Volume 3

# STATUTES OF CALIFORNIA

## AND DIGESTS OF MEASURES

## 1988

Constitution of 1879 as Amended

Measures Submitted to Vote of Electors,
Primary Election, June 7, 1988
and General Election, November 8, 1988

General Laws, Amendments to the Codes, Resolutions,
and Constitutional Amendments passed by the
California Legislature

## 1987–88 Regular Session

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# CHAPTER 1206

An act to add Article 4.5 (commencing with Section 8584) to Chapter 7 of Division 1 of the Government Code, relating to the Office of Emergency Services.

[Approved by Governor September 22, 1988. Filed with Secretary of State September 22, 1988.]

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

SECTION 1. Article 4.5 (commencing with Section 8584) is added to Chapter 7 of Division 1 of the Government Code, to read:

## Article 4.5. Urban Heavy Rescue Act

8584. This article shall be known and may be cited as the Urban Heavy Rescue Act of 1988.

8584.1. (a) It is the intent of the Legislature that the state have an urban heavy rescue capability in the event of a major earthquake. It is also the intent of the Legislature that the Office of Emergency Services and the State Fire Marshal's Office pursue the necessary funding to carry out this article through the normal budget process.

(b) The Fire and Rescue Division of the Office of Emergency Services shall acquire and maintain urban heavy rescue units and transportable caches of search and rescue gear, including hand tools and protective gear. The division shall position the units and caches to ensure a rapid response of personnel and equipment anywhere in the state, and ensure that a unit will be available on the scene within one hour of a major earthquake.

(c) The State Fire Marshal's Office shall coordinate the training of personnel in the use of the units and equipment in cooperation with the Office of Emergency Services.

## CHAPTER 1207

An act to amend Section 20001 of the Vehicle Code, relating to vehicles.

[Approved by Governor September 22, 1988. Filed with Secretary of State September 22, 1988.]

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

SECTION 1. Section 20001 of the Vehicle Code is amended to read:

20001. (a) The driver of any vehicle involved in an accident resulting in injury to any person, other than himself or herself, or in death of any person shall immediately stop the vehicle at the scene of the accident and shall fulfill the requirements of Sections 20003 and 20004.

(b) (1) Except as provided in paragraph (2), any violation of subdivision (a) shall be punished by imprisonment in the state prison, or in the county jail for not to exceed one year or by fine of not to exceed ten thousand dollars ($10,000), or by both.

(2) Any violation of subdivision (a) which results in death or permanent, serious injury, shall be punished by imprisonment in the state prison for two, three, or four years, or in the county jail for not to exceed one year or by a fine of not to exceed ten thousand dollars ($10,000), or by both.

As used in this paragraph, "permanent, serious injury," means loss or permanent impairment of function of any bodily member or organ.

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.

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## CHAPTER 1208

An act to amend Section 81008 of the Government Code, relating to the Political Reform Act of 1974.

[Approved by Governor September 22, 1988 Filed with Secretary of State September 22, 1988.]

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

SECTION 1. Section 81008 of the Government Code is amended to read:

81008. (a) Every report and statement filed pursuant to this title is a public record open for public inspection and reproduction during regular business hours, commencing as soon as practicable, but in any event not later than the second business day following the day on which it was received. No conditions whatsoever shall be imposed upon persons desiring to inspect or reproduce reports and statements filed under this title, nor shall any information or identification be required from such persons. Copies shall be provided at a charge not to exceed ten cents ($0.10) per page. In addition, the filing officer may charge a retrieval fee not to exceed five dollars ($5) per request for copies of reports and statements which are five or more years old. A request for more than one report or statement or report and statement at the same time shall be considered a single request.

(b) Campaign statements shall be open for public inspection and reproduction from 9:00 a.m. to 5:00 p.m. on the Saturday preceding an election held on the first Tuesday after the first Monday in June or November in even-numbered years in the offices of Secretary of State, Registrar-Recorder of Los Angeles County, Registrar of Voters of San Diego County and Registrar of Voters of the City and County of San Francisco.

SEC. 2. The Legislature finds and declares that Section 1 of this act furthers the purposes of the Political Reform Act of 1974 within the meaning of subdivision (a) of Section 81012 of the Government Code.

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## CHAPTER 1209

An act to amend Sections 1188.81, 1188.865, and 1188.875 of, and to add Section 1188.877 to, the Health and Safety Code, relating to small and rural hospitals.

[Approved by Governor September 22, 1988 Filed with Secretary of State September 22, 1988.]

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

SECTION 1. Section 1188.81 of the Health and Safety Code is amended to read:

1188.81. (a) The Legislature recognizes the need to strengthen, and in some cases salvage, rural hospitals to ensure that adequate access to services is provided to residents of rural areas as well as tourists and travelers who, at certain times, may outnumber the residents. Further, the Legislature recognizes that this will require a comprehensive approach. Therefore, the Legislature intends that:

(1) Expertise be provided to endangered rural hospitals to both of the following:

(A) Carry out a strategic assessment of potential business and

diversification of service opportunities.

(B) Develop a specific plan of action when feasible.

(2) Access, when appropriate, be provided to special eligibility programs within the California Health Facilities Financing Authority.

(3) Short-term technical assistance be available on fiscal and program matters.

(4) The State Department of Health Services continue to provide regulatory relief through program flexibility.

(5) Inpatient reimbursement limitations be modified so as not to single out rural hospitals for application.

(6) Reimbursement rates for outpatient services be set at a level which will provide incentives for rural hospitals to focus on the provision of outpatient services and which will reduce the financial losses incurred by the facilities in providing those services.

(b) The Legislature recognizes that for certain rural settings, an acute care hospital as defined in subdivision (a) of Section 1250 of the Health and Safety Code may no longer be cost-effective. Therefore, a rural alternative model which preserves the primary and emergency care systems must be identified, studied through demonstration projects, and developed as a new category of health facility.

(c) The Legislature recognizes that a rural alternative facility may not conform to what is now depicted in state or federal regulation. Therefore, to identify a model, implement demonstration projects, and establish the rural alternative hospital as a license category of health facility, a cooperative effort will be required between the state department, the federal Health Care Financing Administration, and the health care industry. To this end, the Legislature intends that the department inform the federal Health Care Financing Administration of its interest in establishing the rural alternative hospital program and subsequently seek any necessary waivers.

SEC. 2. Section 1188.865 of the Health and Safety Code is amended to read:

1188.865. The department shall provide expert technical assistance to strategically located, high-risk rural hospitals to assist the hospitals in carrying out an assessment of potential business and diversification of service opportunities. In providing the technical assistance on business opportunities, the department shall consult with the Department of Commerce and other appropriate agencies. The high-risk rural hospital, in cooperation with the department, may develop a short-term plan of action if, in its opinion, the results of the assessment so indicate. The department, in consultation with an organization of interest, shall do all of the following:

(a) Establish a process for identifying strategically located, high-risk rural hospitals and reviewing requests from the hospitals for assistance.

(b) Develop a standard format for the strategic assessment.

(c) Develop a model action plan.

(d) Establish criteria for review of action plans.

(e) Request input and assistance from organizations of interest.

(f) Make the strategic assessment format and model action plan available to all small and rural hospitals.

SEC. 3. Section 1188.875 of the Health and Safety Code is amended to read:

1188.875. (a) The department, after consultation with an organization of interest, shall select two strategically located, high-risk rural hospitals to plan and implement rural alternative hospital demonstration projects. To the extent possible, the department shall choose two demonstration sites, with one site serving an isolated mountainous area where access may be impeded by adverse weather conditions, and one site located in a rural agricultural community. Hospitals shall be selected on the basis of their interest in becoming a demonstration site and on their suitability as model rural alternative hospitals. The demonstration projects shall include, but not be limited to, identification of the following:

(1) Appropriate mix and type of services to be provided locally and obtained on referral.

(2) Types and numbers of personnel required.

(3) Probability of, and the amount of, reimbursement under current regulations.

(4) Statutory and regulatory changes necessary to license the facility and maximize reimbursement.

(b) In administering the rural alternative hospital demonstration project, the department shall do all of the following:

(1) Establish two demonstration sites on or before January 1, 1990, and operate the projects for a period of up to 18 months.

(2) Grant exceptions to the licensure requirements for general acute care hospitals that are necessary to serve the purposes of this section when the granting of the exceptions do not jeopardize the health and welfare of patients.

(3) Convey to the Federal Health Care Financing Administration its intent to establish the rural alternative hospital demonstration project and seek any necessary appropriate waivers.

(4) Consider requests for grant funds made by demonstration site hospitals pursuant to subdivision (a) of Section 1188.86 as meeting criteria for priority funding.

(5) Monitor and evaluate demonstration site projects as to the applicability of these models for statewide application.

(c) The department, based on interim findings from the demonstration projects, shall do either of the following:

(1) Prepare and adopt regulations establishing the rural alternative hospital as a licensed health facility by January 1, 1992.

(2) Submit to the Legislature by that date a report detailing why a category of health facility should not be established.

SEC. 4. Section 1188.877 is added to the Health and Safety Code,

to read:

1188.877. (a) The State Department of Health Services shall adopt regulations which will provide for an increase in reimbursement rates for outpatient services rendered to Medi-Cal patients by small and rural hospitals, as defined in Section 1188.855, over and above those reimbursement rates specified in Section 51509 of the California Code of Regulations. The amount of this increase shall be governed by the funding allocated for this specific purpose in the Budget Act, or in another specific appropriation measure.

(b) The rate adjustment authorized by subdivision (a) shall be allocated to eligible hospitals as follows:

(1) A separate percentage increase shall be calculated for minimum floor and nonminimum floor hospitals based on the ratio of each small and rural hospitals' Medi-Cal outpatient payments to the total of all small and rural hospitals' Medi-Cal outpatient payments during the preceding calendar year, as determined by the department. The percentage rate increase for minimum floor hospitals shall be 125 percent of the rate increase percentage calculated for nonminimum floor hospitals. The combined rate increases for minimum floor and nonminimum floor hospitals shall not exceed the funds appropriated for this purpose.

(2) For purposes of this section, "minimum floor hospital" means a hospital (A) for which Medi-Cal payments for outpatient services during the preceding calendar year were less than ½ percent of the total of Medi-Cal payments for outpatient services rendered by all small and rural hospitals during that period and (B) the total gross patient revenue of which from all sources during that period was less than two million five hundred thousand dollars ($2,500,000).

(3) For purposes of this section, "nonminimum floor hospital" means a hospital (A) for which Medi-Cal payments for outpatient services during the preceding calendar year equaled or exceeded ½ percent or of the total of Medi-Cal payments for outpatient services rendered by all small and rural hospitals during that period or (B) the total gross patient revenue of which from all sources during that period was two million five hundred thousand dollars ($2,500,000) or more.

(c) For the purpose of calculating the percentage increase, if any eligible hospital had less than a full year of operation upon which to determine the ratio of Medi-Cal expenditures as defined in paragraph (1) of subdivision (b), the department shall extrapolate the Medi-Cal paid claims expenditures for that hospital to estimate a full year's Medi-Cal claims expenditure.

(d) Payment under this section shall be contingent upon submission of approved claims for Medi-Cal outpatient services rendered after the effective date of this section.

(e) The Director of Health Services shall adopt emergency regulations pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code to implement the rate adjustments required under this section. The

adoption of these regulations shall be deemed an emergency and necessary for the immediate preservation of the public peace, health, or safety. Notwithstanding any provision of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, emergency regulations adopted by the department to implement the rate adjustments required under this section shall not be subject to any review, approval, or disapproval by the Office of Administrative Law at any stage of the rulemaking process. These regulations shall become effective immediately upon their filing with the Secretary of State.

(f) Notwithstanding any other provision of law, reimbursement rates adopted pursuant to this section shall not exceed the hospital's usual and customary charges for services rendered.

(g) The department shall maximize federal financial participation in implementing this section.

(h) The provisions of this section shall become operative July 1, 1989.

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## CHAPTER 1210

An act to amend and supplement the Budget Act of 1988 by adding Item 3790-494 to Section 2.00 thereof, relating to parks and recreation, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 22, 1988. Filed with Secretary of State September 22, 1988 ]

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

SECTION 1. The Department of Parks and Recreation may enter into an operating agreement with the County of Sacramento to operate the Prairie City Off-Highway Vehicle Park as a state vehicular recreation area until the transfer to the state is completed.

SEC. 2. The sum of one million eight thousand dollars ($1,008,000) is hereby appropriated from the Off-Highway Vehicle Fund to the Department of Parks and Recreation for expenditure as follows:

(a) One hundred ninety-five thousand dollars ($195,000) for the acquisition of the real property interest of the County of Sacramento in the Prairie City Off-Highway Vehicle Park.

(b) Eight hundred thirteen thousand dollars ($813,000), in augmentation of Item 3790-001-001 of the Budget Act of 1988 and the establishment of eight personnel years for support of the department for the 1988–89 fiscal year for personal services and operating expenses and equipment related to the Prairie City Off-Highway Vehicle Park. The eight personnel years shall be for a limited term not to exceed three years. The department shall complete a

concessions proposal for the park which is ready for bid in the 1990–91 fiscal year.

SEC. 3. Item 3790-494 is added to Section 2.00 of the Budget Act of 1988 (Chapter 313, Statutes of 1988), to read:

3790-494—Reappropriation, Department of Parks and Recreation. Notwithstanding any other provision of law, the appropriation of $1,584,000 made by Item 3790-301-263(3), Budget Act of 1984, as reappropriated by Item 3790-490-263(6), Budget Act of 1987, for initial development construction for Ocotillo Wells SVRA, is reappropriated to the department, and shall be available for expenditure until June 30, 1989.

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 open the Prairie City Off-Highway Vehicle Park as soon as possible, and in order that the Ocotillo Wells State Vehicle Recreation Area initial development project, which is completely designed and ready to proceed for construction, may be commenced without a delay of construction, which would require continued operations from an inadequate temporary office and no maintenance facility during a period when acquisition of lands to the Ocotillo Wells State Vehicle Recreation Area is growing, it is necessary that this act take effect immediately.

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## CHAPTER 1211

An act to amend Section 12669 of the Water Code, relating to flood control, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 22, 1988. Filed with Secretary of State September 22, 1988.]

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

SECTION 1. Section 12669 of the Water Code is amended to read:

12669. The plan of improvement for flood control and other purposes on the Fresno County Stream Group identified as the Redbank-Fancher Creeks Flood Control Project, including the Redbank Creek Detention Basin, is hereby adopted and authorized substantially in accordance with the recommendations of the Chief of Engineers in House Document Numbered 98-147, at an estimated

cost to the state of such sum as may be appropriated for state cooperation by the Legislature upon recommendation and advice of the department or Reclamation Board, except that no nonflood control application of water may occur within the Redbank Creek Detention Basin except for landscape irrigation or dust control. The preconstruction environmental assessment by the United States Army Corp of Engineers shall include the conduct of field permeability tests and consideration of the recommendations set forth in the "Evaluation Of Impacts On The THAN Site By The Proposed Redbank Creek Flood Detention Basin," 1988, of the State Department of Health Services, Toxic Substances Control Division. Basin design criteria and operational procedures shall include, but not be limited to, the detailed post excavation soils mapping, installation and monitoring of observation wells, and creation of a contingency fund, as indicated by the environmental assessment and as required for compliance with the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code). If state bond act moneys are available for flood control purposes, the Legislature may appropriate those moneys for this project. This authorization shall not be deemed to confer preference on this project over the needs of other statewide programs in the appropriation of available funds. Funds shall be appropriated pursuant to this authorization only upon the act of Congress adopting and authorizing the project as substantially described in House Document Numbered 98-147. The Legislature affirms the topographical and hydrological characteristics of the Fresno County Stream Group for which provision for participation in reservoirs has been made in Section 12868 and determines that the Redbank-Fancher Creeks Flood Control Project is a project on the Fresno County Stream Group, as defined and excepted in Section 12826. The department or Reclamation Board may loan the local agency the funds necessary to pay the local portion of the costs of the lands, easements, and rights-of-way, less the credit provided by Section 12585.3. The rate of interest on the loan shall be the current rate for the Pooled Money Investment Account. The department or Reclamation Board may pay 50 percent of the nonfederal capital costs of the recreation and fish and wildlife enhancement features of the project.

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 construction of urgently needed flood control facilities at the earliest possible time, it is necessary that this act take effect immediately.

# CHAPTER 1212

An act to amend Sections 12027 and 12031 of, and to add Section 12027.1 to, the Penal Code, relating to firearms.

[Approved by Governor September 22, 1988. Filed with Secretary of State September 22, 1988.]

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

SECTION 1. Section 12027 of the Penal Code is amended to read:

12027. Section 12025 does not apply to or affect any of the following:

(a) (1) Any peace officer, listed in Section 830.1 or 830.2, whether active or honorably retired, other duly appointed peace officers, honorably retired peace officers listed in subdivision (c) of Section 830.5, full-time paid peace officers of other states and the federal government who are carrying out official duties while in California, or 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 that officer. Any peace officer described in this paragraph who has been honorably retired shall be issued an identification certificate by the agency the officer retired from.

Any officer retired after January 1, 1981, shall have an endorsement on the identification stating that the issuing agency approves the officer's carrying of a concealed firearm. The endorsement shall also include the date when the endorsement is to be renewed.

No endorsement or renewal endorsement issued pursuant to paragraph (2) shall be effective unless it has a "CCW Approved" stamp on it, except that any peace officer listed in subdivision (f) of Section 830.2 or in subdivision (c) of Section 830.5, who is retired between January 2, 1981, and on or before December 31, 1988, and who is authorized to carry a concealed firearm pursuant to this section, shall not be required to have a "CCW Approved" stamp until the time of the issuance, on or after January 1, 1989, of a renewal endorsement pursuant to paragraph (2). For purposes of this section and Section 12031, "CCW" means "carry concealed weapons."

(2) A retired peace officer who retired after January 1, 1981, shall petition the issuing agency for the renewal of his or her privilege to carry a concealed firearm every five years. An honorably retired peace officer, described in paragraph (1), retired prior to January 1, 1981, shall not be required to obtain an endorsement from the issuing agency to carry a concealed firearm. The agency from which a peace officer is honorably retired may, upon initial retirement of that peace officer, or at any time subsequent thereto, deny or revoke, for good cause the retired officer's privilege to carry a concealed firearm.

(3) An honorably retired peace officer listed in subdivision (c) of Section 830.5 authorized to carry concealed firearms by this

subdivision shall meet the training requirements of Section 832 and shall qualify with the firearm at least annually. The individual retired peace officer shall be responsible for maintaining his or her eligibility to carry a concealed firearm. The Department of Justice shall provide subsequent arrest notification pursuant to Section 11105.2 regarding honorably retired peace officers listed in subdivision (c) of Section 830.5 to the agency from which the officer has retired.

(b) The possession or transportation of unloaded firearms as merchandise by a person engaged in the business of manufacturing, repairing, or dealing in firearms who is licensed to engage in that business or the authorized representative or authorized agent of that person while engaged in the lawful course of the business.

(c) Members of the Army, Navy, or Marine Corps of the United States, or the National Guard, when on duty, or organizations which are by law authorized to purchase or receive such weapons from the United States or this state.

(d) Duly authorized military or civil organizations while parading, or the members thereof when going to and from the places of meeting of their respective organizations.

(e) Guards or messengers of common carriers, banks, and other financial institutions 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.

(f) Members of any club or organization organized for the purpose of practicing shooting at targets upon established target ranges, whether public or private, while such members are using any of the firearms referred to in this chapter upon such target ranges, or while going to and from such ranges.

(g) Licensed hunters or fishermen while engaged in hunting or fishing, or while going to or returning from such hunting or fishing expedition.

(h) Transportation of unloaded firearms by a person operating a licensed common carrier or an authorized agent or employee thereof when transported in conformance with applicable federal law.

(i) Upon approval of the sheriff of the county in which they reside, honorably retired federal officers or agents of the Federal Bureau of Investigation, the Secret Service, the United States Customs Service, the Federal Bureau of Alcohol, Tobacco, and Firearms, the Federal Bureau of Narcotics, and the Drug Enforcement Administration who were assigned to duty within the state for a period of not less than one year, or who retired from active service in the state.

Retired federal officers or agents shall carry identification indicating their retired federal status and shall provide the sheriff with certification from the agency from which they retired certifying their service in the state, the nature of their retirement, and indicating the agency's concurrence that the retired federal officer or agent should be accorded the privilege of carrying a concealed firearm.

The sheriff of the county in which the retired federal officer or

agent resides may require recertification prior to a permit renewal, and may suspend the privilege for cause. The sheriff may charge a fee necessary to cover any reasonable expenses incurred by the county.

SEC. 1.5. Section 12027 of the Penal Code is amended to read:

12027. Section 12025 does not apply to or affect any of the following:

(a) (1) Any peace officer, listed in Section 830.1 or 830.2, whether active or honorably retired, other duly appointed peace officers, honorably retired peace officers listed in subdivision (c) of Section 830.5, full-time paid peace officers of other states and the federal government who are carrying out official duties while in California, or 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 that officer. Any peace officer described in this paragraph who has been honorably retired shall be issued an identification certificate by the agency the officer retired from.

Any officer retired after January 1, 1981, shall have an endorsement on the identification stating that the issuing agency approves the officer's carrying of a concealed firearm. The endorsement shall also include the date when the endorsement is to be renewed.

No endorsement or renewal endorsement issued pursuant to paragraph (2) shall be effective unless it has a "CCW Approved" stamp on it, except that any peace officer listed in subdivision (f) of Section 830.2 or in subdivision (c) of Section 830.5, who is retired between January 2, 1981, and on or before December 31, 1988, and who is authorized to carry a concealed firearm pursuant to this section, shall not be required to have a "CCW Approved" stamp until the time of the issuance, on or after January 1, 1989, of a renewal endorsement pursuant to paragraph (2). For purposes of this section and Section 12031, "CCW" means "carry concealed weapons."

(2) A retired peace officer who retired after January 1, 1981, shall petition the issuing agency for the renewal of his or her privilege to carry a concealed firearm every five years. An honorably retired peace officer, described in paragraph (1), retired prior to January 1, 1981, shall not be required to obtain an endorsement from the issuing agency to carry a concealed firearm. The agency from which a peace officer is honorably retired may, upon initial retirement of that peace officer, or at any time subsequent thereto, deny or revoke, for good cause the retired officer's privilege to carry a concealed firearm.

(3) An honorably retired peace officer listed in subdivision (c) of Section 830.5 authorized to carry concealed firearms by this subdivision shall meet the training requirements of Section 832 and shall qualify with the firearm at least annually. The individual retired peace officer shall be responsible for maintaining his or her eligibility to carry a concealed firearm. The Department of Justice shall provide subsequent arrest notification pursuant to Section 11105.2 regarding honorably retired peace officers listed in subdivision (c)

of Section 830.5 to the agency from which the officer has retired.

(b) The possession or transportation of unloaded firearms as merchandise by a person engaged in the business of manufacturing, repairing, or dealing in firearms who is licensed to engage in that business or the authorized representative or authorized agent of that person while engaged in the lawful course of the business.

(c) Members of the Army, Navy, or Marine Corps of the United States, or the National Guard, when on duty, or organizations which are by law authorized to purchase or receive such weapons from the United States or this state.

(d) Duly authorized military or civil organizations while parading, or the members thereof when going to and from the places of meeting of their respective organizations.

(e) Guards or messengers of common carriers, banks, and other financial institutions 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.

(f) Members of any club or organization organized for the purpose of practicing shooting at targets upon established target ranges, whether public or private, while such members are using any of the firearms referred to in this chapter upon such target ranges, or while going to and from such ranges.

(g) Licensed hunters or fishermen while engaged in hunting or fishing, or while going to or returning from such hunting or fishing expedition.

(h) Transportation of unloaded firearms by a person operating a licensed common carrier or an authorized agent or employee thereof when transported in conformance with applicable federal law.

(i) Upon approval of the sheriff of the county in which they reside, honorably retired federal officers or agents of federal law enforcement agencies including, but not limited to, the Federal Bureau of Investigation, the Secret Service, the United States Customs Service, the Federal Bureau of Alcohol, Tobacco, and Firearms, the Federal Bureau of Narcotics, the Drug Enforcement Administration, the United States Border Patrol, and officers or agents of the Internal Revenue Service who were authorized to carry weapons while on duty, who were assigned to duty within the state for a period of not less than one year, or who retired from active service in the state.

Retired federal officers or agents shall provide the sheriff with certification from the agency from which they retired certifying their service in the state, the nature of their retirement, and indicating the agency's concurrence that the retired federal officer or agent should be accorded the privilege of carrying a concealed firearm.

Upon that approval, the sheriff shall issue a permit to the retired federal officer or agent indicating that he or she may carry a concealed firearm in accordance with this subdivision. The permit shall be valid for a period not exceeding five years, shall be carried

by the retiree while carrying a concealed firearm, and may be revoked for good cause.

The sheriff of the county in which the retired federal officer or agent resides may require recertification prior to a permit renewal, and may suspend the privilege for cause. The sheriff may charge a fee necessary to cover any reasonable expenses incurred by the county.

SEC. 2. Section 12027.1 is added to the Penal Code, to read:

12027.1. (a) As specified in subdivision (a) of Section 12027, any peace officer employed by a local agency and listed in Section 830.1 of the Penal Code, retired after January 1, 1981, shall have an endorsement on the identification certificate stating that the issuing agency approves the officer's carrying of a concealed firearm. The endorsement may be removed by the issuing agency upon a hearing conducted in accordance with subdivision (b) to show good cause. A retired peace officer shall have 15 days to respond to a notice of that hearing, or failing to respond to the notice, forfeits his or her rights to that hearing. A retired peace officer may have his or her privilege to carry a concealed firearm revoked by violating any departmental rules, state, or federal laws that if violated by an officer on active duty would result in that officer's arrest, suspension, or removal from the agency. A retired officer when notified of the revocation of his or her privilege to carry a concealed firearm shall immediately surrender his or her identification certificate and endorsement to the issuing agency. The issuing agency shall reissue a new identification without such endorsement. No peace officer listed in this section retired after January 1, 1989, shall be issued an endorsement to carry a concealed firearm if that peace officer is retired because of a psychological disability.

(b) Any hearing conducted under this section shall be held before a three-member hearing board. One member of the board shall be selected by the local agency and one member shall be selected by the retired peace officer or his or her employee organization. The third member shall be selected jointly by the local agency and the retired peace officer or his or her employee organization.

Any decision by the board shall be binding on the local agency and the retired peace officer.

SEC. 3. Section 12031 of the Penal Code is amended to read:

12031. (a) Except as provided in subdivision (b), (c), or (d), every person who carries a loaded firearm on his or her person or in a vehicle while in any public place or on any public street in an incorporated city or in any public place or on any public street in a prohibited area of unincorporated territory is guilty of a misdemeanor.

Every person convicted under this section who has previously been convicted of an offense enumerated in Section 12001.6, or of any crime made punishable under this chapter, shall serve a term of at least three months in the county jail, or, if granted probation, or if the execution or imposition of sentence is suspended, it shall be a

condition thereof that he or she be imprisoned for a period of at least three months.

The court shall apply the three-month minimum sentence except in unusual cases where the interests of justice would best be served by granting probation or suspending the imposition or execution of sentence without the minimum imprisonment required in this subdivision or by granting probation or suspending the imposition or execution of sentence with conditions other than those set forth in this subdivision, in which case, the court shall specify on the record and shall enter on the minutes the circumstances indicating that the interests of justice would best be served by such a disposition.

(b) Subdivision (a) shall not apply to any of the following:

(1) Peace officers listed in Section 830.1 or 830.2, whether active or honorably retired, other duly appointed peace officers, honorably retired peace officers listed in subdivision (c) of Section 830.5, full-time paid peace officers of other states and the federal government who are carrying out official duties while in California, or any person summoned by any such officers to assist in making arrests or preserving the peace while the person is actually engaged in assisting that officer. Any peace officer described in this paragraph who has been honorably retired shall be issued an identification certificate by the agency from which the officer has retired.

Any officer retired after January 1, 1981, shall have an endorsement on the identification certificate stating that the issuing agency approves the officer's carrying of a loaded firearm. The endorsement shall also include the date when the endorsement is to be renewed.

No endorsement or renewal endorsement issued pursuant to paragraph (2) shall be effective unless it has a "CCW Approved" stamp on it, except that any peace officer listed in subdivision (f) of Section 830.2 or in subdivision (c) of Section 830.5, who is retired between January 2, 1981, and on or before December 31, 1988, and who is authorized to carry a loaded firearm pursuant to this section, shall not be required to have a "CCW Approved" stamp until the time of the issuance, on or after January 1, 1989, of a renewal endorsement issued pursuant to paragraph (2).

(2) A retired peace officer who retired after January 1, 1981, shall petition the issuing agency for renewal of his or her privilege to carry a loaded firearm every five years. An honorably retired peace officer, described in paragraph (1), retired prior to January 1, 1981, shall not be required to obtain an endorsement from the issuing agency to carry a firearm. The agency from which a peace officer is honorably retired may, upon initial retirement of the peace officer, or at any time subsequent thereto, deny or revoke, for good cause, the retired officer's privilege to carry a firearm.

(3) An honorably retired peace officer listed in subdivision (c) of Section 830.5 authorized to carry loaded firearms by this subdivision shall meet the training requirements of Section 832 and shall qualify with the firearm at least annually. The individual retired peace

officer shall be responsible for maintaining his or her eligibility to carry a loaded firearm. The Department of Justice shall provide subsequent arrest notification pursuant to Section 11105.2 regarding honorably retired peace officers listed in subdivision (c) of Section 830.5 to the agency from which the officer has retired.

(4) Members of the military forces of this state or of the United States engaged in the performance of their duties.

(5) Persons who are using target ranges for the purpose of practice shooting with a firearm or who are members of shooting clubs while hunting on the premises of such clubs.

(6) The carrying of concealable weapons by persons who are authorized to carry such weapons pursuant to Article 3 (commencing with Section 12050) of Chapter 1 of Title 2 of Part 4.

(7) Armored vehicle guards, as defined in Section 7521 of the Business and Professions Code, (A) if hired prior to January 1, 1977; or (B) if hired on or after such date, if they have received a firearms qualification card from the Department of Consumer Affairs, in each case while acting within the course and scope of their employment.

(8) Upon approval of the sheriff of the county in which they reside, honorably retired federal officers or agents of the Federal Bureau of Investigation, the Secret Service, the United States Customs Service, the Federal Bureau of Alcohol, Tobacco, and Firearms, the Federal Bureau of Narcotics, and the Drug Enforcement Administration who were assigned to duty within the state for a period of not less than one year, or who retired from active service in the state.

Retired federal officers or agents shall carry identification indicating their retired federal status and shall provide the sheriff with certification from the agency from which they retired certifying their service in the state, the nature of their retirement, and indicating the agency's concurrence that the retired federal officer or agent should be accorded the privilege of carrying a loaded firearm.

The sheriff of the county in which the retired federal officer or agent resides may require recertification prior to a permit renewal, and may suspend the privilege for cause. The sheriff may charge a fee necessary to cover any reasonable expenses incurred by the county.

(c) Subdivision (a) shall not apply to any of the following who have completed a regular course in firearms training approved by the Commission on Peace Officer Standards and Training:

(1) 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 (i) are subject to suspension or dismissal after a hearing on charges duly filed with the commission after a fair and impartial trial, (ii) must be not less than 18 years of age nor more than 40 years of age, (iii) must possess physical qualifications prescribed by the commission, and (iv) 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.

(2) The carrying of weapons by animal control officers or zookeepers, regularly compensated as such by a governmental agency when acting in the course and scope of their employment and when designated by a local ordinance or, if the governmental agency is not authorized to act by ordinance, by a resolution, either individually or by class, to carry such weapons, or by persons who are authorized to carry such weapons pursuant to Section 607f of the Civil Code, while actually engaged in the performance of their duties pursuant to that section.

(3) Harbor policemen designated pursuant to Section 663.5 of the Harbors and Navigation Code.

(d) Subdivision (a) shall not apply to any of the following who have been issued a certificate pursuant to Section 12033. Such certificate shall not be required of any person who is a peace officer, who has completed all training required by law for the exercise of his or her power as a peace officer, and who is employed while not on duty as such peace officer.

(1) Guards or messengers of common carriers, banks, and other financial institutions 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.

(2) Guards of contract carriers operating armored vehicles pursuant to California Highway Patrol and Public Utilities Commission authority (i) if hired prior to January 1, 1977; or (ii) if hired on or after January 1, 1977, if they have completed a course in the carrying and use of firearms which meets the standards prescribed by the Department of Consumer Affairs.

(3) Private investigators and private patrol operators who are licensed pursuant to Chapter 11.5 (commencing with Section 7512) of, and alarm company operators who are licensed pursuant to Chapter 11.6 (commencing with Section 7590) of, Division 3 of the Business and Professions Code, while acting within the course and scope of their employment.

(4) Uniformed security guards or night watchmen employed by any public agency, while acting within the scope and in the course of their employment.

(5) Uniformed security guards, regularly employed and compensated in that capacity by persons engaged in any lawful business, and uniformed alarm agents employed by an alarm company operator, while actually engaged in protecting and preserving the property of their employers or on duty or en route to or from their residence or their place of employment. Security guards and alarm agents en route to or from their residence or employer-required range training. Nothing in this paragraph shall be construed to prohibit cities and counties from enacting ordinances requiring alarm agents to register their name.

(6) Uniformed employees of private patrol operators and private

investigators licensed pursuant to Chapter 11.5 (commencing with Section 7512) of Division 3 of the Business and Professions Code while acting within the course and scope of their employment as private patrolmen or private investigators.

(e) In order to determine whether or not a firearm is loaded for the purpose of enforcing this section, peace officers are authorized to examine any firearm carried by anyone on his or her person or in a vehicle while in any public place or on any public street in an incorporated city or prohibited area of an unincorporated territory. Refusal to allow a peace officer to inspect a firearm pursuant to the provisions of this section constitutes probable cause for arrest for violation of this section.

(f) As used in this section, "prohibited area" means any place where it is unlawful to discharge a weapon.

(g) A firearm shall be deemed to be loaded for the purposes of this section 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; except that 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.

(h) Nothing in this section shall prevent any person engaged in any lawful business, including a nonprofit organization, or any officer, employee, or agent authorized by such person for lawful purposes connected with such business, from having a loaded firearm within such person's place of business, or any person in lawful possession of private property from having a loaded firearm on such property.

(i) Nothing in this section shall prevent any person from carrying a loaded firearm in an area within an incorporated city while engaged in hunting, during such time and in such area as the hunting is not prohibited by the city council.

(j) Nothing in this section is intended to preclude the carrying of any loaded firearm, under circumstances where it would otherwise be lawful, by a person who reasonably believes that the person or property of himself or herself or of another is in immediate, grave danger and that the carrying of such weapon is necessary for the preservation of such person or property. As used in this subdivision "immediate" means the brief interval before and after the local law enforcement agency, when reasonably possible, has been notified of the danger and before the arrival of its assistance.

(k) Nothing in this section is intended to preclude the carrying of a loaded firearm by any person while engaged in the act of making or attempting to make a lawful arrest.

(*l*) Nothing in this section shall prevent any person from having a loaded weapon, if it is otherwise lawful, at his or her place of residence, including any temporary residence or campsite.

SEC. 3.5. Section 12031 of the Penal Code is amended to read:

12031. (a) Except as provided in subdivision (b), (c), or (d), every person who carries a loaded firearm on his or her person or in a vehicle while in any public place or on any public street in an incorporated city or in any public place or on any public street in a prohibited area of unincorporated territory is guilty of a misdemeanor.

Every person convicted under this section who has previously been convicted of an offense enumerated in Section 12001.6, or of any crime made punishable under this chapter, shall serve a term of at least three months in the county jail, or, if granted probation, or if the execution or imposition of sentence is suspended, it shall be a condition thereof that he or she be imprisoned for a period of at least three months.

The court shall apply the three-month minimum sentence except in unusual cases where the interests of justice would best be served by granting probation or suspending the imposition or execution of sentence without the minimum imprisonment required in this subdivision or by granting probation or suspending the imposition or execution of sentence with conditions other than those set forth in this subdivision, in which case, the court shall specify on the record and shall enter on the minutes the circumstances indicating that the interests of justice would best be served by such a disposition.

(b) Subdivision (a) shall not apply to any of the following:

(1) Peace officers listed in Section 830.1 or 830.2, whether active or honorably retired, other duly appointed peace officers, honorably retired peace officers listed in subdivision (c) of Section 830.5, full-time paid peace officers of other states and the federal government who are carrying out official duties while in California, or any person summoned by any such officers to assist in making arrests or preserving the peace while the person is actually engaged in assisting that officer. Any peace officer described in this paragraph who has been honorably retired shall be issued an identification certificate by the agency from which the officer has retired.

Any officer retired after January 1, 1981, shall have an endorsement on the identification certificate stating that the issuing agency approves the officer's carrying of a loaded firearm. The endorsement shall also include the date when the endorsement is to be renewed.

No endorsement or renewal endorsement issued pursuant to paragraph (2) shall be effective unless it has a "CCW Approved" stamp on it, except that any peace officer listed in subdivision (f) of Section 830.2 or in subdivision (c) of Section 830.5, who is retired between January 2, 1981, and on or before December 31, 1988, and who is authorized to carry a loaded firearm pursuant to this section, shall not be required to have a "CCW Approved" stamp until the time of the issuance, on or after January 1, 1989, of a renewal endorsement pursuant to paragraph (2).

(2) A retired peace officer who retired after January 1, 1981, shall petition the issuing agency for renewal of his or her privilege to carry

a loaded firearm every five years. An honorably retired peace officer, described in paragraph (1), retired prior to January 1, 1981, shall not be required to obtain an endorsement from the issuing agency to carry a firearm. The agency from which a peace officer is honorably retired may, upon initial retirement of the peace officer, or at any time subsequent thereto, deny or revoke, for good cause, the retired officer's privilege to carry a firearm.

(3) An honorably retired peace officer listed in subdivision (c) of Section 830.5 authorized to carry loaded firearms by this subdivision shall meet the training requirements of Section 832 and shall qualify with the firearm at least annually. The individual retired peace officer shall be responsible for maintaining his or her eligibility to carry a loaded firearm. The Department of Justice shall provide subsequent arrest notification pursuant to Section 11105.2 regarding honorably retired peace officers listed in subdivision (c) of Section 830.5 to the agency from which the officer has retired.

(4) Members of the military forces of this state or of the United States engaged in the performance of their duties.

(5) Persons who are using target ranges for the purpose of practice shooting with a firearm or who are members of shooting clubs while hunting on the premises of such clubs.

(6) The carrying of concealable weapons by persons who are authorized to carry such weapons pursuant to Article 3 (commencing with Section 12050) of Chapter 1 of Title 2 of Part 4.

(7) Armored vehicle guards, as defined in Section 7521 of the Business and Professions Code, (A) if hired prior to January 1, 1977; or (B) if hired on or after such date, if they have received a firearms qualification card from the Department of Consumer Affairs, in each case while acting within the course and scope of their employment.

(8) Upon approval of the sheriff of the county in which they reside, honorably retired federal officers or agents of federal law enforcement agencies including, but not limited to, the Federal Bureau of Investigation, the Secret Service, the United States Customs Service, the Federal Bureau of Alcohol, Tobacco, and Firearms, the Federal Bureau of Narcotics, the Drug Enforcement Administration, the United States Border Patrol, and officers or agents of the Internal Revenue Service who were authorized to carry weapons while on duty, who were assigned to duty within the state for a period of not less than one year, or who retired from active service in the state.

Retired federal officers or agents shall provide the sheriff with certification from the agency from which they retired certifying their service in the state, the nature of their retirement, and indicating the agency's concurrence that the retired federal officer or agent should be accorded the privilege of carrying a loaded firearm.

Upon approval, the sheriff shall issue a permit to the retired federal officer or agent indicating that he or she may carry a loaded firearm in accordance with this paragraph. The permit shall be valid

for a period not exceeding five years, shall be carried by the retiree while carrying a loaded firearm, and may be revoked for good cause.

The sheriff of the county in which the retired federal officer or agent resides may require recertification prior to a permit renewal, and may suspend the privilege for cause. The sheriff may charge a fee necessary to cover any reasonable expenses incurred by the county.

(c) Subdivision (a) shall not apply to any of the following who have completed a regular course in firearms training approved by the Commission on Peace Officer Standards and Training:

(1) 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 (i) are subject to suspension or dismissal after a hearing on charges duly filed with the commission after a fair and impartial trial, (ii) must be not less than 18 years of age nor more than 40 years of age, (iii) must possess physical qualifications prescribed by the commission, and (iv) 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.

(2) The carrying of weapons by animal control officers or zookeepers, regularly compensated as such by a governmental agency when acting in the course and scope of their employment and when designated by a local ordinance or, if the governmental agency is not authorized to act by ordinance, by a resolution, either individually or by class, to carry such weapons, or by persons who are authorized to carry such weapons pursuant to Section 607f of the Civil Code, while actually engaged in the performance of their duties pursuant to that section.

(3) Harbor policemen designated pursuant to Section 663.5 of the Harbors and Navigation Code.

(d) Subdivision (a) shall not apply to any of the following who have been issued a certificate pursuant to Section 12033. The certificate shall not be required of any person who is a peace officer, who has completed all training required by law for the exercise of his or her power as a peace officer, and who is employed while not on duty as such peace officer.

(1) Guards or messengers of common carriers, banks, and other financial institutions 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.

(2) Guards of contract carriers operating armored vehicles pursuant to California Highway Patrol and Public Utilities Commission authority (i) if hired prior to January 1, 1977; or (ii) if hired on or after January 1, 1977, if they have completed a course in the carrying and use of firearms which meets the standards prescribed by the Department of Consumer Affairs.

(3) Private investigators and private patrol operators who are licensed pursuant to Chapter 11.5 (commencing with Section 7512)

of, and alarm company operators who are licensed pursuant to Chapter 11.6 (commencing with Section 7590) of, Division 3 of the Business and Professions Code, while acting within the course and scope of their employment.

(4) Uniformed security guards or night watchmen employed by any public agency, while acting within the scope and in the course of their employment.

(5) Uniformed security guards, regularly employed and compensated in that capacity by persons engaged in any lawful business, and uniformed alarm agents employed by an alarm company operator, while actually engaged in protecting and preserving the property of their employers or on duty or en route to or from their residence or their place of employment. Security guards and alarm agents en route to or from their residence or employer-required range training. Nothing in this paragraph shall be construed to prohibit cities and counties from enacting ordinances requiring alarm agents to register their name.

(6) Uniformed employees of private patrol operators and private investigators licensed pursuant to Chapter 11.5 (commencing with Section 7512) of Division 3 of the Business and Professions Code while acting within the course and scope of their employment as private patrolmen or private investigators.

(e) In order to determine whether or not a firearm is loaded for the purpose of enforcing this section, peace officers are authorized to examine any firearm carried by anyone on his or her person or in a vehicle while in any public place or on any public street in an incorporated city or prohibited area of an unincorporated territory. Refusal to allow a peace officer to inspect a firearm pursuant to the provisions of this section constitutes probable cause for arrest for violation of this section.

(f) As used in this section, "prohibited area" means any place where it is unlawful to discharge a weapon.

(g) A firearm shall be deemed to be loaded for the purposes of this section 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; except that 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.

(h) Nothing in this section shall prevent any person engaged in any lawful business, including a nonprofit organization, or any officer, employee, or agent authorized by such person for lawful purposes connected with such business, from having a loaded firearm within such person's place of business, or any person in lawful possession of private property from having a loaded firearm on such property.

(i) Nothing in this section shall prevent any person from carrying a loaded firearm in an area within an incorporated city while

engaged in hunting, during such time and in such area as the hunting is not prohibited by the city council.

(j) Nothing in this section is intended to preclude the carrying of any loaded firearm, under circumstances where it would otherwise be lawful, by a person who reasonably believes that the person or property of himself or herself or of another is in immediate, grave danger and that the carrying of such weapon is necessary for the preservation of such person or property. As used in this subdivision "immediate" means the brief interval before and after the local law enforcement agency, when reasonably possible, has been notified of the danger and before the arrival of its assistance.

(k) Nothing in this section is intended to preclude the carrying of a loaded firearm by any person while engaged in the act of making or attempting to make a lawful arrest.

(*l*) Nothing in this section shall prevent any person from having a loaded weapon, if it is otherwise lawful, at his or her place of residence, including any temporary residence or campsite.

SEC. 4. Section 1.5 of this bill incorporates amendments to Section 12027 of the Penal Code proposed by both this bill and AB 1567. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1989, (2) each bill amends Section 12027 of the Penal Code, and (3) this bill is enacted after AB 1567, in which case Section 1 of this bill shall not become operative.

SEC. 5. Section 3.5 of this bill incorporates amendments to Section 12031 of the Penal Code proposed by both this bill and AB 1567. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1989, (2) each bill amends Section 12031 of the Penal Code, and (3) this bill is enacted after AB 1567, in which case Section 3 of this bill shall not become operative.

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 five hundred thousand dollars ($500,000), reimbursement shall be made from the State Mandates Claims Fund.

# CHAPTER 1213

An act to add Section 32 to, the Business and Professions Code, and to amend Sections 1337.1 and 1797.175 of the Health and Safety Code, relating to acquired immune deficiency syndrome.

[Approved by Governor September 22, 1988. Filed with Secretary of State September 22, 1988 ]

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

SECTION 1. Section 32 is added to the Business and Professions Code, to read:

32. (a) The Legislature finds that there is a need to ensure that professionals of the healing arts who have or intend to have significant contact with patients who have, or are at risk to be exposed to, acquired immune deficiency syndrome (AIDS) are provided with training in the form of continuing education regarding the characteristics and methods of assessment and treatment of the condition.

(b) A board vested with the responsibility of regulating the following licensees shall consider including training regarding the characteristics and method of assessment and treatment of acquired immune deficiency syndrome (AIDS) in any continuing education or training requirements for those licensees: chiropractors, medical laboratory technicians, dentists, dental hygienists, dental assistants, physicians and surgeons, podiatrists, registered nurses, licensed vocational nurses, psychologists, physicians assistants, respiratory therapists, acupuncturists, marriage, family, and child counselors, licensed educational psychologists, and clinical social workers.

SEC. 2. Section 1337.1 of the Health and Safety Code is amended to read:

1337.1. A skilled nursing or intermediate care facility shall adopt an approved training program which meets standards established by the state department. The approved training program shall consist of at least the following:

(a) An orientation program to be given to newly employed nurse assistants prior to providing direct patient care in skilled nursing or intermediate care facilities.

(b) A precertification training program consisting of at least 50 classroom hours of training on basic nursing skills, patient safety and rights, and the social and psychological problems of patients, and at least 100 hours supervised and on-the-job training clinical practice. The 100 hours may consist of normal employment as a nurse assistant under the supervision of either the director of nurse training or a licensed nurse. The 50 classroom hours of training may be conducted within a skilled nursing or intermediate care facility or in an educational institution. In such a precertification training program, credit shall be given for the training received in an approved

precertification training program adopted by another skilled nursing or intermediate care facility.

(c) Continuing in-service training to assure continuing competency in existing and new nursing skills.

(d) Each facility shall consider including training regarding the characteristics and method of assessment and treatment of acquired immune deficiency syndrome (AIDS).

SEC. 3. Section 1797.175 of the Health and Safety Code is amended to read:

1797.175. The authority shall establish the standards for continuing education and competency examination for certification and recertification of all prehospital personnel.

The authority shall consider including training regarding the characteristics and method of assessment and treatment of acquired immune deficiency syndrome (AIDS).

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## CHAPTER 1214

An act to amend Section 20017.77 of the Government Code, relating to the Public Employees' Retirement System, and making an appropriation therefor.

[Approved by Governor September 22, 1988. Filed with Secretary of State September 22, 1988.]

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

SECTION 1. Section 20017.77 of the Government Code is amended to read:

20017.77. "State safety member" shall also include officers and employees in (a) the Department of Corrections employed to perform the duties now performed in positions with the following class titles: Director of Corrections, unless upon the appointment of a person to the office of the Director of Corrections the person elects to be an industrial member; Deputy Director, Department of Corrections; Deputy Director, Institutions, Camps and Program Services Division; Deputy Director, Parole and Community Services; warden; Warden—San Quentin; superintendent II and III, Department of Corrections; deputy superintendent; correctional administrator; program administrator, correctional institution; all classes of correctional program supervisor; correctional captain; correctional lieutenant; correctional sergeant; correctional officer; all classes of women's correctional supervisor; Assistant Deputy Director, Parole and Community Services; all classes of parole administrator, adult parole; all classes of parole agent, adult parole; Assistant Director, Investigations and Law Enforcement Liaison; senior special agent; special agent; all classes of women's parole agent; medical facility superintendent; Superintendent, California

Institution for Women; all classes of correctional counselor; Chief and Assistant Chief Transportation Officer, (b) the Department of the Youth Authority employed to perform the duties now performed in positions with the following class titles: Director, Department of the Youth Authority; Chief, Division of Parole and Community Services; Deputy Chief, Division of Parole and Community Services; program administrator, correctional school; assistant superintendent, correctional school; all classes of superintendent, correctional school; Youth Authority camp superintendent; assistant superintendent, Youth Authority camp; Chief, Division of Institutions; treatment team supervisor; all classes of transportation officers, Youth Authority; security officer; all classes of group supervisors; all classes of parole agent, Youth Authority; all classes of youth counselor; supervisor community treatment programs; correctional casework training supervisor; correctional casework trainee; all classes of correctional counselor, (c) the Board of Prison Terms employed to perform duties now performed in positions with the following class titles: all classes of parole officer; all classes of correctional counselor and the Chief of Investigation, (d) the Youthful Offender Parole Board employed to perform duties now performed in positions with the following class titles: all classes of parole agent, and (e) the prison industry authority employed to perform duties now performed in positions with the following class titles: General Manager; Assistant General Manager, Administration and Marketing Branch; Chief, Industry Implementation Division; Activation Manager.

Any officer or employee of the Prison Industry Authority in employment on the operative date of the amendment of this section made in 1988 in the 1987–88 Regular Session of the Legislature and who becomes a state safety member as a result of that amendment may elect within 90 days of notification by the board, to remain subject to the industrial service retirement benefit by filing an irrevocable notice of election with the board.

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## CHAPTER 1215

An act to amend Section 21647 of the Business and Professions Code, relating to pawnbrokers and secondhand dealers.

[Approved by Governor September 22, 1988 Filed with Secretary of State September 22, 1988 ]

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

SECTION 1. Section 21647 of the Business and Professions Code is amended to read:

21647. (a) Whenever any peace officer has probable cause to believe that property in the possession of a pawnbroker or secondhand dealer is stolen, the peace officer may place a hold on

the property for a period not to exceed 90 days. When a peace officer places a hold on the property, the peace officer shall give the pawnbroker or secondhand dealer a written notice at the time the hold is placed, describing the item or items to be held. During that period the pawnbroker or secondhand dealer shall not release or dispose of the property, except pursuant to a court order or upon receipt of a written authorization signed by any peace officer who is a member of the law enforcement agency of which the peace officer placing the hold on the property is a member. Except as specifically set forth in this section, a pawnbroker or secondhand property dealer shall not be subject to civil liability for compliance with this section.

(b) Whenever property that is in the possession of a pawnbroker or secondhand dealer is subject to a hold and the property is required by a peace officer in a criminal investigation, the pawnbroker or secondhand dealer, upon reasonable notice, shall produce the property at reasonable times and places or may deliver the property to any peace officer upon the request of any peace officer who is a member of the law enforcement agency of which the peace officer placing the hold on the property is a member.

(c) Whenever property that is in the possession of a pawnbroker or secondhand dealer is subject to a hold and the property is no longer required for the purpose of criminal investigation, the law enforcement agency that placed the hold on the property shall undertake the following:

(1) With respect to the property being held, if the law enforcement agency has no knowledge of the property on hold being reported as stolen, the property shall be released.

(2) If the law enforcement agency has knowledge that the property has been reported stolen, the law enforcement agency shall notify the person who reported the stolen property of the name and address of the pawnbroker or secondhand dealer holding the property, authorize the release of the property to that person, and advise the person that the law neither requires nor prohibits payment of a fee or any other condition in return for the surrender of the property.

The law enforcement agency that placed the property on hold shall release the hold after 60 days has elapsed following the delivery of the notice to the person who reported the property stolen.

(3) If a pledgor seeks to redeem property that is subject to a hold, the pawnbroker or secondhand dealer shall advise the pledgor of the name and badge number of the peace officer who placed the hold on the property and the name of the law enforcement agency of which the officer is a member. If the property is not required to be held pursuant to a criminal prosecution the hold shall be released.

# CHAPTER 1216

An act to amend Section 199.25 of, and to repeal Section 199.27 of, the Health and Safety Code, relating to AIDS.

[Approved by Governor September 22, 1988 Filed with Secretary of State September 22, 1988.]

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

SECTION 1. Section 199.25 of the Health and Safety Code is amended to read:

199.25. (a) Notwithstanding Section 199.21 or any other provision of law, no physician and surgeon who has the results of a confirmed positive test to detect infection by the probable causative agent of acquired immune deficiency syndrome of a patient under his or her care shall be held criminally or civilly liable for disclosing to a person reasonably believed to be the spouse, or to a person reasonably believed to be a sexual partner or a person with whom the patient has shared the use of hypodermic needles, or to the county health officer, that the patient has tested positive on a test to detect infection by the probable causative agent of acquired immune deficiency syndrome, except that no physician and surgeon shall disclose any identifying information about the individual believed to be infected.

(b) No physician and surgeon shall disclose the information described in subdivision (a) unless he or she has first discussed the test results with the patient and has offered the patient appropriate educational and psychological counseling, which shall include information on the risks of transmitting the human immunodeficiency virus to other people and methods of avoiding those risks, and has attempted to obtain the patient's voluntary consent for notification of his or her contacts. The physician and surgeon shall notify the patient of his or her intent to notify the patient's contacts prior to any notification. When the information is disclosed to a person reasonably believed to be a spouse, or to a person reasonably believed to be a sexual partner, or a person with whom the patient has shared the use of hypodermic needles, the physician and surgeon shall refer that person for appropriate care, counseling, and followup. This section shall not apply to disclosures made other than for the purpose of diagnosis, care, and treatment of persons notified pursuant to this section, or for the purpose of interrupting the chain of transmission.

(c) This section is permissive on the part of the attending physician, and all requirements and other authorization for the disclosure of test results to detect infection by the probable causative agent of acquired immune deficiency syndrome are limited to the provisions contained in this chapter, Chapter 1.12 (commencing with Section 199.30) and Sections 1603.1 and 1603.3. No physician has

a duty to notify any person of the fact that a patient is reasonably believed to be infected by the probable causative agent of acquired immune deficiency syndrome.

(d) The county health officer may alert any persons reasonably believed to be a spouse, sexual partner, or partner of shared needles of an individual who has tested positive on a test to detect infection by the probable causative agent of acquired immune deficiency syndrome about their exposure, without disclosing any identifying information about the individual believed to be infected or the physician making the report, and shall refer any person to whom a disclosure is made pursuant to this subdivision for appropriate care and followup. Upon completion of the county health officer's efforts to contact any person pursuant to this subdivision, all records regarding that person maintained by the county health officer pursuant to this subdivision, including but not limited to any individual identifying information, shall be expunged by the county health officer.

(e) The county health officer shall keep confidential the identity and the seropositivity status of the individual tested and the identities of the persons contacted, as long as records of contacts are maintained.

(f) Except as provided in Section 1603.1 or 1603.3, no person shall be compelled in any state, county, city, or local civil, criminal, administrative, legislative, or other proceedings to identify or provide identifying characteristics which would identify any individual reported or person contacted pursuant to this section.

SEC. 2. Section 199.27 of the Health and Safety Code, as added by Chapter 663 of the Statutes of 1987, is repealed.

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## CHAPTER 1217

An act to amend Section 6082 of the Business and Professions Code, relating to attorneys.

[Approved by Governor September 22, 1988 Filed with Secretary of State September 22, 1988 ]

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

SECTION 1. Section 6082 of the Business and Professions Code is amended to read:

6082. Any person complained against and any person whose reinstatement the board may refuse to recommend may have the action of the board, or of any committee authorized by it to make a determination on its behalf, pursuant to the provisions of this chapter, reviewed by the California Supreme Court or by a California Court of Appeal in accordance with the procedure prescribed by the California Supreme Court.

## CHAPTER 1218

An act to amend Section 114 of the Streets and Highways Code, relating to highways.

[Approved by Governor September 22, 1988. Filed with Secretary of State September 22, 1988.]

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

SECTION 1. Section 114 of the Streets and Highways Code is amended to read:

114. (a) When the commission or other public entity has allocated any funds for the construction, improvement, or maintenance of any portion of a state highway within a city or a county, the department may enter into a cooperative agreement with the city or the county or other public entity for the performance of the work by the department or by the city or the county or other public entity, or for the apportionment of the expense of the work between the department and the city or the county or other public entity.

(b) The department shall enter into a cooperative agreement with a city, county, or other public entity to perform professional and technical project development services, if the department determines that the city, county, or other public entity in which the project is located has qualified and available staff to perform the necessary project services.

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## CHAPTER 1219

An act to amend Sections 11837, 11837.1, 11837.2, 11837.4, 11837.5, 11837.6, 11837.7, and 11837.8 of, to add Sections 11836, 11836.10, 11836.11, 11836.12, 11836.14, 11836.15, 11838.3, 11838.4, 11838.5, 11838.10, and 11838.11 to, and to repeal Sections 11838.2 and 11839 of, the Health and Safety Code, relating to alcohol and drug programs.

[Approved by Governor September 22, 1988. Filed with Secretary of State September 22, 1988.]

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

SECTION 1. Section 11836 is added to the Health and Safety Code, immediately following the heading of Chapter 9 (commencing with Section 11837) of Part 2 of Division 10.5 thereof, to read:

11836. The department shall have the sole authority to license multiple offender drinking driver programs. As used in this chapter "program" means any firm, partnership, association, corporation,

local governmental entity, agency or place which has been recommended by the county board of supervisors and which is licensed by the department to provide alcohol recovery services to persons convicted of Section 23152 or 23153 of the Vehicle Code and referred to a program pursuant to Section 23166, 23171, 23176, 23186, or 23191 of the Vehicle Code.

SEC. 2. Section 11836.10 is added to the Health and Safety Code, to read:

11836.10. No person, firm, partnership, association, corporation, or local governmental entity shall operate, establish, manage, conduct, or maintain a multiple offender drinking driver program in this state without a current and valid license issued pursuant to this chapter.

SEC. 3. Section 11836.11 is added to the Health and Safety Code, to read:

11836.11. The department shall require license renewal on a biennial basis.

SEC. 4. Section 11836.12 is added to the Health and Safety Code, to read:

11836.12. Criteria for licensure of new or existing programs shall include all of the following:

(a) Completion of a written application containing necessary and pertinent information describing the applicant program.

(b) Demonstration by the applicant that it possesses adequate administrative, fiscal, and operational capability to operate a multiple offender drinking driver program.

(c) Onsite review of the program by department staff determines that the program is clean, safe, free of alcohol or illicit drug use, and that the program adheres to applicable statutes and regulations.

(d) The program has paid all licensing fees.

SEC. 5. Section 11836.14 is added to the Health and Safety Code, to read:

11836.14. An initial license shall not be issued until all requirements identified in this chapter and in regulations adopted pursuant to this chapter have been met.

SEC. 6. Section 11836.15 is added to the Health and Safety Code, to read:

11836.15. The department shall adopt regulations to implement this chapter, in accordance with the purposes and process required in Section 11835, which shall include, but not be limited to, the following:

(a) Application requirements.

(b) Service requirements.

(c) Reporting requirements.

(d) Required staff qualifications.

(e) Management and documentation of participant records.

(f) Licensure fee assessment and collection procedures.

SEC. 7. Section 11837 of the Health and Safety Code is amended to read:

11837. (a) Pursuant to the provisions of law relating to suspension of a person's privilege to operate a motor vehicle upon conviction for driving while under the influence of an alcoholic beverage or under the combined influence of an alcoholic beverage and any drug, as set forth in paragraph (3) or (4) of subdivision (a) of Section 13352 of the Vehicle Code, the Department of Motor Vehicles shall restrict the driving privilege pursuant to Section 13352.5 of the Vehicle Code, if the court has notified the department pursuant to Section 13352.5 of the Vehicle Code that the person convicted of that offense has consented to participate for at least one year in a program designed to offer alcohol services to problem drinkers that is licensed pursuant to this chapter.

(b) In determining whether to refer a person, who is ordered to participate in a program pursuant to Section 23166, 23171, 23176, 23186, or 23191 of the Vehicle Code, to a licensed one-year or 30-month program, the court may consider any relevant information about the person made available pursuant to a presentence investigation, which is permitted but not required under Section 23205 of the Vehicle Code, or other screening procedure. That information shall not be furnished, however, by any person who also provides services in a privately operated, licensed program or who has any direct interest in a privately operated, licensed program. In addition, the court shall obtain from the Department of Motor Vehicles a copy of the person's driving record to determine whether the person is eligible to participate in a licensed one-year or 30-month program pursuant to this chapter.

(c) The court may, as a condition of probation, refer a person to a licensed program, even though the person's privilege to operate a motor vehicle is restricted, suspended, or revoked. A one-year program described in Section 23166 or 23186 of the Vehicle Code or a 30-month program described in Section 23171, 23176, or 23191 of the Vehicle Code may include treatment of family members and significant other persons related to the convicted person with the consent of those family members and others as described in subdivision (e) of Section 9838 of Title 9 of the California Code of Regulations, if there is no increase in the costs of the program to the convicted person.

(d) As used in this chapter, "program" means a program which has been recommended by the county board of supervisors to the department and possesses a valid license issued by the department.

SEC. 8. Section 11837.1 of the Health and Safety Code is amended to read:

11837.1. (a) In utilizing any program defined in subdivision (d) of Section 11837, the court may require periodic reports concerning the performance of each person referred to and participating in a program. The program shall provide the court, the Department of Motor Vehicles, and the person referred to and participating in a program, with an immediate report of any failure of the person to comply with the program's rules and policies.

(b) (1) Upon its receipt of notification pursuant to subdivision (a) of a failure of a participant referred to a one-year program described in Section 23166 or 23186 of the Vehicle Code to comply with the rules and policies of the program, the Department of Motor Vehicles shall revoke or suspend the privilege of that person to operate a motor vehicle for the period prescribed by law in accordance with Section 13352.5 of the Vehicle Code, except as otherwise provided in this section. The Department of Motor Vehicles shall notify the person and the court of its intended action and shall inform the person of the opportunity to be reinstated in the program and to avoid suspension of the driving privilege.

(2) Notwithstanding paragraph (1), the Department of Motor Vehicles shall not suspend the driving privilege pursuant to paragraph (1) if the court, upon the petition of the person, determines that the person should be reinstated in the one-year program. The determination by the court shall be made within 45 days of the notice from the department of the intended action or such additional time, not to exceed an additional 45 days, for the determination as is required, ordered, and transmitted to the Department of Motor Vehicles by the court, which additional time is not caused by any action or failure to act by the person. Upon timely presentation by the person to the Department of Motor Vehicles of evidence satisfactory to the Department of Motor Vehicles that the court of jurisdiction has consented to the person's reinstatement in the program and that the person is currently participating in the program, the Department of Motor Vehicles shall continue in effect the restriction of the driving privilege prescribed by Section 13352.5 of the Vehicle Code unless the person has previously been reinstated in the program on two or more prior occasions, in which case the Department of Motor Vehicles shall suspend or revoke the driving privilege for the time prescribed in paragraph (3) or (4) of subdivision (a) of Section 13352 of the Vehicle Code. If the court fails to grant the person's petition for reinstatement in the program, the court shall suspend the person's driving privilege until the time the person's driving privilege is suspended or revoked by the Department of Motor Vehicles pursuant to subdivision (d) of Section 13352.5 of the Vehicle Code.

(c) If, at any time after referral to or while participating in a program, a participant who is referred to a one-year program pursuant to Section 23166 or 23186 of the Vehicle Code or to a 30-month program pursuant to Section 23171, 23176, or 23191 of the Vehicle Code, refuses, for any reason, to consent to a chemical test that he or she is required to submit to pursuant to Section 23157 of the Vehicle Code, his or her participation in the program shall be terminated and, the Department of Motor Vehicles shall immediately suspend or revoke his or her privilege to operate a motor vehicle for the period prescribed in Section 13352 of the Vehicle Code, according to the offense for which he or she was convicted immediately prior to referral to the program. The period

of suspension or revocation shall be in addition to the period of suspension imposed by the Department of Motor Vehicles pursuant to Section 13353 of the Vehicle Code.

(d) If the department denies the renewal of a license or suspends or revokes the license of a program, the department shall immediately notify the Department of Motor Vehicles of those persons who do not commence participation in a licensed program within 21 days from the date of the denial, suspension, or revocation of the license of the program in which the persons were previously participating. The Department of Motor Vehicles shall suspend or revoke, for the period prescribed by law, the privilege to operate a motor vehicle of each of those persons referred to a one-year program pursuant to Section 23166 or 23186 of the Vehicle Code or to a 30-month program pursuant to Section 23171, 23176, or 23191 of the Vehicle Code.

SEC. 9. Section 11837.2 of the Health and Safety Code is amended to read:

11837.2. (a) The court may refer persons only to licensed programs. Subject to these provisions, a person is eligible to participate in the program if it is operating in (1) the county where the person is convicted, or (2) the county where the person resides, or (3) a county that has an agreement with such person's county of residence pursuant to Section 11838, or (4) a county to which a person may request transfer pursuant to subdivision (d). If a person granted probation under Section 23166 or 23186 of the Vehicle Code cannot be referred to a licensed one-year program pursuant to this section, Section 13352.5 of the Vehicle Code does not apply.

(b) If a person has consented to participate in a licensed program and the county where the person is convicted is the same county in which the person resides, the court may order the person to participate in a licensed program within that county, or, if that county does not have a licensed program, the court may order that person to participate in a licensed program within another county, pursuant to Section 11838.

(c) If a person has consented to participate in a licensed program in the county in which that person resides or in a county in which the person's county of residence has an agreement pursuant to Section 11837, and the county where the person is convicted is not the county where the person resides, and if the court grants the person summary probation, the court may order the person to participate in a licensed program in that county. In lieu of summary probation, the court may utilize the probation officer to implement the orders of the court. If the county in which the person resides does not have a licensed program or an agreement with another county pursuant to Section 11838 and the person consents, the court may order the person to participate in a licensed program within the county where that person is convicted or in a county with which the county has an agreement pursuant to Section 11838.

(d) Except as otherwise provided in subdivision (e), subsequent

to a person's commencement of participation in a program, the person may request transfer to another licensed program (1) in the same county in which the person has commenced participation in the program, upon approval of that county's alcohol program administrator, or (2) in a county other than the county in which the person has commenced participation in the program, upon approval of the alcohol program administrator of the county in which the person is participating and the county to which the person is requesting transfer.

(e) Subdivision (d) does not apply (1) if the court has ordered the person to participate in a specific licensed program, unless the court orders the transfer or, (2) if the person is under formal probation, unless the probation officer consents to the transfer. The department shall establish reporting forms and procedures to ensure that the court receives notice of any program transfer pursuant to this subdivision or subdivision (d).

(f) Jurisdiction of all postconviction matters arising pursuant to this section may be retained by the court of conviction.

(g) The department, in cooperation with the Department of Motor Vehicles and the alcohol program administrators, shall establish procedures to ensure the effective implementation of this section.

SEC. 10. Section 11837.4 of the Health and Safety Code is amended to read:

11837.4. (a) No program, regardless of how it is funded, may be licensed unless all the requirements of this chapter and of the regulations adopted pursuant to this chapter have been met.

(b) Each licensed program shall include, but not be limited to, the following:

(1) For the one-year programs specified in subdivision (a) of Section 11837, each program shall provide for close and regular supervision of the person, including face-to-face interviews at least once every other calendar week, regarding the person's progress in the program. For the 30-month programs specified in subdivision (c) of Section 23171, subdivision (c) of Section 23176, and subdivision (c) of Section 23191 of the Vehicle Code, each program shall provide for close and regular supervision of the person, including regular, scheduled face-to-face interviews over the course of 30 months regarding the person's progress in the program and recovery from problem drinking, alcoholism, chemical dependency, or polydrug abuse, as prescribed by regulations of the department. The interviews in either program shall be conducted individually with each person being supervised and shall occur at times other than when the person is participating in any group or other activities of the program. No program activity in which the person is participating shall be interrupted in order to conduct the individual interviews.

(2) The department shall approve all fee schedules for the programs and shall require that each program be self-supporting

from the participants' fees and that each program provide for the payment of the costs of the program by participants at times and in amounts commensurate with their ability to pay in order to enable these persons to participate. Each program shall make provisions for persons who cannot afford to pay the fees. Only the department may establish the criteria and procedures for determining a participant's ability to pay. The department shall ensure that the fees are set at amounts which will enable programs to provide adequately for the immediate and long-term continuation of services required pursuant to this chapter. The fees shall be used only for the purposes set forth in this chapter, except that any profit or surplus, that does not exceed the maximum level established by the department, may be utilized for any purposes allowable under any other provisions of law. In its regulations, the department shall define, for the purposes of this paragraph, taking into account prudent accounting, management, and business practices and procedures, the terms "profits" and "surplus." The department shall fairly construe these provisions so as not to jeopardize fiscal integrity of the programs. The department may not license any program if the department finds that any element of the administration of the program does not assure the fiscal integrity of the program.

(3) Both of the licensed programs described in paragraph (1) shall include a variety of treatment services for problem drinkers, alcoholics, chemical dependents, and polydrug abusers or shall have the capability of referring the persons to, and regularly and closely supervising the persons while in, any appropriate medical, hospital, or licensed residential treatment services or self-help groups for their problem drinking, alcoholism, chemical dependency, or polydrug abuse problem. In addition to the requirements of paragraph (1), the department shall prescribe in its regulations what other services the program shall provide, at a minimum, in the treatment of participants, which services may include lectures, classes, group discussions, group counseling, or individual counseling in addition to the interviews required by paragraph (1), or any combination thereof. However, any class, group discussion, or counseling activity, other than lectures, shall be regularly scheduled to consist of not to exceed 15 persons, except that they may, on an emergency basis, exceed 15, but not more than 17, persons, at any one meeting. At no time shall there be more than 17 persons in attendance at any one meeting. For the 30-month programs specified in subdivision (c) of Section 23171, subdivision (c) of Section 23176, and subdivision (c) of Section 23191 of the Vehicle Code, each licensed program shall include a method by which each participant shall maintain a compendium of probative evidence, as prescribed in the regulations of the department, on a trimonthly basis demonstrating a performance of voluntary community service by the participant, including, but not limited to, the prevention of drinking and driving, the promotion of safe driving, and responsible attitudes toward the use of chemicals of any kind, for not less than 10 hours per month,

with a total of not less than 300 hours of service for the entire program. In determining whether or not the participant has met the objectives of the program, the court shall consider the participant's demonstration of significant improvement in any of the following areas of personal achievement:

(A) Significant improvement in occupational performance, including efforts to obtain gainful employment.

(B) Significant improvement in physical and mental health.

(C) Significant improvement in family relations, including financial obligations.

(D) Significant improvement in financial affairs and economic stability.

The compendium of evidence shall be maintained by the participant for review by the program, court, probation officer, or other appropriate governmental agency. The program officials, with the express approval of the referring court, shall make provisions for a participant to voluntarily enter, using the participant's own resources, a licensed chemical dependency recovery hospital or residential treatment program which has a valid license and is certified by the department to provide alcohol or drug services, and to receive three weeks of program participation credit for each week of that treatment, not to exceed 12 weeks of program participation credit, but only if the treatment is at least two weeks in duration. The program shall document probative evidence of this hospital or residential care treatment in the participant's program file.

(4) In order to assure program effectiveness, the department shall require, whenever appropriate, that the licensed program provides services to ethnic minorities, women, youth, or any other group that has particular needs relating to the program.

(5) The goal of each program shall be to assist persons participating in the program to recognize their chemical dependency and to assist them in their recovery.

(6) Each program shall establish a method by which the court, the Department of Motor Vehicles, and the person are notified in a timely manner of the person's failure to comply with the program's rules and regulations.

(c) No program may be licensed unless the county complies with the requirements of subdivision (b) of Section 11812. The provider of a program that offers either a one-year program or a 30-month program or both programs described in this section shall be required to obtain only one license.

(d) Departmental approval for the establishment of a 30-month program by a licensed one-year program is contingent upon approval by the county alcohol program administrator, based upon confirmation that the program applicant is capable of providing the service and that the fiscal integrity of the program applicant will not be jeopardized by the operation of the program.

The court shall refer a person to a 30-month treatment program only if a 30-month program exists or is provided for in the jurisdiction

of the court.

(e) A county or program shall not prescribe additional program requirements unless the requirements are specifically approved by the department.

(f) The department may license a program on a provisional basis.

SEC. 10.5. Section 11837.4 of the Health and Safety Code is amended to read:

11837.4. (a) No program, regardless of how it is funded, may be licensed unless all of the requirements of this chapter and of the regulations adopted pursuant to this chapter have been met.

(b) Each licensed program shall include, but not be limited to, the following:

(1) For the one-year programs specified in subdivision (a) of Section 11837, each program shall provide for close and regular supervision of the person, including face-to-face interviews at least once every other calendar week, regarding the person's progress in the program. For the 30-month programs specified in subdivision (b) of Section 23171, subdivision (b) of Section 23176, and subdivision (b) of Section 23191 of the Vehicle Code, each program shall provide for close and regular supervision of the person, including regular, scheduled face-to-face interviews over the course of 30 months regarding the person's progress in the program and recovery from problem drinking, alcoholism, chemical dependency, or polydrug abuse, as prescribed by regulations of the department. The interviews in either program shall be conducted individually with each person being supervised and shall occur at times other than when the person is participating in any group or other activities of the program. No program activity in which the person is participating shall be interrupted in order to conduct the individual interviews.

(2) The department shall approve all fee schedules for the programs and shall require that each program be self-supporting from the participants' fees and that each program provide for the payment of the costs of the program by participants at times and in amounts commensurate with their ability to pay in order to enable these persons to participate. Each program shall make provisions for persons who can successfully document current inability to pay the fees. Only the department may establish the criteria and procedures for determining a participant's ability to pay. The department shall ensure that the fees are set at amounts which will enable programs to provide adequately for the immediate and long-term continuation of services required pursuant to this chapter. The fees shall be used only for the purposes set forth in this chapter, except that any profit or surplus, that does not exceed the maximum level established by the department, may be utilized for any purposes allowable under any other provisions of law. In its regulations, the department shall define, for the purposes of this paragraph, taking into account prudent accounting, management, and business practices and procedures, the terms "profits" and "surplus." The department shall

fairly construe these provisions so as not to jeopardize fiscal integrity of the programs. The department may not license any program if the department finds that any element of the administration of the program does not assure the fiscal integrity of the program.

(3) Both of the licensed programs described in paragraph (1) shall include a variety of treatment services for problem drinkers, alcoholics, chemical dependents, and polydrug abusers or shall have the capability of referring the persons to, and regularly and closely supervising the persons while in, any appropriate medical, hospital, or licensed residential treatment services or self-help groups for their problem drinking, alcoholism, chemical dependency, or polydrug abuse problem. In addition to the requirements of paragraph (1), the department shall prescribe in its regulations what other services the program shall provide, at a minimum, in the treatment of participants, which services may include lectures, classes, group discussions, group counseling, or individual counseling in addition to the interviews required by paragraph (1), or any combination thereof. However, any group discussion or counseling activity, other than classes or lectures, shall be regularly scheduled to consist of not more than 15 persons, except that they may, on an emergency basis, exceed 15, but not more than 17, persons, at any one meeting. At no time shall there be more than 17 persons in attendance at any one meeting. For the 30-month programs specified in subdivision (b) of Section 23171, subdivision (b) of Section 23176, and subdivision (b) of Section 23191 of the Vehicle Code, each licensed program shall include a method by which each participant shall maintain a compendium of probative evidence, as prescribed in the regulations of the department, on a trimonthly basis demonstrating a performance of voluntary community service by the participant, including, but not limited to, the prevention of drinking and driving, the promotion of safe driving, and responsible attitudes toward the use of chemicals of any kind, for not less than 120 hours and not more than 300 hours, as determined by the court, with one-half of that time to be served during the initial 18 months of program participation and one-half of that time to be served in the final 12 months. In determining whether or not the participant has met the objectives of the program, the compendium of evidence shall also include, and the court shall consider, the participant's demonstration of significant improvement in any of the following areas of personal achievement:

(A) Significant improvement in occupational performance, including efforts to obtain gainful employment.

(B) Significant improvement in physical and mental health.

(C) Significant improvement in family relations, including financial obligations.

(D) Significant improvement in financial affairs and economic stability.

The compendium of evidence shall be maintained by the participant for review by the program, court, probation officer, or

other appropriate governmental agency. The program officials, unless prohibited by the referring court, shall make provisions for a participant to voluntarily enter, using the participant's own resources, a licensed chemical dependency recovery hospital or residential treatment program which has a valid license issued by the State of California to provide alcohol or drug services, and to receive three weeks of program participation credit for each week of that treatment, not to exceed 12 weeks of program participation credit, but only if the treatment is at least two weeks in duration. The program shall document probative evidence of this hospital or residential care treatment in the participant's program file.

(4) In order to assure program effectiveness, the department shall require, whenever appropriate, that the licensed program provides services to ethnic minorities, women, youth, or any other group that has particular needs relating to the program.

(5) The goal of each program shall be to assist persons participating in the program to recognize their chemical dependency and to assist them in their recovery.

(6) Each program shall establish a method by which the court, the Department of Motor Vehicles, and the person are notified in a timely manner of the person's failure to comply with the program's rules and regulations.

(c) No program may be licensed unless the county complies with the requirements of subdivision (b) of Section 11812. The provider of a program that offers either a one-year program or a 30-month program or both programs described in this section shall be required to obtain only one license.

(d) Departmental approval for the establishment of a 30-month program by a licensed one-year program is contingent upon approval by the county alcohol program administrator, based upon confirmation that the program applicant is capable of providing the service and that the fiscal integrity of the program applicant will not be jeopardized by the operation of the program.

The court shall refer a person to a 30-month treatment program only if a 30-month program exists or is provided for in the jurisdiction of the court.

(e) A county or program shall not prescribe additional program requirements unless the requirements are specifically approved by the department.

(f) The department may license a program on a provisional basis.

SEC. 11. Section 11837.5 of the Health and Safety Code is amended to read:

11837.5. (a) No person may participate in any program that has not been licensed by the department pursuant to this chapter.

(b) The department shall charge reasonable fees for licensing multiple offender drinking driver programs. Fees shall be set at a level sufficient to cover all administrative costs incurred by the department.

(c) The department shall have the authority to fine a provider

who is delinquent in the payment of licensing fees. Fines collected from delinquent providers shall be placed in the Drinking Driver Program Trust Fund and shall be used to offset costs incurred by the department in the administration of the program.

(d) A program's failure to pay licensing fees or assessed fines shall be grounds for the denial of an initial license or revocation of an existing license.

(e) There is established in the State Treasury a Drinking Driver Program Licensing Trust Fund. All fees and fines collected from multiple offender drinking driver programs shall be deposited in this fund. The money in the fund shall be available when appropriated by the Legislature.

(f) The department shall prepare an annual report on the assets, liabilities, and balance in the Drinking Driver Program Licensing Trust Fund. The report shall also include an itemized statement of income and expenses for the trust fund since the last report. The department shall submit the report to the Legislature and shall furnish a copy of the report, upon request, to any provider of a multiple offender drinking driver program.

(g) Licensing fees shall be evaluated annually and based on the department's projected costs for the forthcoming fiscal year. Any excess fees remaining in the Drinking Driver Program Licensing Trust Fund at the close of the fiscal year shall be forwarded and taken into consideration in establishment of fees for the subsequent fiscal year. If the department proposes to increase the licensing fees, the department shall justify the increase to the Legislature by showing that sufficient assets are not currently available in the Drinking Driver Program Licensing Trust Fund and that current licensing fee collections are not sufficient to support current or planned expenses of the department for drinking driver program licensing activities.

(h) Licensing fee collection procedures, which include the assessment of fines for delinquent fee payments, shall be defined in regulations adopted pursuant to this chapter.

SEC. 12. Section 11837.6 of the Health and Safety Code is amended to read:

11837.6. (a) The major responsibility for assuring programmatic and fiscal integrity of each program rests with the county alcohol program administrator of each county utilizing a program pursuant to this chapter.

(b) The county alcohol program administrator shall assure, through monitoring at least once every six months, compliance with the applicable statutes and regulations by any licensed program within the county's jurisdiction. Whenever possible, the county monitoring shall coincide with the state licensing reviews. The county alcohol program administrator shall prepare and submit, to the department and the program provider, an annual written report of findings regarding the program's compliance with applicable statutes and regulations.

(c) The county alcohol program administrator shall submit a

description of each licensed program as part of the county alcohol program plan.

(d) The county alcohol program administrator shall notify the department, within 30 days of the date that a program's license is denied, suspended or revoked, of the individuals who failed to commence participation in another licensed program within 21 days of the license denial, suspension or revocation.

SEC. 13. Section 11837.7 of the Health and Safety Code is amended to read:

11837.7. (a) The county alcohol program administrator, or the advisory board acting through the county alcohol program administrator, shall inform the board of supervisors immediately if it is determined that any program is not meeting the regulations adopted by the department. The department shall be notified in writing by the county alcohol program administrator of any program that is not in compliance with applicable statutes and regulations.

(b) The department, the county alcohol program administrator, the chief probation officer, or their authorized representatives may enter, in a nondisruptive manner, any class, lecture, group discussion, or any other program element to observe these activities.

(c) Notwithstanding subdivision (a) of Section 11837.6, the department may audit, or contract for the auditing of, any licensed program.

SEC. 14. Section 11837.8 of the Health and Safety Code is amended to read:

11837.8. (a) The department shall authorize each county alcohol program administrator to retain, in an amount not in excess of that specified by the department, a portion of the fees charged for participation in the program that is sufficient to reimburse the county for the costs and expenses which the administrator reasonably incurs in discharging his or her duties pursuant to this chapter.

(b) A county may not use for any purpose set forth in this chapter any funds allocated to it by the department pursuant to Division 10.5 (commencing with Section 11750). The board of supervisors may authorize the use of any other funds for any purpose set forth in this chapter.

(c) Notwithstanding subdivision (b), a county with a population of 20,000 or less may utilize funds allocated by the department to establish and administer a program if the department finds that the county cannot establish a self-supporting program at reasonable cost or is unable to establish jointly a program with another county. If an exception is granted, reasonable effort shall be made by the county to observe the intent of subdivision (b) that programs be self-supporting.

SEC. 15. Section 11838.2 of the Health and Safety Code is repealed.

SEC. 16. Section 11838.3 is added to the Health and Safety Code, to read:

11838.3. (a) The director may bring an action to enjoin any

violation of Section 11836.10 in the superior court in and for the county in which the violation occurred. Any proceeding under the provisions of 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 director 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.

(b) With respect to any and all actions brought pursuant to this section alleging actual violation of Section 11836.10 the court shall, if it finds the allegations to be true, issue its order enjoining the program from continuance of the violation.

SEC. 17. Section 11838.4 is added to the Health and Safety Code, to read:

11838.4. (a) Notwithstanding any other provision of this chapter, any person who violates Section 11836.10 may be assessed by the department an immediate civil penalty in the amount of two hundred dollars ($200) per day of the violation.

(b) The civil penalty authorized in subdivision (a) shall be imposed if an unlicensed program is operated and the operator refuses to seek licensure or the operator seeks licensure and the licensure application is denied and the operator continues to operate the unlicensed program.

(c) An operator may appeal the assessment to the director, and if the matter is unresolved at that stage the operator may appeal the director's decision in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 18. Section 11838.5 is added to the Health and Safety Code, to read:

11838.5. The civil, criminal, and administrative remedies available to the department pursuant to this article are not exclusive, and may be sought and employed in any combination deemed advisable by the department to enforce this chapter.

SEC. 19. Section 11838.10 is added to the Health and Safety Code, to read:

11838.10. The director may suspend or revoke any license issued under this chapter, or deny an application to renew a license or to modify the terms and conditions of a license, upon any of the following grounds and in the manner provided in this chapter:

(a) Violation by the licensee of this chapter or regulations adopted pursuant to this chapter.

(b) Repeated violation by the licensee of this chapter or regulations adopted pursuant to this chapter.

(c) Aiding, abetting, or permitting the violation of, or any repeated violation of, subdivisions (a) and (b).

(d) Continued program operations jeopardize the health and welfare of participants or the public.

(e) Misrepresentation of any material fact in obtaining a multiple offender program license.

SEC. 20. Section 11838.11 is added to the Health and Safety Code, to read:

11838.11. (a) Proceedings for the suspension, revocation, or denial of a license under this chapter shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the department shall have all the powers granted by these provisions. In the event of conflict between this chapter and the Government Code, the Government Code shall prevail.

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

SEC. 21. Section 11839 of the Health and Safety Code is repealed.

SEC. 22. Section 10.5 of this bill incorporates amendments to Section 11837.4 of the Health and Safety Code proposed by both this bill and SB 2233. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1989, (2) each bill amends Section 11837.4 of the Health and Safety Code, and (3) this bill is enacted after SB 2233, in which case Section 10 of this bill shall not become operative.

SEC. 23. 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.

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## CHAPTER 1220

An act relating to correctional facilities, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 22, 1988 Filed with Secretary of State September 22, 1988.]

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

SECTION 1. The Department of Corrections is hereby authorized to construct and establish a 2,000-bed Level IV prison together with a 200-bed service facility in Imperial County.

SEC. 2. The sum of ten million dollars ($10,000,000) is hereby appropriated to the Department of Corrections from the 1988 Prison Construction Fund for the 2,000-bed Level IV prison together with a 200-bed service facility in Imperial County. The amount appropriated by this section shall be repaid to the 1988 Prison Construction Fund from funds derived from lease-purchase

financing methods, including any loans from the Pooled Money Investment Account pursuant to Section 16312 of the Government Code, authorized for the planning and construction of this facility.

Funds appropriated by this subdivision shall be available for purposes, as necessary, of site acquisition, site studies and suitability reports, environmental studies, master planning, architectural programming, schematics, preliminary plans, and working drawings,

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:

California prisons are severely overcrowded. In order to alleviate that problem at the earliest possible date, this act must take effect immediately.

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## CHAPTER 1221

An act to amend Sections 11202 and 11203 of, and to add Section 11203.5 to, the Vehicle Code, relating to vehicles.

[Approved by Governor September 22, 1988 Filed with Secretary of State September 23, 1988 ]

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

SECTION 1. 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 the following criteria before a license may be issued for the traffic violator school:

(1) Be a person who has not been convicted of a crime involving an act of dishonesty, fraud, or deceit with the intent to benefit himself or herself or another substantially, or to injure another substantially. A conviction after a plea of nolo contendere is a conviction for purposes of this paragraph.

(2) 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 building used by the department as an office, or any court of law, unless the owner was established at the location on or before July 1, 1984.

(3) Conform to standards which shall be 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 the 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.

(4) Procure and file with the department a bond in the amount 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 of its political subdivisions.

(5) Have a classroom approved by the department and the proper equipment necessary for giving instruction to traffic violators.

(6) Have a lesson plan approved by the department and provide no 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.

(7) Execute and file with the department a good and sufficient instrument designating the director as agent of the applicant for the purpose of service of process, as provided in this paragraph, in any action or actions which may thereafter be commenced against the applicant arising out of any claim for damages suffered by any firm, person, association, or corporation by reason of (A) a violation by the applicant of any of the provisions of this code committed in relation to the specifications of the applicant's traffic violator school or (B) any condition of the bond required by paragraph (4). The applicant shall stipulate and agree in the instrument that any process directed to the applicant, when personal service of process upon him or her cannot be made in this state after due diligence, may be served instead upon the director, or in the event of 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 shall be of the same legal force and effect as personal service of the applicant.

The instrument shall further stipulate and agree that the agency created by the designation shall continue for and 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. The instrument designating the director as agent for service of process shall be acknowledged by the applicant before a notary public. In any case where 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. The service on the director or department employee pursuant to this section is sufficient service on the licensee if a notice of the service and a copy of the summons and complaint

is, on the same business 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.

The director shall keep a record of all processes so served upon him or her, which shall show the day and hour of service, and shall retain the documents served in the department's files. Where the licensee is served with legal process by service upon the director or a department employee in lieu of the director, the licensee shall be allowed 30 days from and after the service within which to answer any complaint or other pleading which may be filed in the cause. For purposes of venue, where the licensee is served with process by service upon the director or a department employee in lieu of the director, the service shall be deemed 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.

(8) 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.

(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 shall be required.

(c) Paragraphs (4) and (7) 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 (8) of subdivision (a) shall 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. 2. Section 11203 of the Vehicle Code is amended to read:

11203. In lieu of the bond otherwise required by paragraph (4) of subdivision (a) of Section 11202, the applicant may make a deposit pursuant to Article 7 (commencing with Section 995.710) of Chapter 2 of Title 14 of Part 2 of the Code of Civil Procedure. The director may order the deposit returned at the expiration of three years from the date a traffic violator school licensee has ceased to do business, or three years from the date a licensee has ceased to be licensed, if the director is satisfied that there are no outstanding claims against the deposit. A municipal or superior court may, upon petition, order

the return of the deposit prior to the expiration of three years upon evidence satisfactory to the court that there are no outstanding claims against the deposit. If either the director, department, or state is a defendant in any civil action instituted to recover all or any part of the deposit, or any civil action is instituted by the director, department, or state to determine those entitled to any part of the deposit, the director, department, or state shall be paid reasonable attorney fees and costs from the deposit. Costs shall include those administrative costs incurred in processing claims against the licensee recoverable from the deposit.

SEC. 3. Section 11203.5 is added to the Vehicle Code, to read:

11203.5. If the state or any of its political subdivisions suffers any loss or damage by reason of any fraudulent practice or representation or by reason of any violation of this division by a traffic violator school owner, the department may bring a cause of action against the traffic violator school owner and the surety upon the owner's bond.

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## CHAPTER 1222

An act to add a chapter heading immediately preceding Section 32000 of, and to add Chapter 2 (commencing with Section 32050) to Division 14.1 of, the Vehicle Code, relating to vehicles.

[Approved by Governor September 22, 1988 Filed with Secretary of State September 23, 1988 ]

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

SECTION 1. A chapter heading is added immediately preceding Section 32000 of the Vehicle Code, to read:

### CHAPTER 1. LICENSING

SEC. 2. Chapter 2 (commencing with Section 32050) is added to Division 14.1 of the Vehicle Code, to read:

### CHAPTER 2. NOTIFICATION OF ROUTES

32050. (a) Prior to the transport of anhydrous hydrazine, methylhydrazine, dimethylhydrazine, Aerozine 50, fuming nitric acid, liquid flourine, or nitrogen tetroxide in bulk packaging, except when that packaging contains only residue, outside the confines of a facility where that material was used or stored, or prior to the delivery of that bulk material to a carrier for transport, each carrier shall provide advance notification, in writing, of the shipment, to the department, which in turn, shall notify the sheriff of each county and police chief of each city in which is located the proposed route. Notification shall be made through the Department of Justice's

California Law Enforcement Telecommunications System. The sheriffs and police chiefs shall, in turn, make timely notification to the fire chiefs within their respective jurisdictions through a mutually agreed upon communications system.

(b) Subdivision (a) applies only to the extent that it does not conflict with federal law.

(c) For the purposes of this section:

(1) "Bulk packaging" has the same meaning as defined in Section 171.8 of Title 49 of the Code of Federal Regulations.

(2) "Fire chief" means the fire chief of each county and city fire department and the fire chief of each fire protection district serving a population greater than 15,000 in which is located the proposed route. This paragraph does not apply to any fire chief of a fire department or fire protection district which is composed of 50 percent or more volunteer firefighters.

(3) "Residue" has the same meaning as defined in Section 171.8 of Title 49 of the Code of Federal Regulations.

32051. (a) Each advance notification required by Section 32050 shall contain all of the following information:

(1) The name, address, and emergency telephone number of the manufacturer, shipper, carrier, and receiver of the shipment.

(2) A current copy of a material data safety sheet, as designated by the department, regarding the material.

(3) If the shipment is originating within California, the point of origin of the shipment and the 48-hour period during which departure of the shipment is estimated to occur, the destination of the shipment within California, and the 48-hour period during which the shipment is estimated to arrive.

(4) If the shipment is originating outside of California, the point of origin of the shipment and the 48-hour period during which the shipment is estimated to arrive at the state boundary, the destination of the shipment within California, and the 48-hour period during which the shipment is estimated to arrive.

(5) A telephone number and address for current shipment information.

(b) The department shall design a standard notification form to include all of the information specified in subdivision (a) and shall make these forms available by April 1, 1989.

32052. (a) The notification required by Section 32050 shall reach the department at least 72 hours before the beginning of the 48-hour period during which departure of the shipment of any material designated in Section 32050 is estimated to occur, and the department shall notify the sheriffs and the police chiefs as specified in subdivision (a) of Section 32050 at least 36 hours before the beginning of the 48-hour departure period specified in subdivision (a) of Section 32051, who shall notify the fire chiefs, as provided in Section 32050. A copy of the notification shall be retained by the department for three years.

(b) The carrier shall also notify, by telephone or telegram, the

department if there are any changes in the scheduling of a shipment, in the routes to be used for shipment, or any cancellation of a shipment. The department shall, in turn, notify the sheriffs and the police chiefs specified in subdivision (a) of Section 32050 that would be affected by these changes in the scheduling of a shipment, in the routes to be used for a shipment, or the cancellation of a shipment, who shall notify the fire chiefs, as provided in Section 32050. The department shall maintain for three years a record of each telegram and telephonic notification.

32053. (a) Any carrier who violates Section 32050, 32051, or 32052, in addition to any other penalty provided by law, is subject to a civil penalty of not less than five hundred dollars ($500) or more than one thousand dollars ($1,000) for each violation. For purposes of this section, each day of a continuing violation is a separate violation.

(b) When establishing the amount of the civil penalty, the court shall consider, in addition to other relevant circumstances, all of the following:

(1) The extent of the harm caused by the violation.

(2) The persistence of the violation.

(3) The number of prior violations by the same violator.

(4) The deterrent value of the penalty based on the financial resources of the violator.

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.

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## CHAPTER 1223

An act to amend Sections 74004 and 74005 of, to repeal Section 74003 of, and to add Article 17.1 (commencing with Section 74010) to Chapter 10 of Title 8 of, the Government Code, and to amend Section 830.4 of the Penal Code, relating to public employees.

[Approved by Governor September 22, 1988. Filed with Secretary of State September 23, 1988 ]

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

SECTION 1. Section 74003 of the Government Code is repealed.

SEC. 2. Section 74004 of the Government Code is amended to read:

74004. (a) The number of positions within each job classification which may be filled by appointment by the clerk and administrative officer/executive officer, respectively, of each such court, and the

number of the salary range set forth in Section 74005 which constitutes the compensation for each job classification, are shown in the table below, in which the various municipal courts are designated by column headings from left to right in the same order as that in which their judicial districts are named in Section 74000:

| Class Code | Title of Classification | Salary Range | Number of Positions Authorized in Each Court | | | | |
|---|---|---|---|---|---|---|---|
| | | | NOC | COC | WOC | OCH | SOC |
| 0534 | Info. proc. spec. II. ..... .... . | D37 | 15 | 14 | 14 | 11 | 4 |
| 0566 | Judicial secy. I, MC. . .... . ..... | D40 S/2 | 1 | 1 | 1 | 1 | 0 |
| 0569 | Judicial secy II, MC.. ..... ..... | D44 | 1 | 1 | 1 | 1 | 1 |
| 0580 | Secretary III .. | D44 | 1 | 1 | 1 | 1 | 1 |
| 0705 | Deputy clerk I, MC . . | D33 S/5 | 46 | 61 | 44 | 29 | 18 |
| 0708 | Deputy clerk II, MC ..... ..... . | D35 S/3 | 20 | 17 | 20 | 23 | 13 |
| 0711 | Deputy clerk III, MC .. ..... | D40 | 8 | 7 | 9 | 7 | 5 |
| 0712 | Judicial asst, MC ..... . ..... ... | D52 | 1 | 1 | 1 | 1 | 1 |
| 0714 | Deputy clerk IV, MC . ..... . | D42 | 1 | 2 | 1 | 0 | 1 |
| 0718 | Supv deputy clerk I, MC .... . | D43 | 2 | 3 | 2 | 1 | 0 |
| 0719 | Supv. deputy clerk II, MC..... | D46 | 3 | 2 | 3 | 2 | 1 |
| 0720 | Division head I, MC.... ..... ..... | D53 | 0 | 0 | 0 | 0 | 4 |
| 0723 | Division head II, MC ..... ..... | D55 | 5 | 5 | 5 | 5 | 0 |
| 0744 | Asst. courtroom clerk, MC ..... | D38 | 3 | 3 | 6 | 4 | 0 |
| 0745 | Courtroom clerk, MC ..... | D50 | 15 | 17 | 12 | 11 | 6 |
| 0780 | Interpreter, MC ... ..... . ..... | A39 | 4 | 2 | 3 | 1 | 0 |
| 2381 | Municipal court judicial .. Hearing officer | 45,000/ Flat | 0 | 1 | 0 | 0 | 0 |
| 7509 | Detention release officer . | A56 | 0 | 10 | 0 | 0 | 0 |
| 7510 | Senior detention release off | A58 | 0 | 6 | 0 | 0 | 0 |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 7511 | Supv. detention release off. ..... | A62 | 0 | 1 | 0 | 0 | 0 |
| 7918 | Systems analyst II ..... ..... . ..... | A55 | 0 | 1 | 0 | 0 | 0 |
| 7920 | Systems analyst III .... .. ... .. .... . | A60 | 0 | 0 | 0 | 0 | 0 |
| 7922 | Systems analyst IV ..... ..... ... . | A64 | 1 | 1 | 1 | 1 | 1 |
| 8449 | ASA municipal court/ marshal ..... .. | E63 | 0 | 1 | 0 | 0 | 0 |

(b) The Legislature finds and declares that the matter of appointing, promoting, demoting, and dismissing persons in positions with the municipal courts and all other aspects of the personnel management of municipal courts of Orange County is one for local concern. It further finds and declares that wherever possible such personnel management may grant to persons in positions with the municipal courts similar treatment with persons in positions with the County of Orange who are performing similar duties and who possess similar qualifications.

(c) To achieve the legislative intent expressed in subdivisions (a) and (b), the municipal courts of Orange County may create a personnel committee consisting of five judges selected one from each court by a majority vote of the judges of the respective courts, or where there is an equal division of the judges of a court, by the senior judge of that court. The personnel committee may adopt rules and regulations providing for a personnel system for all municipal courts of Orange County which may provide for similar treatment for employees and attachés of the several courts as is provided for Orange County employees generally. In so providing for a personnel system, the judges may adopt all or any part of the personnel and salary resolution or appropriate memoranda of understanding of the County of Orange.

(d) With the approval of the board of supervisors, the personnel system adopted by the personnel committee and made applicable to all the municipal courts of Orange County may be administered by the County of Orange through its personnel department. The board of supervisors may withdraw its approval at any time.

(e) If an increase in the business of the court or any other emergency requires a greater number of attachés or employees for the prompt and faithful discharge of the business of the court than the number expressly provided in this article or requires the performance of duties of positions in a class not expressly provided in this article, a majority of the judges of any of the courts, with the approval of the board of supervisors, may establish additional titles, pay rates, and positions as they deem necessary for the performance of the duties and exercise of the powers conferred by law upon the courts. Rates of compensation of such other officers, attachés, and

employees may be set by joint action and approval of the board of supervisors and a majority of the municipal court judges of Orange County. The establishment of additional titles, positions, and pay rates and changes in compensation made pursuant to this subdivision shall be on an interim basis and shall expire on January 1 of the second year following the year in which such establishment or change is made. The provisions of this section are directory only and are not intended to affect the application of Section 72150.

SEC. 3. Section 74005 of the Government Code is amended to read:

74005. The schedule of biweekly salary ranges referred to in Sections 74002, and 74004 are those ranges set forth in the Personnel and Salary Resolution adopted by the Orange County Board of Supervisors.

Notwithstanding any other provisions of law, the salaries of municipal court officers, attachés, and employees may upon the joint approval of the personnel committee and the board of supervisors be increased or decreased in order to provide compensation that is comparable to county employees of similar qualifications and experience holding equal or comparable positions in the Orange County classified service as the comparability is determined jointly by the personnel committee and the board of supervisors, except that any such increase or decrease shall be effective only until January 1 of the second year following the year in which such increase or decrease is made.

In the event that the board of supervisors adopts a revised salary schedule for county employees, the board shall confer with the personnel committee, and if both are agreed that the new schedule shall apply also to the officers, attachés, and employees of the municipal courts, the revised salary schedule shall apply equally to the officers, attachés, and employees of municipal courts in the same manner and date as for county employees, except that any such salary adjustment shall only be effective until January 1 of the second year following the year in which such adjustment is made.

SEC. 4. Article 17.1 (commencing with Section 74010) is added to Chapter 10 of Title 8 of the Government Code, to read:

Article 17.1. Marshal of Orange County

74010. (a) There shall be one marshal, designated as the Marshal of Orange County, for the superior and municipal courts established in Orange County. The marshal shall serve at the pleasure of a majority of the judges of the superior and municipal courts in the county.

The salary range of the marshal shall be 20 percent higher than the range of captain in the marshal's office, and the marshal's salary shall be determined by the judges' personnel committee within that range.

(b) The marshal shall possess the rights and powers and perform

the duties imposed upon marshals of courts generally and, when so authorized by the board of supervisors pursuant to Section 74007, within Orange County, shall exercise all powers and perform all duties imposed upon sheriffs with respect to proceedings in the superior court.

(c) Whenever a vacancy occurs in the position of Marshal of Orange County, the judges of the superior court and all the municipal courts in Orange County by a majority vote of their aggregate number, shall select and appoint the marshal under such organization, rules, and procedures as they adopt or ratify therefor. Discharge of the marshal shall be by majority vote of the judges of the municipal courts and the superior court.

(d) There shall be one assistant marshal, appointed by and serving at the pleasure of the marshal. This appointment shall require the concurrence of a majority of the judges personnel committee as set forth in subdivisions (b) and (c) of Section 74011. Discharge of the assistant marshal shall require the concurrence of a majority of the judges' personnel committee established pursuant to subdivision (b) of Section 74011.

(e) The salary range of the assistant marshal shall be 10 percent higher than the range of captain in the marshal's office. The salary of the assistant marshal may be adjusted annually, within its range, by the marshal with concurrence of the judges' personnel committee.

(f) A branch office of the Marshal of Orange County shall be maintained in each superior and municipal court district facility, except where those facilities are shared, in which case one office may serve the needs of both courts.

74011. (a) The Legislature finds and declares that the matter of appointing, promoting, demoting, and dismissing persons in positions in the marshal's office and all other aspects of the personnel management of the Marshal of Orange County is one of local concern. It further finds and declares that wherever possible that personnel management may grant to persons in positions with the marshal's office similar treatment with persons in positions with the County of Orange who are performing similar duties and who possess similar qualifications.

(b) To achieve this legislative intent, the courts of Orange County may create a personnel committee of 10 judges, comprised of five judges from the municipal courts and five judges from the superior court. There shall be one judge from each municipal court selected by a majority vote of the judges of the respective municipal courts, or, where there is an equal division of the judges of a municipal court, by the presiding judge of that court. The superior court judges shall be selected by the presiding judge of the superior court.

(c) The personnel committee may adopt rules and regulations for a personnel system for employees of the marshal's office. The personnel committee may adopt all or any part of the personnel and salary resolution or appropriate memoranda of understanding of the

County of Orange. Except as provided in this section, provisions relating to compensation or benefits shall require the concurrence of the board of supervisors.

(d) The first one year served by a deputy marshal or court services officer appointee, and the first six months served by any other appointee, shall be considered a probationary period, except for appointment to classes of positions serving at the pleasure of the appointing authority. The appointing authority shall have the power to dismiss without cause, in the case of a new employee, or to demote without cause, in the case of a promoted employee, during that probationary period.

(e) With the approval of the board of supervisors, the personnel system adopted by the judges' personnel committee may be administered by the County of Orange through its personnel department.

74012. The marshal may make the following appointments at the designated salary ranges:

| Title of Job Classification | Applicable Pay Range Number | Number of Positions Authorized |
|---|---|---|
| Senior staff analyst | ML5 | 1 |
| Systems analyst II | A55 | 1 |
| Captain, marshal's office | MM2 | 2 |
| Lieutenant, marshal's office | MM1 | 6 |
| Sergeant, marshal's office | P11 | 20 |
| Marshal's investigator II | P9 S/3 | 6 |
| Marshal's investigator I | P6 S/3 | 10 |
| Deputy marshal II | P3 | 17 |
| Deputy marshal I | P1 | 160 |
| Deputy marshal trainee | PA S/12 | 6 |
| | Flat | |
| Court services officer | A42 | 27 |
| Radio dispatcher | A47 | 2 |
| Chief clerk II, marshal's office | D46 | 4 |
| Secretary III | D44 | 1 |
| Chief clerk I, marshal's office | D44 | 1 |
| Supervising clerk II | D42 | 1 |
| Supervising clerk I's | D40 | 5 |
| Marshal's technician | D38 S/5 | 16 |
| Clerk III's, marshal's office | D38 | 2 |
| Clerk II's, marshal's office | D35 S/3 | 25 |
| Clerk I's, marshal's office | D33 S/5 | 11 |
| Information processing specialist II | D37 S/3 | 9 |

74013. (a) It is the intent of the county to maintain parity in salary and benefits between those employees in the marshal's office and employees in the same or comparable classes for other departments. When the salary of a class in the service of Orange

County is adjusted by the board of supervisors, the salary of the equivalent class in the marshal's office shall be adjusted in the same amount and at the same time. Salaries for classes not considered equivalent shall be adjusted based on internal relationships and other criteria customarily used in setting salaries in other county classes. In the event that a system of merit pay increases is established by the County of Orange for employees, merit increases, if justified, may be authorized by the committee of judges' personnel committee for employees with similar qualifications and experience in equivalent classifications. Designation of certain classes as equivalent positions shall be as follows, except that their designation as equivalent positions may be changed or deleted at any time following a classification study and an agreement between the county and the judges' personnel committee:

| Marshal Classification | County Classification |
|---|---|
| | Management |
| Captain, marshal's office | Captain |
| Lieutenant, marshal's office | Lieutenant |
| | Safety Members |
| Sergeant, marshal's office | Sergeant |
| Marshal's investigator II | Investigator |
| Investigator I | Investigator (less two salary ranges) |
| Deputy marshal II | Deputy sheriff II |
| Deputy marshal I | Deputy sheriff I |
| Deputy marshal trainee | Deputy sheriff trainee |
| | General Classes |
| Marshal's technician | Clerk III |
| | Clerical Classes |
| Clerk II, marshal's office | Account clerk II |
| Clerk I, marshal's office | Typist clerk II |

Positions in these classes within the marshal's office shall not be paid less salary than positions in equivalent county classifications.

(b) If an increase in the business of the court or any other business necessity requires a greater number of attachés or employees for the prompt and faithful discharge of the business of the court than the number expressly provided in this article, or requires the performance of duties of positions in a class not expressly provided in this article, the judges' personnel committee, with the approval of

the board of supervisors, may establish additional titles, pay rates, and positions as they deem necessary for the performance of the duties and exercise of the powers conferred by law upon the court. Rates of compensation of these officers, attachés, and employees may be set by joint action and approval of the board of supervisors and the judges' personnel committee. The establishment of additional titles, positions, and pay rates and changes in compensation pursuant to this subdivision shall be effective only until January 1 of the second year following the year in which the establishment or change is made. This section shall not affect the appointment of additional deputy marshals pursuant to Section 72150.

74014. The assignment of persons holding the positions of Deputy Marshal I or Court Services Officer to individual courtrooms shall be made by the marshal with the concurrence of the individual judge in whose courtrooms the assignment is to be made and shall be consistent with local rules and procedures. Each deputy or officer shall serve in that assignment at the pleasure and under the direction of that judge.

SEC. 5. Section 830.4 of the Penal Code, as amended by Section 1 of Chapter 322 of the Statutes of 1988, is amended to read:

830.4. The following persons are peace officers while engaged in the performance of their duties in or about the properties owned, operated, or administered by their employing agency, or when they are required by their employer to perform their duties anywhere within the political subdivision which employs them. These officers shall also have the authority of peace officers anywhere in the state as to an offense committed, or which there is probable cause to believe has been committed, with respect to persons or property the protection of which is the duty of the officer or when making an arrest pursuant to Section 836 of the Penal Code as to any public offense with respect to which there is an immediate danger to person or property or of the escape of the perpetrator of the offense. These peace officers may carry firearms only if authorized by, and under such terms and conditions as are specified by, their employing agency:

(a) Security officers of the California State Police Division.

(b) The Sergeant at Arms of each house of the Legislature.

(c) The coordinator of security for the judicial branch, and the bailiffs of the Supreme Court and of the courts of appeal.

(d) Guards and messengers of the Treasurer's office.

(e) Officers designated by the hospital administrator of a state hospital under the jurisdiction of the State Department of Mental Health or the State Department of Developmental Services pursuant to Section 4313 or 4493 of the Welfare and Institutions Code.

(f) Any railroad policeman commissioned by the Governor pursuant to Section 8226 of the Public Utilities Code.

(g) Persons employed as members of a police department of a school district pursuant to Section 39670 of the Education Code.

(h) Safety police officers of the County of Los Angeles.

(i) Housing authority patrol officers employed by the housing authority of a city, district, county, or city and county or employed by the police department of a city and county.

(j) Transit police officers of a county, city, or district.

(k) Any person regularly employed as an airport law enforcement officer by a city, county, or district operating the airport or by a joint powers agency, created pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 of the Government Code, operating the airport.

(*l*) Court service officers in a county of the second class or a county of the third class.

(m) Security officers of the Department of General Services of the City of Los Angeles designated by the General Manager of the department. Notwithstanding any other provision of law, the peace officers designated by this subdivision shall not be authorized to carry firearms.

(n) Firefighter/security guards employed by the Military Department.

(o) Security officers of the Department of Justice.

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.

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## CHAPTER 1224

An act to amend Section 1420 of the Health and Safety Code, relating to health facilities.

[Approved by Governor September 22, 1988 Filed with Secretary of State September 23, 1988.]

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

SECTION 1. Section 1420 of the Health and Safety Code is amended to read:

1420. (a) Upon receipt of a complaint, the state department shall assign an inspector to make a preliminary review of the complaint and shall notify the complainant of the name of the inspector. Unless the state department determines that the complaint is willfully intended to harass a licensee or is without any reasonable basis, it shall make an onsite inspection or investigation within 10 working days of the receipt of the complaint. In either event, the complainant shall be promptly informed of the state department's proposed course of action. Upon the request of either the complainant or the state department, the complainant or his or her representative, or both, may be allowed to accompany the inspector to the site of the

alleged violations during his or her tour of the facility, unless the inspector determines that the privacy of any patient would be violated thereby.

When conducting an onsite inspection or investigation pursuant to this section, the state department shall collect and evaluate all available evidence and may issue a citation based upon, but not limited to, all of the following:

(1) Observed conditions.

(2) Statements of witnesses.

(3) Facility records.

(b) Upon being notified of the state department's determination as a result of the inspection or investigation, a complainant who is dissatisfied with the state department's determination, regarding a matter which would pose a threat to the health, safety, security, welfare, or rights of a resident, shall be notified by the state department of the right to an informal conference, as set forth in this section. The complainant may, within five business days after receipt of the notice, notify the director in writing of his or her request for an informal conference. The informal conference shall be held with the designee of the director for the county in which the long-term health care facility which is the subject of the complaint is located. The long-term health care facility may participate as a party in this informal conference. The director's designee shall notify the complainant and licensee of his or her determination within 10 working days after the informal conference and shall apprise the complainant and licensee in writing of the appeal rights provided in subdivision (c).

(c) If the complainant is dissatisfied with the determination of the director's designee in the county in which the facility is located, the complainant may, within 15 days after receipt of this determination, notify in writing the Deputy Director of the Licensing and Certification Division of the state department, who shall assign the request to a representative of the Complainant Appeals Unit for review of the facts that led to both determinations. As a part of the Complainant Appeals Unit's independent investigation, and at the request of the complainant, the representative shall interview the complainant in the district office where the complaint was initially referred. Based upon this review, the Deputy Director of the Licensing and Certification Division of the state department shall make his or her own determination and notify the complainant and the facility within 30 days.

(d) Any citation issued as a result of a conference or review provided for in subdivision (b) or (c) shall be issued and served upon the facility within three days of the final determination, excluding Saturday, Sunday, and holidays, unless the licensee agrees in writing to an extension of this time. Service shall be effected either personally or by registered or certified mail. A copy of the citation shall also be sent to each complainant.

(e) A miniexit conference shall be held with the administrator or

his or her representative upon leaving the facility at the completion of the investigation to inform him or her of the status of the investigation. The department shall also state the items of noncompliance and compliance found as a result of a complaint and those items found to be in compliance, provided the disclosure maintains the anonymity of the complainant.

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## CHAPTER 1225

An act to add Section 40718 to the Health and Safety Code, relating to air pollution.

[Approved by Governor September 22, 1988 Filed with Secretary of State September 23, 1988.]

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

SECTION 1. Section 40718 is added to the Health and Safety Code, to read:

40718. (a) Not later than January 1, 1990, the state board shall publish maps identifying those cities, counties, or portions thereof which have measured one or more violations of any state or federal ambient air quality standard. The state board shall produce at least one separate map for each pollutant.

(b) A district may prepare the maps required under subdivision (a) for the area within its jurisdiction. If a district chooses to prepare maps, the district shall provide the maps to the state board for review not less than four months prior to the date when the state board is required to publish the maps, and pursuant to a schedule established by the state board for any subsequent maps.

(c) The maps produced pursuant to subdivision (a) shall be based upon the most recent monitoring results, using the best technological capabilities and the best scientific judgment. The maps produced pursuant to subdivision (a) shall clearly identify portions of each district which have or have not measured one or more violations of any state or federal ambient air quality standard. The maps shall be representative of the actual air quality in each portion of the district.

(d) The state board shall publish its criteria for preparing the maps pursuant to this section not later than January 31, 1989. To the extent applicable, the state board shall identify any criteria relating to meterological impact on monitored air quality data; reliability of monitored data; magnitude, frequency, and duration of periods when ambient air quality standards are exceeded; and the area within the district in which the standards are exceeded.

(e) Any person may petition the state board to hold a public hearing on any proposed, adopted, amended, or revised map. If the petition is granted by the state board, the public hearing may be held at a regularly scheduled public hearing in Sacramento. Notice of the

time and place of any hearing shall be given not less than 30 days prior to the hearing by publication in the district pursuant to Section 6061 of the Government Code. If a district includes portions of more than one county, the notice shall be published in each county not less than 30 days prior to the date of the hearing.

The notice shall include a description of the map proposed to be adopted, amended, or repealed and a summary description of the effect of the proposal.

(f) The state board shall review annually, and as appropriate revise, the maps required by this section, using the criteria developed pursuant to subdivision (c).

(g) Nothing in this section is intended to prevent a district board from enacting and enforcing rules or regulations designed to prevent interference with or maintenance of state and federal air quality standards, or to prevent significant deterioration of air quality in any area of the district.

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## CHAPTER 1226

An act to amend Sections 25364.6 and 25395 of the Health and Safety Code, relating to hazardous substances, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 22, 1988. Filed with Secretary of State September 23, 1988 ]

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

SECTION 1. Section 25364.6 of the Health and Safety Code is amended to read:

25364.6. (a) Notwithstanding any other provision of law, a response action contractor may be indemnified and held harmless pursuant to this section for acts or omissions in carrying out a removal or remedial action to any person for injuries caused by a hazardous substance release, or threatened release, or for costs, damages, or expenses incurred as a result thereof, including, but not limited to, claims for indemnification or contribution and claims by third parties, unless the contractor was a responsible party for the release which is the subject of the removal or remedial action.

(b) This section shall apply only to a removal or remedial action at a hazardous substance release site for which one or more of the following applies:

(1) The department, after reasonable effort, has not been able to identify a potentially responsible party.

(2) The potentially responsible party is subject to an order issued, or an enforceable agreement entered into, pursuant to subdivision (a) of Section 25355.5 and the department has determined that the party is not in compliance with the order or agreement.

(3) The potentially responsible party has entered into an enforceable agreement with the department, and the department has entered into a contract for removal or remedial action at the site.

(4) The department determines that immediate corrective action is necessary, pursuant to Section 25354, and that no potentially responsible party is ready, willing, and able to take that action.

(5) The director determines that removal or remedial action at the site is necessary because there may be an imminent and substantial endangerment to the public health or welfare, or to the environment, and that no potentially responsible party is ready, willing, and able to take that action.

(c) The director may enter into a contract, and may amend all existing contracts, to hold harmless and indemnify any response action contractor against any liability specified in subdivision (a), including the expenses of litigation or settlement, pursuant to the determinations specified in subdivision (d) and the requirements specified in subdivision (e).

(d) Before entering into, or amending, a contract pursuant to this section, the director shall obtain the approval of the Department of General Services,which shall, as a condition of granting this approval, make all of the following determinations:

(1) The contract provides that the liability of the response action contractor is required to arise from conduct which does not constitute gross negligence or intentional misconduct.

(2) The response action contractor demonstrates to the Department of General Services that it is not covered by insurance available at a fair and reasonable price and that this insurance is unlikely to become available.

(3) The response action contractor is required to assume liability in an amount of up to twice the amount of the specific work assigned to the response action contractor for the purpose of ensuring that the response action contractor will use appropriate diligence to avoid careless acts or omissions. The director shall indemnify the response action contractor in an amount of up to, but not more than, twenty-five million dollars ($25,000,000).

(4) There is a fixed dollar amount limit to the total liability of the state to indemnify the response action contractor.

(5) There is no other qualified response action contractor.

(6) There is no other response action contractor which possesses insurance for the costs, damages, and expenses specified in subdivision (a).

(e) The department shall enter into, or amend, a contract to indemnify and hold harmless a response action contractor pursuant to this section, only if the department also complies with both of the following requirements:

(1) The department shall not expend any funds to provide indemnity pursuant to this section unless this indemnity is required to ensure that an approved removal and remedial action can be implemented.

(2) The department notifies the Chairperson of the Joint Legislative Budget Committee within 30 days, or within the lesser period determined by the chairperson, before providing any indemnity, regarding the necessity for the indemnity. The notification shall contain information showing the department's compliance with this section.

(f) The indemnity provided by this section shall not apply to claims for which the state establishes, in accordance with subdivision (g), that the response action contractor has not complied with all applicable requirements imposed by the state pursuant to the contract.

(g) The state shall notify the response action contractor, within 30 days after work is required to be performed, whenever it alleges that the response action contractor has not complied with any contract requirements applicable to that work. Subdivision (f) shall only apply to claims arising out of work for which the notice required by this subdivision has been given.

(h) For purposes of this section, "response action contractor" means any person who entered into a contract with the department to take removal or remedial action pursuant to this chapter in response to a release or threatened release, including any subcontractors of the response action contractor.

(i) For purposes of this section, "removal and remedial action" includes, besides those actions specified in Sections 25322 and 25323, actions taken to characterize a site, actions taken to prepare and implement a remedial action plan, and actions taken to redispose of any waste resulting from the removal or remedial action.

(j) This section shall remain in effect only until January 1, 1992, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1992, deletes or extends that date.

SEC. 2. Section 25395 of the Health and Safety Code is amended to read:

25395. (a) Except as provided in subdivisions (b), (c), and (d) this chapter, including, but not limited to, the tax imposed by Section 25345, shall remain in effect only until July 1, 1991, and as of that date is repealed, unless a later enacted statute, which is enacted before July 1, 1991, deletes or extends that date.

(b) On July 1, 1991, the Department of Finance shall submit a report to the Secretary of State which states whether the principal of, and interest on, the bonds sold pursuant to Article 7.5 (commencing with Section 25385) have been paid and the General Fund has been reimbursed for any and all amounts that were expended therefrom to pay the principal of, and interest on, those bonds. If the report states that the bonds have not been paid and the General Fund has not been reimbursed, then, notwithstanding subdivision (a), Article 1 (commencing with Section 25300), Article 2 (commencing with Section 25310), Article 3 (commencing with Section 25330), Article 4 (commencing with Section 25340), Article 6 (commencing with Section 25360), and Article 7.5 (commencing

with Section 25385) shall not be repealed and shall remain in effect until the date specified in subdivision (c).

(c) If the articles specified in subdivision (b) remain in effect after July 1, 1991, pursuant to subdivision (b), on the date when the principal of, and interest on, the bonds sold pursuant to Article 7.5 (commencing with Section 25385) have been paid and the General Fund has been reimbursed for any and all amounts that were expended therefrom to pay the principal of, and interest on, those bonds, the Department of Finance shall submit a report to the Secretary of State containing that information. The articles specified in subdivision (b) shall be repealed on the date when that report is submitted.

(d) Section 25364.6 shall not be repealed, except as provided in subdivision (j) of that section.

(e) If the articles specified in subdivision (b) remain in effect after July 1, 1991, the committee, as defined in Section 25385.1, may determine the amount of the tax revenues to be collected annually pursuant to Section 25345, which amount may be less than, but shall not exceed, fifteen million dollars ($15,000,000) plus the amount of refunds made pursuant to paragraph (3) of subdivision (d) of Section 25345.4. The committee shall also inform the State Board of Equalization, on March 1 of each calendar year, of the amount of the tax revenues which will be collected for the previous calendar year.

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 ensure that response action contractors are available to clean up hazardous substance releases, and thereby protect public health and safety, it is necessary that this act take effect immediately.

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## CHAPTER 1227

An act to add and repeal Section 6357.5 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor September 22, 1988. Filed with Secretary of State September 23, 1988.]

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

SECTION 1. The Legislature finds and declares that the State of California annually loses millions of dollars of sales and use tax revenues due to federal prohibitions on the taxation of imported airline fuel sold in California which is used in international travel. This action by the federal government has placed domestic producers, which must collect the sales and use tax on identical types

of sales, at a competitive disadvantage relative to foreign producers.

It is the intent of the Legislature, in enacting the exemption provided by this act, to allow domestic producers to compete equally with foreign producers.

It is also the intent of the Legislature to make the Congress aware of the deleterious effect the federal prohibition on taxation of foreign producers' sales of fuel has had on California revenues and on domestic fuel producers.

SEC. 2. Section 6357.5 is added to the Revenue and Taxation Code, to read:

6357.5. (a) There are exempted from the taxes imposed by this part the gross receipts from the sale of, and the storage, use, or other consumption of, fuel and petroleum products sold to an air common carrier for immediate consumption or shipment in the conduct of its business as an air common carrier, on a flight whose first destination is a foreign destination.

(b) To qualify for the exemption, the air common carrier shall furnish to the seller an exemption certificate in writing stating the quantity of fuel and petroleum products claimed as exempt. That certificate shall bear the purchaser's valid seller's permit number or valid fuel exemption registration number and shall be substantially in the form prescribed by the board. Acceptance in good faith of that certificate shall relieve the seller from liability for the sales tax.

(c) "Foreign destination," as used in this section, means the first point reached outside of the United States by an air common carrier in the conduct of its business as a common carrier at which cargo or passengers are loaded or discharged.

(d) "Immediate consumption or shipment," as used in this section, means that the delivery of the fuel and petroleum products by the seller is directly into an aircraft for consumption or transportation outside the United States and not for storage by the purchaser or any third party.

(e) Any air common carrier claiming exemption under this section who is not required to hold a valid seller's permit, shall be required to register with the board and obtain a fuel exemption registration number, and shall be required to file returns as the board may prescribe, either if the board notifies the carrier that returns must be filed or if the carrier is liable for taxes based upon consumption or transportation of fuel or petroleum products erroneously claimed as exempt under this section. A common carrier required to hold a fuel exemption registration number shall be subject to all applicable provisions of this part, Part 1.5 (commencing with Section 7200), and Part 1.6 (commencing with Section 7251).

(f) An air common carrier claiming an exemption under this section upon request, shall make available to the board records, including, but not limited to, a copy of a log abstract, an air waybill, or a cargo manifest, documenting its consumption or transportation of the fuel or petroleum products to a foreign destination and the amount claimed as exempt. If the carrier fails to provide these

records upon request, the board may revoke the carrier's fuel exemption registration number.

(g) The board may require any air common carrier claiming an exemption under this section and required to obtain a fuel exemption registration number, to place with it such security as the board may determine pursuant to Section 6701.

(h) Pursuant to this section, any use of the fuel and petroleum products by the purchasing carrier, other than that incident to the delivery of the fuel and petroleum products to the carrier and the consumption or transportation of the fuel and petroleum products by the carrier to the foreign destination for use in the conduct of its business as a common carrier, or a failure of the carrier to document its consumption or transportation of the fuel and petroleum products to the foreign destination, shall subject the carrier to liability for payment of sales tax as if it were a retailer making a retail sale of the property at the time of that use or failure, and the sales price of the property to it shall be deemed to be the gross receipts from the retail sale.

(i) This section shall become operative on January 1, 1989. This section shall remain in effect only until January 1, 1994, and as of that date is repealed, unless a later enacted statute, which is chaptered before that date, deletes or extends the date. In the event that the federal exemption provided in Section 1309 of Title 19 of the United States Code, relating to supplies for certain vessels and aircraft, is repealed prior to January 1, 1994, this section is also repealed as of the date.

SEC. 3. Notwithstanding Section 2230 of the Revenue and Taxation Code, the state will not reimburse counties and cities for revenue losses caused by the enactment of this act.

SEC. 4. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.

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## CHAPTER 1228

An act relating to passenger trains, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 22, 1988 Filed with Secretary of State September 23, 1988.]

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

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

(a) The expansion of rail passenger service in the San Diego-Los Angeles corridor, undertaken as a demonstration project on request of the Legislature, has resulted in a doubling of service and a

quadrupling of ridership, to the point where this corridor carries more intercity rail passengers than any other corridor in the country except the Boston-Washington Northeast corridor.

(b) The highest ridership segment on the National Railroad Passenger Corporation (Amtrak) Los Angeles-Seattle passenger train is between Los Angeles and Santa Barbara, even though, other than Glendale, that train does not stop in the populous San Fernando Valley.

(c) The Department of Transportation, in cooperation with Amtrak, has added an additional train between Los Angeles and Santa Barbara and a number of dedicated feeder buses on this route.

(d) Extension of additional San Diego-Los Angeles trains to Santa Barbara can be accomplished with existing Amtrak equipment and can make a positive contribution to congestion relief and energy conservation.

(e) By attracting additional passengers, the extension can also provide greater opportunities for the successful San Diego-Los Angeles corridor to reach a point where revenues come close to covering costs, as was the case in August 1985 when those trains achieved a revenue-cost ratio of 105 percent.

(f) It is necessary, and in the public interest, to develop a program to upgrade the rail line to accommodate faster and more frequent rail service while maintaining capacity for freight operations, as an extension of the recently completed study of the San Diego-Los Angeles corridor segment, which was submitted to the Legislature in July 1987 and is in the process of being implemented.

(g) Coordination of regional rail services in southern California is essential to ensure maximum public convenience and to avoid unnecessary duplication of efforts and expense.

SEC. 2. (a) There is hereby created the Southern California Regional Intercity State Rail Corridor Study Group. The chairperson of the group shall be the Director of Transportation or a designee of the director.

(b) The following may each appoint a representative to the group:

(1) The Southern California Association of Governments.

(2) The Los Angeles County Transportation Commission or its successor agency.

(3) The Ventura County Association of Governments or its successor agency.

(4) The Santa Barbara Council of Government.

(5) The San Bernardino Association of Governments.

(6) The Riverside County Transportation Commission.

(7) The Orange County Transportation Commission.

(8) The National Railroad Passenger Corporation.

(9) Railroad corporations owning rail lines affected by this act.

(10) The Secretary-Treasurer of the California Labor Federation.

(11) A consumer representative jointly appointed by the Chairperson of the Assembly Committee on Transportation and the

Chairperson of the Senate Committee on Transportation.

(c) The group shall develop a program of incremental upgrading of the Los Angeles-Santa Barbara intercity rail corridor. The program developed by the group shall be substantially similar in scope and coverage to the program developed for the Los Angeles-San Diego rail corridor, pursuant to Chapter 1313 of the Statutes of 1985. In this connection, the group shall do all of the following:

(1) Identify improvements on the line that will reduce train running times, increase reliability of service, facilitate additional passenger train frequencies, while maintaining capacity for current freight operations.

(2) Review the various options for increasing track capacity in the San Fernando Valley, including the installation of double tracks and a centralized traffic control system.

(3) Review the locations of additional stations on the line, including stops adjacent to the University of California at Santa Barbara (Goleta) and at Lompoc.

(4) Review impacts on the rail corridor of service and capital improvements in other rail corridors, including, but not limited to, the Los Angeles-San Diego, the Riverside-Orange County-Los Angeles, the San Bernardino-Los Angeles, and light rail corridors, in order to maximize coordination of services and avoid unnecessary duplication of effort.

(5) Review existing studies of the rail transportation needs of the rail corridor and connecting rail corridors, as appropriate.

(6) Develop criteria to determine priorities of potential improvements on a cost-benefit basis, and analyze and make recommendations based on these criteria.

(7) Establish an implementation and funding plan.

(d) The group shall prepare and submit to the Legislature a report of its findings and recommendations not later than April 30, 1989. The report may incorporate findings and recommendations from studies previously conducted by the Southern California Association of Governments relating to rail service in the corridor. The group may recommend further study of adjoining corridors to the Legislature or may undertake the studies if they are locally funded.

SEC. 3. (a) The sum of one hundred seventy-five thousand dollars ($175,000) is hereby appropriated from the Transportation Planning and Development Account in the State Transportation Fund to the Department of Transportation for preparation of a program of incremental improvements to the Los Angeles-Santa Barbara intercity rail service, to be made available to match, in an equal amount, any funds or contributions provided for these purposes from nonstate sources.

(b) The sum of ninety thousand dollars ($90,000) is hereby appropriated from the Transportation Planning and Development Account in the State Transportation Fund to the Department of

Transportation for allocation by the Director of Transportation to the Metropolitan Transportation Commission, the Sacramento Area Council of Governments, and the Department of Transportation for purposes of conducting an intercity rail corridor upgrade study for the Auburn-Sacramento-Oakland-San Jose Corridor, as proposed by Assembly Concurrent Resolution 132 of the 1987–88 Regular Session, to be made available to match, in an equal amount, any funds or contributions provided for these purposes from nonstate sources.

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 that critical transportation problems affecting the Los Angeles-Santa Barbara and the Auburn-Sacramento-Oakland-San Jose intercity rail corridors may be addressed at the earliest possible time, it is necessary that this act take effect immediately.

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## CHAPTER 1229

An act relating to schools, and making an appropriation therefor.

[Approved by Governor September 23, 1988 Filed with Secretary of State September 23, 1988 ]

I am deleting the $100,000 appropriation contained in Section 2 of Senate Bill No. 2357.

This bill establishes a 13-member advisory commission to study the feasibility of increased consolidation of school districts. The commission shall report their results and recommendations to the Legislature by January 1, 1990.

The demands placed on budget resources require all of us to set priorities The budget enacted in July 1988 appropriated nearly $44 billion in state funds. This amount is more than adequate to provide the necessary essential services provided for by State Government. It is not necessary to put additional pressure on taxpayer funds for programs that fall beyond the priorities currently provided.

Thus, after reviewing this legislation, I have concluded that its merits do not sufficiently outweigh the need this year for funding top priority programs and continuing a prudent reserve for economic uncertainties.

It is more appropriate to consider funding the provisions of this bill during the budget process for Fiscal Year 1989–90. Only at that time can we review the relative merits of this program in comparison to all other funding projects. The budget process enables us to weigh all demands on the state's revenues and direct our resources to programs, either new or existing, that have the most merit

With this deletion, I approve Senate Bill No. 2357.

GEORGE DEUKMEJIAN, Governor

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

SECTION 1. An advisory commission to conduct a study on the feasibility of increased consolidation of the school districts of this state is hereby established. The commission shall consist of 13 members. Nine members of the commission shall be appointed by the Governor, two members shall be appointed by the Speaker of the Assembly, and two members shall be appointed by the Senate

Committee on Rules. Every effort shall be made to ensure that the ethnic and racial composition of the commission reflects the current ethnic and racial distribution of pupils in kindergarten and grades 1 to 12, inclusive. The commission shall report the results of that study to the Legislature, together with its recommendations for any statutory revisions pursuant to the results of the study, no later than January 1, 1990. If the commission determines consolidation to be feasible, its report shall include recommended fiscal and other incentives for the implementation of that consolidation. Members of the commission shall be reimbursed for travel expenses and per diem incurred in the course of performance of their official duties. The commission may hire staff necessary to complete the study.

SEC. 2. The sum of one hundred thousand dollars ($100,000) is hereby appropriated from the General Fund to the advisory commission created by Section 1 of this act for purposes of supporting the activities of the commission.

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## CHAPTER 1230

An act to add Section 1760.3 to the Welfare and Institutions Code, relating to graffiti removal, and making an appropriation therefor.

[Approved by Governor September 23, 1988 Filed with Secretary of State September 23, 1988 ]

I am deleting the $45,000 appropriation contained in Section 2 of Senate Bill No 2465

This bill would establish a pilot project to employ adults and minors who are on probation in a graffiti removal project in Los Angeles County and would appropriate $45,000 from the General Fund to the Department of the Youth Authority to support this effort.

The demands placed on budget resources require all of us to set priorities The budget enacted in July 1988 appropriated nearly $44 billion in state funds This amount is more than adequate to provide the necessary essential services provided for by State Government It is not necessary to put additional pressure on taxpayer funds for programs that fall beyond the priorities currently provided

Thus, after reviewing this legislation, I have concluded that its merits do not sufficiently outweigh the need this year for funding top priority programs and continuing a prudent reserve for economic uncertainties

It is more appropriate to consider funding the provisions of this bill during the budget process for Fiscal Year 1989–90 Only at that time can we review the relative merits of this program in comparison to all other funding projects The budget process enables us to weigh all demands on the state's revenues and direct our resources to programs, either new or existing, that have the most merit

With this deletion, I approve Senate Bill No 2465

GEORGE DEUKMEJIAN, Governor

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

SECTION 1. Section 1760.3 is added to the Welfare and Institutions Code, to read:

1760.3. (a) For purposes of this section "graffiti" means any unauthorized inscription, word, figure, or design which is marked, etched, scratched, drawn, or painted on any structural component of

any building, structure, or other facility regardless of its content or nature and regardless of the nature of the material of that structural component.

(b) The Youth Authority shall establish and monitor the progress of a three-year pilot project in Los Angeles County for the removal of graffiti. The pilot project shall be administered by the Los Angeles County Probation Office which shall require adults, minors, or adults and minors, who are on probation, as part of community service ordered to be performed as a condition of their probation, to perform work necessary and proper to repair, remove, clean, or reconstruct any damage or defacement resulting from the application of graffiti to public buildings, structures, or other facilities owned by the state, Los Angeles County, any city within Los Angeles County, or any district or other political subdivision of the state.

(c) The Los Angeles County Probation Office also may, in its discretion, as part of the pilot project, require wards of the juvenile court who are placed in the juvenile hall for Los Angeles County or any juvenile home, ranch, or camp located in Los Angeles County to perform work necessary and proper to repair, remove, clean, or reconstruct any damage or defacement resulting from the application of graffiti to public buildings, structures, or other facilities owned by the state, Los Angeles County, any city within Los Angeles County, or any district or other political subdivision of the state.

(d) Based on its monitoring of the progress of the pilot project, the Youth Authority shall report to the Legislature on the effectiveness of the pilot project in removing grafitti and any other impact of the pilot project on the community on or before April 1, 1990, April 1, 1991, and April 1, 1992. Each report shall include the number of square feet of surface area from which graffiti has been removed and the number of wards of the Youth Authority and juvenile court and adult offenders who have participated in the program in the previous calendar year. The project shall be deemed successful if in the first year graffiti is removed from at least 47,591 square feet of surface area at a cost of not more than sixteen thousand five hundred fifty-seven dollars ($16,557) as compared with the commercial cost of thirty thousand eight hundred forty-six dollars ($30,846) for the removal of a comparable amount of graffiti.

SEC. 2. The sum of forty-five thousand dollars ($45,000) is hereby appropriated from the General Fund to the Department of the Youth Authority for the pilot project for the removal of graffiti established pursuant to Section 1 of this act, to be allocated to Los Angeles County for the administration of the pilot project.

SEC. 3. The Legislative Analyst shall study the potential for a tax credit or incentive to encourage manufacturers, distributors, or other donors to provide free paint for the purpose of covering up graffiti or free graffiti-removal products. This study shall be submitted to the Legislature on or before June 1, 1989.

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 five hundred thousand dollars ($500,000), reimbursement shall be made from the State Mandates Claims Fund.

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## CHAPTER 1231

An act to amend Sections 20514, 20543, and 20544 of the Revenue and Taxation Code, relating to taxation, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 23, 1988. Filed with Secretary of State September 23, 1988 ]

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

SECTION 1. Section 20514 of the Revenue and Taxation Code is amended to read:

20514. Assistance shall not be allowed under this chapter if gross household income, after allowance for actual cash expenditures which are reasonable, ordinary, and necessary to realize income, exceeds twenty-four thousand dollars ($24,000).

SEC. 2. Section 20543 of the Revenue and Taxation Code is amended to read:

20543. The amount of assistance for a claimant owning his or her residential dwelling shall be based on claimant's household income for the period set forth in Section 20503.

The percentage of assistance for which each claimant owning his or her residential dwelling shall be eligible shall be based on the following scale:

| If the total household income (as defined in this part) is not more than: | The percentage of tax on the first $34,000 of full value (as determined for tax purposes) used to provide assistance is: |
|---|---|
| $3,300 | 96% |
| 3,520 | 94 |
| 3,740 | 92 |
| 3,960 | 90 |
| 4,180 | 88 |
| 4,400 | 86 |
| 4,620 | 84 |
| 4,840 | 82 |

| | |
|---|---|
| 5,060 | 80 |
| 5,280 | 78 |
| 5,500 | 76 |
| 5,720 | 73 |
| 5,940 | 69 |
| 6,160 | 65 |
| 6,380 | 61 |
| 6,600 | 57 |
| 6,820 | 53 |
| 7,040 | 49 |
| 7,260 | 45 |
| 7,480 | 41 |
| 7,700 | 37 |
| 7,920 | 34 |
| 8,140 | 31 |
| 8,360 | 28 |
| 8,580 | 25 |
| 8,800 | 22 |
| 9,020 | 20 |
| 9,240 | 18 |
| 9,460 | 16 |
| 9,680 | 14 |
| 9,900 | 12 |
| 10,450 | 10 |
| 11,000 | 8 |
| 11,550 | 7 |
| 12,100 | 6 |
| 12,650 | 5 |
| 13,200 | 4 |

SEC. 3. Section 20544 of the Revenue and Taxation Code is amended to read:

20544. The amount of assistance for a claimant renting his or her residence shall be based on the claimant's household income for the time period set forth in Section 20503.

The percentage of assistance for which each claimant renting his or her residence shall be eligible shall be based on the following scale:

| If the total household income (as defined in this part) is not more than: | The statutory property tax equivalent is: | The percentage of the statutory property tax equivalent used to provide assistance is: |
|---|---|---|
| $3,300 | $250 | 96% |
| 3,520 | 250 | 94 |
| 3,740 | 250 | 92 |
| 3,960 | 250 | 90 |
| 4,180 | 250 | 88 |
| 4,400 | 250 | 86 |
| 4,620 | 250 | 84 |

| | | |
|---|---|---|
| 4,840 | 250 | 82 |
| 5,060 | 250 | 80 |
| 5,280 | 250 | 78 |
| 5,500 | 250 | 76 |
| 5,720 | 250 | 73 |
| 5,940 | 250 | 69 |
| 6,160 | 250 | 65 |
| 6,380 | 250 | 61 |
| 6,600 | 250 | 57 |
| 6,820 | 250 | 53 |
| 7,040 | 250 | 49 |
| 7,260 | 250 | 45 |
| 7,480 | 250 | 41 |
| 7,700 | 250 | 37 |
| 7,920 | 250 | 34 |
| 8,140 | 250 | 31 |
| 8,360 | 250 | 28 |
| 8,580 | 250 | 25 |
| 8,800 | 250 | 22 |
| 9,020 | 250 | 20 |
| 9,240 | 250 | 18 |
| 9,460 | 250 | 16 |
| 9,680 | 250 | 14 |
| 9,900 | 250 | 12 |
| 10,450 | 250 | 10 |
| 11,000 | 250 | 8 |
| 11,550 | 250 | 7 |
| 12,100 | 250 | 6 |
| 12,600 | 250 | 5 |
| 13,200 | 250 | 4 |

SEC. 4. In the event that this act becomes effective prior to October 2, 1988, it shall apply to claims for property tax assistance for the 1988–89 fiscal year and fiscal years thereafter.

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 that this act may provide updated levels of property tax assistance commencing with the 1988–89 fiscal year, it is necessary that this act go into immediate effect.

## CHAPTER 1232

An act to add Section 21081.6 to the Public Resources Code, relating to environmental quality.

[Approved by Governor September 23, 1988. Filed with Secretary of State September 23, 1988.]

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

SECTION 1. Section 21081.6 is added to the Public Resources Code, to read:

21081.6. When making the findings required by subdivision (a) of Section 21081 or when adopting a negative declaration pursuant to paragraph (2) of subdivision (c) of Section 21080, 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.

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.

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## CHAPTER 1233

An act to add Sections 3214 and 4909.1 to the Labor Code, relating to workers' compensation.

[Approved by Governor September 23, 1988. Filed with Secretary of State September 23, 1988.]

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

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

(a) A program known as early intervention is currently being operated in the Department of Corrections and the Department of the Youth Authority. Early intervention seeks to ensure that the parties involved in workers' compensation cases are fully informed of available options, that decisions are reached expeditiously, and

that those decisions are implemented in a timely manner.

(b) An early intervention program facilitates the return to work of an injured employee and may reduce the monetary expenditures associated with workers' compensation cases.

SEC. 2. Section 3214 is added to the Labor Code, to read:

3214. 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.

SEC. 3. Section 4909.1 is added to the Labor Code, to read:

4909.1. Authorized representatives of the Department of Corrections, and the Department of the Youth Authority may request the State Compensation Insurance Fund to provide any payment, allowance, or benefit as described in Section 4909. When requested by an authorized representative, the State Compensation Insurance Fund shall administer the benefits in a timely fashion.

SEC. 4. The Director of Corrections and the Director of the Youth Authority shall report to the Auditor General by July 1, 1992, on the accomplishments of early intervention and shall include in the report all of the following specific data:

(a) The number of injuries reported on Cal-OSHA Log 200.

(b) The number of days elapsed from the date of injury to the date that workers' compensation benefits were provided to the employee.

(c) The number of days that the employee was off work due to the injury.

(d) The number of employees that returned to work.

(e) The number of days from the date of injury to the date the employee was referred to vocational rehabilitation.

(f) The early intervention counseling costs.

(g) The number and cost of medical-legal consultations as described in Section 4620 of the Labor Code.

(h) The total claim costs after finalization.

(i) The number of employees that received industrial disability retirement.

The report shall also include backup costs for industrially injured employees, recruitment and training costs for replacement personnel, and costs of industrial disability retirement.

The report shall compare the specific data in this section to comparable data for workers' compensation cases for three calendar years immediately preceding implementation of early intervention. Specific data described in subdivisions (a) to (i), inclusive, shall be compiled for every workers' compensation case that has resulted in 30 days or more of disability from work, or in which the injury was

alleged to be the result of psychological stress or the physical manifestations thereof, and shall be included in the comparison and report to the Auditor General. The Auditor General shall review and evaluate the report provided by the directors, in terms of the accuracy of the data compiled, its completeness, and compliance with the statutory mandates of the act.

The Auditor General shall submit the report of the directors, along with its review and evaluation, to the Legislature by December 31, 1992.

It is the intent of the Legislature that hearings be held to examine the report of the directors along with the Auditor General's review, to assess the potential applicability of the workers' compensation early intervention program to other public agencies and the private sector.

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## CHAPTER 1234

An act to amend Section 17053.13 of, and to add Section 17156 to, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor September 23, 1988. Filed with Secretary of State September 23, 1988.]

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

SECTION 1. Section 17053.13 of the Revenue and Taxation Code is amended to read:

17053.13. (a) (1) There shall be allowed as a credit against the amount of "net tax" (as defined in Section 17039) an amount equal to 4 percent of the total amount of eligible income (as defined in subdivision (b)) received by a qualifying taxpayer during the taxable year.

(2) The credit allowed by this section shall not exceed forty dollars ($40) in any taxable year.

(b) For purposes of this section, "eligible income" means all of the following:

(1) The salary, wages, bonuses, allowances, and other compensation received by an individual for his or her services on extended active duty as a member of the armed forces of the United States, including any auxiliary branch thereof. For the purposes of this paragraph and paragraph (3), "extended active duty" means any period of active duty pursuant to a call or order to that duty for a period in excess of 90 days or for an indefinite period.

(2) Pensions and retirement pay received by an individual for his or her services as a member of the Armed Forces of the United States, including any auxiliary branch thereof, the California National Guard, or the State Military Reserve.

(3) Salary, wages, bonuses, allowances, and other compensation received by an individual for his or her services on other than extended active duty as a member of the Armed Forces of the United States, including any auxiliary branch thereof.

(4) Compensation and allowances received for active duty service as a member in the California National Guard or State Military Reserve for any month during any part of which that member did either of the following:

(A) Served pursuant to a declaration of emergency by the Governor in accordance with Section 143 or 146 of the Military and Veterans Code.

(B) (i) Was hospitalized as a result of wounds, disease, or injury incurred while serving under the declaration of emergency specified in subparagraph (A).

(ii) This paragraph shall not apply for any month beginning more than two years after the date of termination of the emergency specified in subparagraph (A).

(5) For purposes of paragraph (4):

(A) Service is performed only if performed on or after the date the declaration of emergency specified in subparagraph (A) of paragraph (4) is declared by the Governor and on or before the date of termination of that emergency, as designated by the Governor.

(B) "Compensation and allowances" does not include pension and retirement pay.

(c) For purposes of this section, "qualifying taxpayer" means an individual whose adjusted gross income for the taxable year is less than twenty-seven thousand dollars ($27,000). For purposes of this subdivision, if the taxpayer is married during any period of the taxable year, there shall be taken into account the combined adjusted gross income of the taxpayer and his or her spouse for that period. However, in the case where a taxpayer and his or her spouse each are qualified to claim the credit provided by this section, half of their combined adjusted gross income shall be attributable to each spouse.

(d) This section shall remain in effect only until January 1, 1992, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1992, deletes or extends that date.

SEC. 2. Section 17156 is added to the Revenue and Taxation Code, to read:

17156. Gross income does not include any amount received pursuant to any federal law enacted in 1988 to provide reparation payments to redress the injustice done to United States citizens and resident aliens of Japanese ancestry who were interned during World War II.

This section shall not become operative, unless and until the Franchise Tax Board determines that a federal statute is enacted in 1988 which provides that amounts payable under a federal program to redress the injustice done to United States citizens and resident aliens of Japanese ancestry who were interned during World War II shall be treated, for purposes of the internal revenue laws of the

United States, as damages for human suffering.

SEC. 3. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.

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## CHAPTER 1235

An act to amend Sections 20930.11 and 31625.3 of, and to add Sections 20020.1, 20020.10, and 31672.2 to, the Government Code, relating to public retirement systems.

[Approved by Governor September 23, 1988. Filed with Secretary of State September 23, 1988.]

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

SECTION 1. Section 20020.1 is added to the Government Code, to read:

20020.1. "Local policeman" or "policewoman" also includes any officer or employee of a police department of a contracting agency which is a city, employed to perform communication duties for an employer that contracted with this system for coverage for its local policemen or policewomen on October 1, 1948, and who elected to become a local safety member on August 25, 1973, pursuant to Chapter 91 of the Statutes of 1973.

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 the approval of contracts or, in the case of contracts made after the effective date of this section, by express provision in the contract making the contracting agency subject to this section.

SEC. 2. Section 20020.10 is added to the Government Code, to read:

20020.10. "Local policeman" and "local policemen," as used in this part, mean, respectively, a local policeman or policewoman and local policemen or policewomen.

SEC. 3. Section 20930.11 of the Government Code is amended to read:

20930.11. "Public service," with respect to a local member who is a full-time employee, also means any time on or after January 1, 1981, but not to exceed 12 months, during which the local member is laid off. In the event the member becomes subject to membership through employment in another member classification during the layoff period, any service credit accumulated through and contributions associated with the intervening employment shall be revoked upon election by the member to purchase public service credit as provided by this section. The service credit provided by this section shall not exceed one year and shall be provided to any person

who: (1) returns within 12 months of the date of layoff to full-time employment under the procedures of the employer for returning laid-off employees to work; (2) elects to purchase the public service credit within three years of return to work or the effective date of the contract amendment to become subject to this section; and (3) redeposits any contributions which had been withdrawn at the commencement of, or during, the period of the layoff.

This section shall not apply to any contracting agency nor to the employees of a contracting agency unless and until the agency elects to be subject to this section by contract or by amendment to its contract made in the manner prescribed for approval of contracts.

SEC. 4. Section 31625.3 of the Government Code is amended to read:

31625.3. Notwithstanding any other provision of this chapter, contributions shall not be deducted from the salary of any member who was a member before or after March 7, 1973, of the retirement association, another county retirement system established under this chapter, or the Public Employees' Retirement System, and has total reciprocal service credit of not less than 30 years in the retirement association, or in the retirement association and another county retirement system established under this chapter, or the Public Employees' Retirement System, or a combination thereof.

This section shall apply only in counties of the second and fourth class, as established by Sections 28020, 28023, and 28025, as amended by Chapter 1204 of the Statutes of 1971, but shall not apply in these counties unless and until it is adopted by a majority vote of the board of supervisors.

SEC. 5. Section 31672.2 is added to the Government Code, to read:

31672.2. Any elective officer who filed a declaration with the board to become a member, pursuant to Section 31553, who has served two complete consecutive terms in an elective office, and who has reached the minimum age for retirement provided in Section 31672, may be retired upon filing with the board a written application setting forth the date upon which he or she desires his or her retirement to become effective which shall be not more than 60 days after the date of filing the application.

This section shall become operative only in any county of the 16th class, as defined by Section 28020 and 28037, as amended by Chapter 1204 of the Statutes of 1971, and on the first day of the calendar month after the board of supervisors adopts a resolution making it operative in the county.

SEC. 6. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because this act does not mandate a new program or higher level of service on local government. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Chapter 4 (commencing with Section 17550) of Part 7 of Division 2 of Title 2 of the Government Code.

# CHAPTER 1236

An act to add and repeal Section 16511.5 of the Welfare and Institutions Code, relating to AIDS, and making an appropriation therefor.

[Approved by Governor September 23, 1988 Filed with Secretary of State September 23, 1988 ]

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

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

(a) Currently, there are 70 pediatric AIDS cases in California.

(b) Public health experts predict a substantial increase in pediatric AIDS cases by 1991, ranging from 3,000 cases estimated by the Public Health Service to 10,000-20,000 AIDS cases nationally predicted by the National Commission to Prevent Infant Mortality.

(c) According to the report of the Surgeon General's Workshop on Children with HIV Infection and their families, over 75 percent of babies born with AIDS are black or hispanic.

(d) The 1988 Presidential Commission on the Human Immunodeficiency Virus Epidemic reports that for a large majority of pediatric AIDS cases that are being diagnosed, epidemiologic data suggests perinatal transmission from a mother who uses intravenous drugs or is the sexual partner of an intravenous drug user.

(e) The median life expectancy for an infant suffering from AIDS is nine months.

(f) The cost of medical treatment for these children, many of whom are unnecessarily hospitalized, can exceed $250,000 per year.

(g) A significant proportion of pediatric AIDS cases are clearly related to substance abuse by the children's parents.

(h) The child welfare system has seen a dramatic increase in the number of high-risk children needing protective services. Consequently, the future dependent care system, which is already overburdened, will be increasingly stressed by the dramatic increases of children with AIDS.

SEC. 2. Section 16511.5 is added to the Welfare and Institutions Code, to read:

16511.5. (a) The department shall establish a pilot project in a county selected by the department, to provide services to foster parents of children two years of age and under who have tested positive for antibodies to the human immunodeficiency virus (HIV), or who have been diagnosed as having acquired immune deficiency syndrome (AIDS). The department shall select a northern California county or a southern California county which cares for a disproportionately high number of drug-or-alcohol addicted babies, who in turn have a high incidence of AIDS or HIV infection. The pilot project shall be operated by a local public or private nonprofit

organization pursuant to a contract with the department.

(b) The pilot project established pursuant to subdivision (a) shall provide all of the following:

(1) Recruitment of foster parents who are willing to care for children who have tested positive for antibodies to HIV, or who have been diagnosed as having AIDS.

(2) Training and education for each new foster parent, which shall consist of not less than a 30-minute presentation on AIDS, its means of transmission, AIDS resources and service referrals, and information pertaining to the special care required for infants who have tested positive for antibodies to HIV, or who have been diagnosed as having AIDS.

(3) Support for foster parents participating in this pilot project, which shall include, but not be limited to, respite care and counseling.

(c) The local public or private nonprofit organization operating the pilot project shall provide a match of one dollar for every three dollars in state funds.

(d) The department shall, on or before January 1, 1990, report to the Legislature on implementation of the pilot project.

The report shall include, but is not limited to, all of the following:

(1) Percent of foster parents participating in the project who accept placement of children with AIDS.

(2) Percent of foster parents who accept placement of children with AIDS upon request, but are not participating in the project.

(3) Percent of foster parents participating in the project who accept placement of children with AIDS subsequent to an initial placement.

(4) Percent of foster parents who accept placement of children with AIDS subsequent to an initial placement, but are not participating in the project.

(5) Percent of placements in both groups that are terminated and the reasons for termination.

(e) This section shall remain in effect only until January 1, 1992, and as of that date is repealed, unless a later enacted statute which is chaptered prior to January 1, 1992, deletes or extends that date.

SEC. 3. The sum of one hundred twenty-five thousand dollars ($125,000) is hereby appropriated from the General Fund to the State Department of Social Services in order to implement this act.

# CHAPTER 1237

An act to amend Section 36 of the Code of Civil Procedure, relating to civil procedure.

[Approved by Governor September 23, 1988. Filed with Secretary of State September 23, 1988.]

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

SECTION 1. Section 36 of the Code of Civil Procedure is amended to read:

36. (a) A civil case shall be entitled to preference upon the motion of any party to the action who has reached the age of 70 years unless the court finds that the party does not have a substantial interest in the case as a whole.

(b) A civil case to recover damages for wrongful death or personal injury shall be entitled to preference upon the motion of any party to the action who is under the age of 14 years unless the court finds that the party does not have a substantial interest in the case as a whole. A civil case subject to subdivision (a) shall be given preference over a case subject to this subdivision.

(c) Unless the court otherwise orders, notice of a motion for preference shall be served with the memorandum to set or the at-issue memorandum by the party serving the memorandum, or 10 days after such service by any other party; or thereafter during the pendency of the action upon the application of a party who reaches the age of 70 years.

(d) In its discretion, the court may also grant a motion for preference served with the memorandum to set or the at-issue memorandum and accompanied by clear and convincing medical documentation which concludes that one of the parties suffers from an illness or condition raising substantial medical doubt of survival of that party beyond six months, and which satisfies the court that the interests of justice will be served by granting such preference.

(e) Notwithstanding any other provision of law, the court may in its discretion grant a motion for preference served with the memorandum to set or the at-issue memorandum and accompanied by a showing of cause which satisfies the court that the interests of justice will be served by granting such preference.

(f) Upon the granting of such a motion for preference, the clerk shall set the case for trial not more than 120 days from that date and there shall be no continuance beyond 120 days from the granting of the motion for preference except for physical disability of a party or a party's attorney, or upon a showing of good cause stated in the record. No such continuance shall be for more than 15 days, nor shall more than one such continuance be granted to any party.

## CHAPTER 1238

An act to amend Section 139 of the Labor Code, relating to labor.

[Approved by Governor September 23, 1988. Filed with Secretary of State September 23, 1988.]

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

SECTION 1. Section 139 of the Labor Code is amended to read:

139. The administrative director shall appoint a Medical and Chiropractic Advisory Committee composed of 11 members, seven of whom shall be physicians and surgeons who hold an M.D. degree and are certificated to practice medicine in this state, and two of whom shall be physicians and surgeons who hold a D.O. degree and are certificated to practice osteopathic medicine in this state. Two members of the Medical and Chiropractic Advisory Committee shall be chiropractors licensed to practice chiropractic in this state. The seven physician and surgeon, M.D., and two physician and surgeon, D.O., members of the advisory committee shall represent medical specialties concerned with the treatment of industrial injury and disease. The physician and surgeon, M.D., members shall be appointed after consultation with statewide and local associations of the medical profession. The physician and surgeon, D.O., members shall be appointed after consultation with the statewide association of the osteopathic medical profession. The members of the committee shall be appointed for two-year staggered terms. The chiropractic members shall be appointed after consultation with statewide and local associations of the chiropractic profession. Vacancies shall be filled by appointment for the unexpired terms. Members shall receive actual necessary traveling expenses and a per diem of one hundred dollars ($100) for each day spent in meetings of the Medical and Chiropractic Advisory Committee. The Medical and Chiropractic Advisory Committee members shall counsel and assist the medical director and shall perform other duties as the administrative director may direct.

The members of the Medical and Chiropractic Advisory Committee shall, within the scope of each member's professional training, do all the following:

(a) Maintain liaison with the medical and chiropractic professions.

(b) Assist in recruiting doctors for the medical bureau.

(c) Advise the medical director as to selection and removal of independent medical or chiropractic examiners.

(d) Assist, within the scope of each member's professional training, in developing guidelines for determination of disputed questions of clinical fact.

(e) Suggest standards for improving care furnished injured employees.

(f) Undertake continuing studies of developments in the field of

rehabilitation, and continuously inform treating physicians and surgeons and chiropractors of these developments.

(g) Advise the division regarding reasonable levels of fees for physicians and surgeons and chiropractors performing services under this code.

The administrative director shall appoint for renewable terms of two years, independent expert medical examiners in each of the respective specialties as may be required. The administrative director shall appoint for renewable terms of two years, independent expert chiropractic examiners.

Assignment of cases to independent examiners shall be made at the request of the administrative director, the secretary of the appeals board, or a workers' compensation judge by the medical director or his or her assistant in each office where a unit of the medical bureau is maintained or by the workers' compensation judge in charge in other offices of the division. Insofar as possible, a rotation method of assignment of independent medical or expert chiropractic examiners shall be followed.

The examiners shall conduct examinations and report their findings and opinions in accordance with guidelines developed for that purpose by the medical director of the division.

Payment for the examination shall be made by the Division of Industrial Accidents from funds appropriated for that purpose or for the support of the division's medical bureau, or in accordance with Section 5703.5.

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## CHAPTER 1239

An act to add and repeal Sections 17052.17, 17052.18, 23617, and 23617.5 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor September 23, 1988 Filed with Secretary of State September 23, 1988 ]

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

SECTION 1. Section 17052.17 is added to the Revenue and Taxation Code, to read:

17052.17. (a) There shall be allowed as a credit against the net tax imposed by this part for the taxable year an amount equal to the amount determined in subdivision (b).

(b) (1) The amount of the credit allowed by this section shall be 30 percent of either or both of the following:

(A) The cost paid or incurred by the taxpayer on or after the effective date of this section for the startup expenses of establishing a child care program or constructing a child care facility in California, to be used primarily by the children of the taxpayer's

employees.

(B) The cost paid or incurred by the taxpayer on or after the effective date of this section for contributions to California child care information and referral services such as those which identify local child care services, offer information describing these resources to employees, and make referrals of employees to child care services where there are vacancies.

In the case of a child care facility established by two or more taxpayers, the credit shall be allowed if the facility is to be used primarily by the children of the employees of each of the taxpayers.

(2) The amount of the credits allowed by this section shall not exceed thirty thousand dollars ($30,000) for any taxable year.

(c) For purposes of this section, "startup expenses" include, but are not limited to, feasibility studies, site preparation, and construction, renovation or acquisition of facilities for purposes of establishing or expanding onsite or near-site centers by one or more employers.

(d) With the exception of a husband and wife, if two or more taxpayers share in the costs eligible for the credit provided by this section, each taxpayer shall be eligible to receive the tax credit in proportion to his or her respective share of the costs paid or incurred. In the case of a partnership, the tax credit may be divided between the partners pursuant to a written partnership agreement in accordance with Chapter 10 (commencing with Section 17851), which includes Section 704 of the Internal Revenue Code concerning substantial economic effect, relating to partners' distributive share. In the case of a husband or wife who files a separate return, the credit may be taken by either or equally divided between them.

(e) In the case where the credit allowed under this section exceeds the net tax for the taxable year, that portion of the credit which exceeds the net tax may be carried over to the net tax in the next five succeeding taxable years. The credit shall be applied first to the earliest taxable years possible.

(f) No deduction shall be allowed as otherwise provided in this part for that portion of expenses paid or incurred for the taxable year which is equal to the amount of the credit allowed under this section attributable to those expenses.

(g) In lieu of claiming the tax credit provided by this section, the taxpayer may elect to take depreciation pursuant to Section 17250. In addition, the taxpayer may take depreciation pursuant to that section for the cost of a facility in excess of the amount of the tax credit claimed under this section.

(h) The basis for any child care facility for which a credit is allowed shall be reduced by the amount of the credit attributable to the facility. The basis adjustment shall be made for the taxable year for which the credit is allowed.

(i) (1) In order to be eligible for the credit allowed under subparagraph (A) of paragraph (1) of subdivision (b), the taxpayer shall submit to the Franchise Tax Board upon request a statement

certifying that the costs for which the credit is claimed are incurred with respect to the startup expenses of establishing a child care program or constructing a child care facility in California to be used primarily by the children of the taxpayer's employees and which will be in operation for at least 60 consecutive months after completion.

(2) If the child care center for which a credit is claimed pursuant to this section is disposed of or ceases to operate within 60 months after completion, that portion of the credit claimed which represents the remaining portion of the 60-month period shall be added to the taxpayer's tax liability in the taxable year of that disposition or nonuse.

(j) (1) This section shall not apply to taxable years beginning on or after January 1, 1992.

(2) This section shall remain in effect only until December 1, 1992, and as of that date is repealed, unless a later enacted statute, which is enacted and becomes operative before December 1, 1992, deletes or extends that date.

SEC. 2. Section 17052.18 is added to the Revenue and Taxation Code, to read:

17052.18. (a) There shall be allowed as a credit against the net tax imposed by this part for the taxable year an amount equal to the amount determined in subdivision (b).

(b) (1) The amount of the credit allowed by this section shall be 50 percent of the cost paid or incurred by the taxpayer on or after the effective date of this section for contributions to a qualified care plan made on behalf of any dependent of the taxpayer's California employee who is under the age of 15.

(2) The amount of the credit allowed by this section in any taxable year shall not exceed six hundred dollars ($600) for each contribution to a full-time qualified care plan and three hundred dollars ($300) for each contribution to a part-time qualified care plan.

(c) For purposes of this section:

(1) "Qualified care plan" includes, but is not limited to, onsite service, center-based service, in-home care or home-provider care, provided the facility is located in this state and is operated under the authority of a license when required by state law.

(2) "Full-time qualified care plan" means an average of eight or more hours per day for at least 42 weeks per year in a qualified care plan.

(3) "Part-time qualified care plan" means an average of two to eight hours per day for at least 42 weeks per year in a qualified care plan.

(4) "Contributions" include employer reimbursements to employees for the employee's qualified care plan expenses, or direct payments to child care programs or providers, or both.

(5) The term "employee" includes, for any year, an individual who is an employee within the meaning of Section 401(c)(1) of the Internal Revenue Code (relating to self-employed individuals).

(d) In the case where an employer makes contributions to a

qualified care plan and also collects fees from parents to support a child care facility owned and operated by the employer, no credit shall be allowed under this section for contributions in the amount, if any, by which the sum of the contributions and fees exceed the total cost of providing care. The Franchise Tax Board may require information about fees collected from parents of children.

(e) In the case where the child care received is of less than 42-week duration, the employer shall claim a prorated portion of the allowable credit.

(f) In the case where the credit allowed under this section exceeds the net tax for the taxable year, that portion of the credit which exceeds the net tax may be carried over to the net tax in the next five succeeding taxable years. The credit shall be applied first to the earliest taxable years possible.

(g) The credit shall not be available to an employer if the care provided on behalf of an employee is provided by an individual who:

(1) Qualifies as a dependent of that employee or that employee's spouse under paragraph (1) of subdivision (d) of Section 17054.

(2) Is (within the meaning of Section 17056) a son, stepson, daughter, or stepdaughter of that employee under the age of 19 at the close of that taxable year.

(h) The contributions to a qualified care plan shall not discriminate in favor of employees who are officers, owners, or highly compensated, or their dependents.

(i) No deduction shall be allowed as otherwise provided in this part for that portion of expenses paid or incurred for the taxable year which is equal to the amount of the credit allowed under this section.

(j) In the case where the credit is taken by an employer for contributions to a qualified care plan which is used at a facility owned by the employer, the basis of that facility shall be reduced by the amount of the credit. The basis adjustment shall be made for the taxable year for which the credit is allowed.

(k) With the exception of a husband and wife, if two or more taxpayers share in the costs eligible for the credit provided by this section, each taxpayer shall be eligible to receive the tax credit in proportion to his or her respective share of the costs paid or incurred. In the case of a partnership, the tax credit may be divided between the partners pursuant to a written partnership agreement in accordance with Chapter 10 (commencing with Section 17851), which includes Section 704 of the Internal Revenue Code, concerning substantial economic effect, relating to a partner's distributive share. In the case of a husband and wife who file a separate return, the credit may be taken by either or equally divided between them.

(*l*) (1) This section shall not apply to taxable years beginning on or after January 1, 1992.

(2) This section shall remain in effect only until December 1, 1992, and as of that date is repealed, unless a later enacted statute, which is enacted and becomes operative before December 1, 1992, deletes

or extends that date.

SEC. 3. Section 23617 is added to the Revenue and Taxation Code, to read:

23617. (a) There shall be allowed as a credit against the taxes imposed by this part (except the minimum franchise tax, the alternative minimum tax, and the taxes imposed by Sections 23809 and 23811 relating to built-in gains and excess passive income, respectively) an amount equal to the amount determined in subdivision (b).

(b) (1) The amount of the credit allowed by this section shall be 30 percent of either or both of the following:

(A) The cost paid or incurred by the taxpayer on or after the effective date of this section for the startup expenses of establishing a child care program or constructing a child care facility in California, to be used primarily by the children of the taxpayer's employees.

(B) The cost paid or incurred by the taxpayer on or after the effective date of this section for contributions to California child care information and referral services such as those which identify local child care services, offer information describing these resources to employees, and make referrals of employees to child care services where there are vacancies.

In the case of a child care facility established by two or more taxpayers, the credit shall be allowed if the facility is to be used primarily by the children of the employees of each of the taxpayers.

(2) The amount of the credits allowed by this section shall not exceed thirty thousand dollars ($30,000) for any income year.

(c) For purposes of this section, "startup expenses" include, but are not limited to, feasibility studies, site preparation, and construction, renovation, or acquisition of facilities for purposes of establishing or expanding onsite or near-site centers by one or more employers.

(d) If two or more taxpayers share in the costs eligible for the credit provided by this section, each taxpayer shall be eligible to receive the tax credit in proportion to its respective share of the costs paid or incurred. In the case of a partnership, the tax credit may be divided between the partners pursuant to a written partnership agreement in accordance with Chapter 10 (commencing with Section 17851), which includes Section 704 of the Internal Revenue Code, concerning substantial economic effect, relating to a partner's distributive share.

(e) In the case where the credit allowed under this section exceeds the taxes imposed by this part (except the minimum franchise tax, the alternative minimum tax, and the taxes imposed by Sections 23809 and 23811 relating to built-in gains and excess passive income, respectively), that portion of the credit which exceeds those taxes may be carried over to the taxes imposed by this part (except the minimum franchise tax, the alternative minimum tax, and the taxes imposed by Sections 23809 and 23811 relating to built-in gains

and excess passive income, respectively) in the next five succeeding income years. The credit shall be applied first to the earliest income years possible.

(f) No deduction shall be allowed as otherwise provided in this part for that portion of expenses paid or incurred for the income year which is equal to the amount of the credit allowed under this section attributable to those expenses.

(g) In lieu of claiming the tax credit provided by this section, the taxpayer may elect to take depreciation pursuant to Section 24371.5. In addition, the taxpayer may take depreciation pursuant to that section for the cost of a facility in excess of the amount of the tax credit claimed under this section.

(h) The basis for any child care facility for which a credit is allowed shall be reduced by the amount of the credit attributable to the facility. The basis adjustment shall be made for the taxable year for which the credit is allowed.

(i) (1) In order to be eligible for the credit allowed under subparagraph (A) of paragraph (1) of subdivision (b), the taxpayer shall submit to the Franchise Tax Board upon request a statement certifying that the costs for which the credit is claimed are incurred with respect to the startup expenses of establishing a child care program or constructing a child care facility in California to be used primarily by the children of the taxpayer's employees and which will be in operation for at least 60 consecutive months after completion.

(2) If the child care center for which a credit is claimed pursuant to this section is disposed of or ceases to operate within 60 months after completion, that portion of the credit claimed which represents the remaining portion of the 60-month period shall be added to the taxpayer's tax liability in the income year of that disposition or nonuse.

(j) (1) This section shall not apply to income years beginning on or after January 1, 1992.

(2) This section shall remain in effect only until December 1, 1992, and as of that date is repealed, unless a later enacted statute, which is enacted and becomes operative before December 1, 1992, deletes or extends that date.

SEC. 4. Section 23617.5 is added to the Revenue and Taxation Code, to read:

23617.5. (a) There shall be allowed as a credit against the taxes imposed by this part (except the minimum franchise tax, the alternative minimum tax, and the taxes imposed by Sections 23809 and 23811 relating to built-in gains and excess passive income, respectively) an amount equal to the amount determined in subdivision (b).

(b) (1) The amount of the credit allowed by this section shall be 50 percent of the cost paid or incurred by the taxpayer on or after the effective date of this section for contributions to a qualified care plan made on behalf of any dependent of the taxpayer's California employee who is under the age of 15.

(2) The amount of the credit allowed by this section in any income year shall not exceed six hundred dollars ($600) for each contribution to a full-time qualified care plan and three hundred dollars ($300) for each contribution to a part-time qualified care plan.

(c) For purposes of this section:

(1) "Qualified care plan" includes, but is not limited to, onsite service, center-based service, and in-home care or home-provider care, provided the facility is located in this state and is operated under the authority of a license when required by state law.

(2) "Full-time qualified care plan" means an average of eight or more hours per day for at least 42 weeks per year in a qualified care plan.

(3) "Part-time qualified care plan" means an average of two to eight hours per day for at least 42 weeks per year in a qualified care plan.

(4) "Contributions" include employer reimbursements to employees for the employee's qualified care plan expenses, or direct payments to child care programs or providers, or both.

(5) The term "employee" includes, for any year, an individual who is an employee within the meaning of Section 401(c)(1) of the Internal Revenue Code (relating to self-employed individuals).

(d) In the case where an employer makes contributions to a qualified care plan and also collects fees from parents to support a child care facility owned and operated by the employer, no credit shall be allowed under this section for contributions in the amount, if any, by which the sum of the contributions and fees exceed the total cost of providing care. The Franchise Tax Board may require information about fees collected from parents of children served in the facility from taxpayers claiming credits under this section.

(e) In the case where the child care received is of less than 42-week duration, the employer shall claim a prorated portion of the allowable credit.

(f) In the case where the credit allowed under this section exceeds the taxes imposed by this part (except the minimum franchise tax, the alternative minimum tax, and the taxes imposed by Sections 23809 and 23811 relating to built-in gains and excess passive income, respectively), that portion of the credit which exceeds those taxes may be carried over to the taxes imposed by this part (except the minimum franchise tax, the alternative minimum tax, and the taxes imposed by Sections 23809 and 29811 relating to built-in gains and excess passive income, respectively) in the next five succeeding income years. The credit shall be applied first to the earliest income years possible.

(g) The credit shall not be available to an employer if the care provided on behalf of an employee is provided by an individual who:

(1) Qualifies as a dependent of that employee or that employee's spouse under paragraph (1) of subdivision (d) of Section 17054.

(2) Is (within the meaning of Section 17056) a son, stepson, daughter, or stepdaughter of that employee under the age of 19 at

the close of that taxable year.

(h) The contributions to a qualified care plan shall not discriminate in favor of employees who are officers, owners, or highly compensated, or their dependents.

(i) No deduction shall be allowed as otherwise provided in this part for that portion of expenses paid or incurred for the income year which is equal to the amount of the credit allowed under this section.

(j) In the case where the credit is taken by an employer for contributions to a qualified care plan which is used at a facility owned by the employer, the basis of that facility shall be reduced by the amount of the credit. The basis adjustment shall be made for the income year for which the credit is allowed.

(k) If two or more taxpayers share in the costs eligible for the credit provided by this section, each taxpayer shall be eligible to receive the tax credit in proportion to its respective share of the costs paid or incurred. In the case of a partnership, the tax credit may be divided between the partners pursuant to a written partnership agreement in accordance with Chapter 10 (commencing with Section 17851), which includes Section 704 of the Internal Revenue Code, concerning substantial economic effect, relating to a partner's distributive share.

(*l*) (1) This section shall not apply to income years beginning on or after January 1, 1992.

(2) This section shall remain in effect only until December 1, 1992, and as of that date is repealed, unless a later enacted statute, which is enacted and becomes operative before December 1, 1992, deletes or extends that date.

SEC. 5. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.

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## CHAPTER 1240

An act to amend Section 1011 of the Military and Veterans Code, and to amend and supplement the Budget Act of 1988 by adding Item 1970-303-036 to Section 2.00 thereof, relating to veterans, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 23, 1988. Filed with Secretary of State September 26, 1988.]

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

SECTION 1. Section 1011 of the Military and Veterans Code is amended to read:

1011. (a) There is in the department a Veterans' Home of California, which is situated at Veterans' Home, Napa County.

(b) (1) The department may establish and construct a second

home which shall be situated in the County of Imperial, Los Angeles, Orange, Riverside, San Bernardino, Ventura, or San Diego. The department shall operate the second home concurrently with the first home.

(2) The department may complete any preapplication process necessary with the United States Veterans' Administration for construction of the second home.

(3) There is hereby created an Advisory Site Selection Committee in the department to advise the director on the site for the second home. The committee shall hold three meetings and give its recommendation after the third meeting. The committee shall be composed of the following persons:

(A) The Commander of the Veterans of Foreign Wars.
(B) The Commander of the Disabled American Veterans.
(C) The Commander of the American Legion.
(D) The Commander of AmVets.
(E) One member appointed by the Speaker of the Assembly.
(F) One member appointed by the Senate Committee on Rules.
(G) One member appointed by the Governor.

SEC. 2. Item 1970-303-036 is added to Section 2.00 of the Budget Act of 1988, to read:

1970-303-036--For capital outlay, a veterans' home in southern California. Department of Veterans Affairs, for site analysis and selection, environmental impact reports, staff, and any other related activities, payable from the Special Account for Capital Outlay ..... 2,219,000

Provisions:

(1) Notwithstanding Section 2 of this act, the amount herein appropriated shall be available for expenditure during the 1988-89 and 1989-90 fiscal years.

(2) Of the amount herein appropriated, not to exceed $1,119,000 shall be available for support of the department during the 1988-89 and 1989-90 fiscal years and shall be transferred, upon request of the department, to Item 1960-001-001 of the Budget Act of 1988 or the Budget Act of 1989, or both, for expenditure.

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 expedite the construction of a Veterans' Home of California in southern California to serve the state's burgeoning and aging veteran population as soon as possible, it is necessary that this act take effect immediately.

## CHAPTER 1241

An act to amend Section 35781 of the Food and Agricultural Code, relating to milk.

[Approved by Governor September 23, 1988. Filed with Secretary of State September 26, 1988 ]

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

SECTION 1. Section 35781 of the Food and Agricultural Code is amended to read:

35781. (a) Except as otherwise provided in this article, market milk shall not contain any of the following:

(1) More than 15,000 bacteria per milliliter if to be sold as raw milk to the consumer.

(2) More than 50,000 bacteria per milliliter if to be sold as raw milk for pasteurization or more than 750 bacteria per milliliter after having been subjected to laboratory pasteurization which has a time-temperature equivalent to that required in Section 34001 before pasteurization.

(3) More than 15,000 bacteria per milliliter or more than 10 coliform bacteria per milliliter at time of delivery to the consumer, if pasteurized.

(4) More than 750 coliform bacteria per milliliter in raw milk for pasteurization. Samples shall be taken while the milk is on the premises of the producer.

(5) More than 800,000 somatic cells per milliliter, as determined by direct microscopic somatic cell count, electronic somatic cell count, or optical somatic cell count. After January 1, 1990, the maximum somatic cell count shall be 600,000 somatic cells per milliliter, as determined by the methods specified in this paragraph. This paragraph does not apply to market goat milk.

(b) The director may, by regulation, require different standards for raw market milk for pasteurization from the standards in this section if he or she determines, after an administrative hearing, that the standards are necessary to protect or improve milk quality.

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.

# CHAPTER 1242

An act to add and repeal Chapter 11 (commencing with Section 186.20) to Title 7 of Part 1 of, the Penal Code, relating to crimes, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 23, 1988 Filed with Secretary of State September 26, 1988 ]

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

SECTION 1. Chapter 11 (commencing with Section 186.20) is added to Title 7 of Part 1 of the Penal Code, to read:

## CHAPTER 11. STREET TERRORISM ENFORCEMENT AND PREVENTION ACT

186.20. This chapter shall be known and may be cited as the "California Street Terrorism Enforcement and Prevention Act."

186.21. The Legislature hereby finds and declares that it is the right of every person regardless of race, color, creed, religion, national origin, sex, age, sexual orientation, or handicap to be secure and protected from fear, intimidation, and physical harm caused by the activities of violent groups and individuals. It is not the intent of the Legislature in enacting this chapter to interfere with the exercise of rights protected by the United States Constitution or by the California Constitution. The Legislature recognizes the constitutional right of every citizen to harbor and express beliefs on any lawful subject whatsoever, to lawfully associate with others who share similar beliefs, to petition lawfully constituted authority for a redress of perceived grievances, or to participate in the electoral process.

The Legislature, however, further finds that the State of California is in a state of crisis which has been caused by violent street gangs whose members threaten, terrorize, and commit a multitude of crimes against the peaceful citizens of their neighborhoods. These activities, both individually and collectively, present a clear and present danger to public order and safety and are not constitutionally protected. It is the intent of the Legislature in enacting this chapter to seek the eradication of criminal activity by street gangs by focusing upon patterns of criminal gang-related activity and upon the organized nature of street gangs, which together are the chief source of terror created by street gangs. The Legislature further finds that there are nearly 600 criminal street gangs operating in California, and that the number of gang-related murders is increasing. The Legislature also finds that in Los Angeles County alone there were 328 gang-related murders in 1986, and that gang homicides in 1987 have increased 80 percent over 1986.

186.22. (a) Any person who actively participates in any criminal

street gang with knowledge that its members engage in or have engaged in a pattern of criminal gang activity, and who willfully promotes, furthers, or assists in any felonious criminal conduct by gang members, shall be punished by imprisonment in the county jail for a period not to exceed one year, or by imprisonment in the state prison for one, two, or three years.

(b) Any person who is convicted of a felony or a misdemeanor which is committed for the benefit of, at the direction of, or in association with, any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, shall be punished in the following manner:

(1) Any person who violates this subdivision in the commission of a misdemeanor, shall be punished by imprisonment in the county jail not to exceed one year, or by imprisonment in the state prison for one, two, or three years, provided that any person sentenced to imprisonment in the county jail pursuant to subdivision (b) of Section 17, shall be imprisoned for a period not to exceed one year, but not less than 180 days, and shall not be eligible for release upon completion of sentence, parole, or any other basis, until he or she has served 180 days. If the court grants probation or suspends the execution of sentence imposed upon the defendant, it shall require as a condition thereof that the defendant serve 180 days in county jail.

(2) Except as provided in paragraph (3), any person who violates this subdivision in the commission of a felony shall, upon conviction of that felony, in addition and consecutive to the punishment prescribed for the felony of which he or she has been convicted, be punished by an additional term of one, two, or three years at the court's discretion. The court shall order the imposition of the middle term of the sentence enhancement, unless there are circumstances in aggravation or mitigation. The court shall state the reasons for its choice of sentence enhancements on the record at the time of sentencing.

(3) Any person who violates this subdivision in the commission of a felony punishable by imprisonment in the state prison for life, shall not be paroled until a minimum of 15 calendar years have been served.

(4) Notwithstanding any other provision of law, the court may strike the additional punishment for the enhancements provided in this section in an unusual case where the interests of justice would best be served, if the court specifies on the record and enters into the minutes the circumstances indicating that the interests of justice would best be served by that disposition.

(c) As used in this chapter, "pattern of criminal gang activity" means the commission, attempted commission, or solicitation of two or more of the following offenses, provided at least one of those offenses occurred after the effective date of this chapter and the last of those offenses occurred within three years after a prior offense, and the offenses are committed on separate occasions, or by two or more persons:

(1) Assault with a deadly weapon or by means of force likely to produce great bodily injury, as defined in Section 245.

(2) Robbery, as defined in Chapter 4 (commencing with Section 211) of Title 8 of Part 1.

(3) Unlawful homicide or manslaughter, as defined in Chapter 1 (commencing with Section 187) of Title 8 of Part 1.

(4) The sale, possession for sale, transportation, manufacture, offer for sale, or offer to manufacture controlled substances as defined in Sections 11054, 11055, 11056, 11057, and 11058 of the Health and Safety Code.

(5) Shooting at an inhabited dwelling or occupied motor vehicle as defined in Section 246.

(6) Arson, as defined in Section 451.

(7) The intimidation of witnesses and victims, as defined in Section 136.1.

(d) As used in this chapter, "criminal street gang" means any ongoing organization, association, or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of one or more of the criminal acts enumerated in paragraphs (1) to (7), inclusive, of subdivision (c), which has a common name or common identifying sign or symbol, whose members individually or collectively engage in or have engaged in a pattern of criminal gang activity.

186.23. This chapter does not apply to employees engaged in concerted activities for their mutual aid and protection, or the activities of labor organizations or their members or agents.

186.24. If any part or provision of this chapter, or the application thereof to any person or circumstance, is held invalid, the remainder of the chapter, including the application of such part or provisions to other persons or circumstances, shall not be affected thereby and shall continue in full force and effect. To this end, the provisions of this chapter are severable.

186.25. Nothing in this chapter shall prevent a local governing body from adopting and enforcing laws consistent with this chapter relating to gangs and gang violence. Where those local laws duplicate or supplement the provisions of this chapter, this chapter shall be construed as providing alternative remedies and not as preempting the field.

186.26. On or before January 1, 1991, the District Attorney of Los Angeles County and the City Attorney of the City of Los Angeles shall submit a report to the Legislature on the impact of this chapter on the control of criminal street gang activity in Los Angeles County. The report shall include, but need not be limited to, all of the following:

(a) The number of arrests made under this chapter.

(b) The number of prosecutions under this chapter.

(c) The number of trials which have resulted from prosecutions under this chapter and the number of pleas which have resulted.

(d) The number of convictions under this chapter.

(e) The number and type of sentence enhancements which have been sought under this chapter, and the number and kind of sentence enhancements which have been ordered by the courts.

186.27. This chapter shall remain in effect only until January 1, 1992, and as of that date is repealed, unless a later enacted statute, which is chaptered on or before January 1, 1992, deletes or extends that date.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because: (1) 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; and (2) 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.

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 provide the tools necessary for law enforcement to stem the tide of illegal gang warfare without infringing upon the constitutional rights of any individual, at the earliest possible time, it is necessary that this act take effect immediately.

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## CHAPTER 1243

An act to add Section 4383 to the Business and Professions Code, to amend Sections 11377 and 11550 of the Health and Safety Code, to add Section 77400.1 to the Government Code, and to amend Sections 264, 286, and 288a of, to add Sections 647.1 and 1463.23 to, and to add Chapter 2.71 (commencing with Section 1001.10) to Title 6 of Part 2 of, the Penal Code, relating to health.

[Approved by Governor September 23, 1988. Filed with Secretary of State September 26, 1988.]

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

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

(a) Acquired immune deficiency syndrome (AIDS) and infection by human immunodeficiency virus (HIV), the etiologic agent for AIDS, has reached epidemic proportions in this state.

(b) While intravenous drug users account for 2 percent of all AIDS cases diagnosed in California, studies in San Francisco indicate that 20 percent of IV drug users are infected with HIV.

(c) In some eastern cities where infection with HIV has affected

IV drug users early in the AIDS epidemic, the rate of infection among IV drug users is as high as 80 percent.

(d) The greatest risk of transmission of HIV to heterosexuals is through IV drug users.

(e) Street prostitutes are more likely to use intravenous drugs and, therefore, are at greater risk for exposure to HIV.

(f) Education and counseling about the causes of AIDS and the prevention of HIV infection are crucial to halting the spread of the epidemic.

(g) IV drug users and prostitutes are not easily reached with education and counseling because they have no formal network, no formal publications targeting them specifically, and in general are not in the mainstream of society that is reached by any form of media.

(h) It is critical that IV drug users and prostitutes be targeted specifically for AIDS education and counseling.

SEC. 2. Section 4383 is added to the Business and Professions Code, to read:

4383. In addition to any fine assessed under Section 4382, the judge may assess a fine not to exceed seventy dollars ($70) against any person who violates Section 4143 or 4149, with the proceeds of this fine to be used in accordance with Section 1463.23 of the Penal Code. The court shall, however, take into consideration the defendant's ability to pay and no defendant shall be denied probation because of his or her inability to pay the fine permitted under this section.

SEC. 2.5. Section 77400.1 is added to the Government Code, to read:

77400.1. In addition to dispositions made pursuant to Section 77400, disposition shall be made of the fines collected in accordance with Section 1463.23 of the Penal Code, prior to all filing fees and fines and forfeitures, or portions thereof, which otherwise would accrue to an option county, being transmitted quarterly by the option county to the state.

SEC. 3. Section 11377 of the Health and Safety Code is amended to read:

11377. (a) Except as otherwise provided in subdivision (b) or in Article 7 (commencing with Section 4211) of Chapter 9 of Division 2 of the Business and Professions Code, every person who possesses any controlled substance which is (1) classified in Schedule III, IV, or V, and which is not a narcotic drug, (2) specified in subdivision (d) of Section 11054, except paragraphs (13), (14), (15), and (20) of subdivision (d), (3) specified in paragraph (2) or (3) of subdivision (f) of Section 11054, or (4) specified in subdivision (d), (e), or (f) of Section 11055, unless upon the prescription of a physician, dentist, podiatrist, or veterinarian, licensed to practice in this state, shall be punished by imprisonment in the county jail for a period of not more than one year or the state prison.

(b) Any person who violates subdivision (a) by unlawfully

possessing a controlled substance specified in subdivision (f) of Section 11056, and who has not previously been convicted of such a violation involving a controlled substance specified in subdivision (f) of Section 11056, is guilty of a misdemeanor.

(c) In addition to any fine assessed under subdivision (b), the judge may assess a fine not to exceed seventy dollars ($70) against any person who violates subdivision (a), with the proceeds of this fine to be used in accordance with Section 1463.23 of the Penal Code. The court shall, however, take into consideration the defendant's ability to pay, and no defendant shall be denied probation because of his or her inability to pay the fine permitted under this subdivision.

SEC. 4. Section 11550 of the Health and Safety Code is amended to read:

11550. (a) No person shall use, or be under the influence of any controlled substance which is (1) specified in subdivision (b), (c), or (e), or paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (14), (15), (21), (22), or (23) of subdivision (d) of Section 11054, specified in subdivision (b) or (c) of Section 11055, or specified in paragraph (1) or (2) of subdivision (d) or in paragraph (3) of subdivision (e) of Section 11055, or (2) a narcotic drug classified in Schedule III, IV, or V, except when administered by or under the direction of a person licensed by the state to dispense, prescribe, or administer controlled substances. It shall be the burden of the defense to show that it comes within the exception. Any person convicted of violating any provision of this subdivision is guilty of a misdemeanor and shall be sentenced to serve a term of not less than 90 days or more than one year in the county jail. The court may place a person convicted under this subdivision on probation for a period not to exceed five years and shall in all cases in which probation is granted require, as a condition thereof, that the person be confined in the county jail for at least 90 days. In no event does the court have the power to absolve a person who violates this subdivision from the obligation of spending at least 90 days in confinement in the county jail.

(b) In addition to any fine assessed under this section, the judge may assess a fine not to exceed seventy dollars ($70) against any person who violates this section, with the proceeds of this fine to be used in accordance with Section 1463.23 of the Penal Code. The court shall, however, take into consideration the defendant's ability to pay, and no defendant shall be denied probation because of his or her inability to pay the fine permitted under this subdivision.

(c) Nothing in this section prevents diversion of a person under Chapter 2.5 (commencing with Section 1000) of Title 6 of Part 2 of the Penal Code unless the person is charged with violating subdivision (b) or (c) of Section 243 of the Penal Code. A person charged with violating this section by being under the influence of any controlled substance which is specified in paragraph (21), (22), or (23) of subdivision (d) of Section 11054 or in paragraph (3) of subdivision (e) of Section 11055 and with violating either subdivision

(b) or (c) of Section 243 of the Penal Code shall be ineligible for diversion.

SEC. 5. Section 264 of the Penal Code is amended to read:

264. (a) Rape, as defined in Section 261, is punishable by imprisonment in the state prison for three, six, or eight years. Rape, as defined in Section 262, is punishable either by imprisonment in the county jail for not more than one year or in the state prison for three, six, or eight years. Unlawful sexual intercourse, as defined in Section 261.5, is punishable either by imprisonment in the county jail for not more than one year or in the state prison.

(b) In addition to any punishment imposed under this section, the judge may assess a fine not to exceed seventy dollars ($70) against any person who violates Section 261, 261.5, or 262 with the proceeds of this fine to be used in accordance with Section 1463.23. The court shall, however, take into consideration the defendant's ability to pay, and no defendant shall be denied probation because of his or her inability to pay the fine permitted under this subdivision.

SEC. 6. Section 286 of the Penal Code is amended to read:

286. (a) Sodomy is sexual conduct consisting of contact between the penis of one person and the anus of another person.

(b) (1) Except as provided in Section 288, any person who participates in an act of sodomy with another person who is under 18 years of age shall be punished by imprisonment in the state prison, or in a county jail for a period of not more than one year.

(2) Except as provided in Section 288, any person over the age of 21 years who participates in an act of sodomy with another person who is under 16 years of age shall be guilty of a felony.

(c) Any person who participates in an act of sodomy with another person who is under 14 years of age and more than 10 years younger than he or she, or when the act is accomplished against the victim's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person or where the act is accomplished against the victim's will by threatening to retaliate in the future against the victim or any other person, and there is a reasonable possibility that the perpetrator will execute the threat shall be punished by imprisonment in the state prison for three, six, or eight years.

(d) Any person who, while voluntarily acting in concert with another person, either personally or aiding and abetting such other person, commits an act of sodomy when the act is accomplished against the victim's will by means of force or fear of immediate and unlawful bodily injury on the victim or another person or where the act is accomplished against the victim's will by threatening to retaliate in the future against the victim or any other person, and there is a reasonable possibility that the perpetrator will execute the threat shall be punished by imprisonment in the state prison for five, seven, or nine years.

(e) Any person who participates in an act of sodomy with any person of any age while confined in any state prison, as defined in

Section 4504, or in any local detention facility as defined in Section 6031.4 shall be punished by imprisonment in the state prison, or in a county jail for a period of not more than one year.

(f) Any person who commits an act of sodomy, and the victim is at the time unconscious of the nature of the act and this is known to the person committing the act, shall be punished by imprisonment in the state prison for a period of three, six, or eight years.

(g) Except as provided in subdivision (h), a person who commits an act of sodomy, and the victim is at the time incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, and this is known or reasonably should be known to the person committing the act, shall be punished by imprisonment in the state prison, for three, six, or eight years. Notwithstanding the existence of a conservatorship pursuant to the provisions of the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code), the prosecuting attorney shall prove, as an element of the crime, that a mental disorder or developmental or physical disability rendered the alleged victim incapable of giving consent.

(h) Any person who commits an act of sodomy, and the victim is at the time incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, and this is known or reasonably should be known to the person committing the act, and both the defendant and the victim are at the time confined in a state hospital for the care and treatment of the mentally disordered or in any other public or private facility for the care and treatment of the mentally disordered approved by a county mental health director, shall be punished by imprisonment in the state prison, or in a county jail for a period of not more than one year. Notwithstanding the existence of a conservatorship pursuant to the provisions of the Lanterman-Petris-Short Act ( Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code), the prosecuting attorney shall prove, as an element of the crime, that a mental disorder or developmental or physical disability rendered the alleged victim incapable of giving legal consent.

(i) Any person who commits an act of sodomy, where the victim is prevented from resisting by an intoxicating or anesthetic substance, or any controlled substance, administered by or with the privity of the accused, shall be punished by imprisonment in the state prison for a period of three, six, or eight years.

(j) Any person who commits an act of sodomy, where the victim submits under the belief that the person committing the act is the victim's spouse, and this belief is induced by any artifice, pretense, or concealment practiced by the accused, with intent to induce the belief, shall be punished by imprisonment in the state prison for a period of three, six, or eight years.

(k) Any person who commits an act of sodomy, where the act is accomplished against the victim's will by threatening to use the authority of a public official to incarcerate, arrest, or deport the

victim or another, and the victim has a reasonable belief that the perpetrator is a public official, shall be punished by imprisonment in the state prison for a period of three, six, or eight years.

As used in this subdivision, "public official" means a person employed by a governmental agency who has the authority, as part of that position, to incarcerate, arrest, or deport another. The perpetrator does not actually have to be a public official.

(*l*) As used in subdivisions (c) and (d) "threatening to retaliate" means a threat to kidnap or falsely imprison, or inflict extreme pain, serious bodily injury, or death.

(m) In addition to any punishment imposed under this section, the judge may assess a fine not to exceed seventy dollars ($70) against any person who violates this section, with the proceeds of this fine to be used in accordance with Section 1463.23. The court shall, however, take into consideration the defendant's ability to pay, and no defendant shall be denied probation because of his or her inability to pay the fine permitted under this subdivision.

SEC. 7. Section 288a of the Penal Code is amended to read:

288a. (a) Oral copulation is the act of copulating the mouth of one person with the sexual organ or anus of another person.

(b) (1) Except as provided in Section 288, any person who participates in an act of oral copulation with another person who is under 18 years of age shall be punished by imprisonment in the state prison, or in a county jail for a period of not more than one year.

(2) Except as provided in Section 288, any person over the age of 21 years who participates in an act of oral copulation with another person who is under 16 years of age is guilty of a felony.

(c) Any person who participates in an act of oral copulation with another person who is under 14 years of age and more than 10 years younger than he or she, or when the act is accomplished against the victim's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person or where the act is accomplished against the victim's will by threatening to retaliate in the future against the victim or any other person, and there is a reasonable possibility that the perpetrator will execute the threat shall be punished by imprisonment in the state prison for three, six, or eight years.

(d) Any person who, while voluntarily acting in concert with another person, either personally or by aiding and abetting that other person, commits an act of oral copulation (1) when the act is accomplished against the victim's will by means of force or fear of immediate and unlawful bodily injury on the victim or another person, or (2) where the act is accomplished against the victim's will by threatening to retaliate in the future against the victim or any other person, and there is a reasonable possibility that the perpetrator will execute the threat, or (3) where the victim is at the time incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, and this is known or reasonably should be known to the person committing the act shall

be punished by imprisonment in the state prison for five, seven, or nine years. Notwithstanding the appointment of a conservator with respect to the victim pursuant to the provisions of the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code), the prosecuting attorney shall prove, as an element of the crime described under paragraph (3), that a mental disorder or developmental or physical disability rendered the alleged victim incapable of giving legal consent.

(e) Any person who participates in an act of oral copulation while confined in any state prison, as defined in Section 4504 or in any local detention facility as defined in Section 6031.4, shall be punished by imprisonment in the state prison, or in a county jail for a period of not more than one year.

(f) Any person who commits an act of oral copulation, and the victim is at the time unconscious of the nature of the act and this is known to the person committing the act, shall be punished by imprisonment in the state prison for a period of three, six, or eight years.

(g) Except as provided in subdivision (h), any person who commits an act of oral copulation, and the victim is at the time incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, and this is known or reasonably should be known to the person committing the act, shall be punished by imprisonment in the state prison, for three, six, or eight years. Notwithstanding the existence of a conservatorship pursuant to the provisions of the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code), the prosecuting attorney shall prove, as an element of the crime, that a mental disorder or developmental or physical disability rendered the alleged victim incapable of giving consent.

(h) Any person who commits an act of oral copulation, and the victim is at the time incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, and this is known or reasonably should be known to the person committing the act, and both the defendant and the victim are at the time confined in a state hospital for the care and treatment of the mentally disordered or in any other public or private facility for the care and treatment of the mentally disordered approved by a county mental health director, shall be punished by imprisonment in the state prison, or in a county jail for a period of not more than one year. Notwithstanding the existence of a conservatorship pursuant to the provisions of the Lanterman-Petris-Short Act ( Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code), the prosecuting attorney shall prove, as an element of the crime, that a mental disorder or developmental or physical disability rendered the alleged victim incapable of giving legal consent.

(i) Any person who commits an act of oral copulation, where the victim is prevented from resisting by any intoxicating or anesthetic

substance, or any controlled substance, administered by or with the privity of the accused, shall be punished by imprisonment in the state prison for a period of three, six, or eight years.

(j) Any person who commits an act of oral copulation, where the victim submits under the belief that the person committing the act is the victim's spouse, and this belief is induced by any artifice, pretense, or concealment practiced by the accused, with intent to induce the belief, shall be punished by imprisonment in the state prison for a period of three, six, or eight years.

(k) Any person who commits an act of oral copulation, where the act is accomplished against the victim's will by threatening to use the authority of a public official to incarcerate, arrest, or deport the victim or another, and the victim has a reasonable belief that the perpetrator is a public official, shall be punished by imprisonment in the state prison for a period of three, six, or eight years.

As used in this subdivision, "public official" means a person employed by a governmental agency who has the authority, as part of that position, to incarcerate, arrest, or deport another. The perpetrator does not actually have to be a public official.

(*l*) As used in subdivisions (c) and (d) "threatening to retaliate" means a threat to kidnap or falsely imprison, or to inflict extreme pain, serious bodily injury, or death.

(m) In addition to any punishment imposed under this section, the judge may assess a fine not to exceed seventy dollars ($70) against any person who violates this section, with the proceeds of this fine to be used in accordance with Section 1463.23. The court shall, however, take into consideration the defendant's ability to pay, and no defendant shall be denied probation because of his or her inability to pay the fine permitted under this subdivision.

SEC. 8. Section 647.1 is added to the Penal Code, to read:

647.1. In addition to any fine assessed under Section 647, the judge may assess a fine not to exceed seventy dollars ($70) against any person who violates subdivision (a) or (b) of Section 647, or, if the offense involves intravenous use of a controlled substance, subdivision (f) of Section 647, with the proceeds of this fine to be used in accordance with Section 1463.23.

The court shall, however, take into consideration the defendant's ability to pay and no defendant shall be denied probation because of his or her inability to pay the fine permitted under this section.

SEC. 9. Chapter 2.71 (commencing with Section 1001.10) is added to Title 6 of Part 2 of the Penal Code, to read:

## CHAPTER 2.71. AIDS PREVENTION PROGRAM IN DRUG ABUSE AND PROSTITUTION CASES

1001.10. (a) The judge shall require any person described in subdivision (b), as a condition of either sentencing the person to probation or of permitting the person to participate in a drug diversion program to agree to participate in an AIDS education

program. Testing for AIDS antibodies shall be offered but no person described in subdivision (b) shall be required to be tested.

(b) This section shall apply to any person who has either been convicted of, or pled guilty to, any of the following:

(1) A violation of subdivision (a) of Section 11377 of the Health and Safety Code, Section 11550 of the Health and Safety Code, Section 4143 or 4149 of the Business and Professions Code, or of subdivision (f) of Section 647 if the offense involves intravenous use of a controlled substance.

(2) A violation of subdivision (a) or (b) of Section 647.

1001.11. (a) The health department in each county shall select an agency, or agencies, in the county that shall provide AIDS prevention education to those persons sentenced to probation or a drug diversion program in accordance with Section 1001.10. The health department shall endeavor to select an agency, or agencies, that currently provide AIDS prevention education programs to substance abusers or prostitutes. If no agency is currently providing this education, the county agency responsible for substance abuse shall develop an AIDS prevention education program either within the agency or under contract with a community-based, nonprofit organization in the county. The health department shall forward to the courts a list of agencies selected for purposes of referral in accordance with Section 1001.10. Reimbursement for the costs of implementing this section shall be made out of moneys deposited with the county treasurer in accordance with Section 1463.23.

(b) An AIDS prevention education program providing services pursuant to subdivision (a) shall, at a minimum, include details about the transmission of human immunodeficiency virus (HIV), the etiologic agent for AIDS, symptoms of AIDS or AIDS-related conditions, prevention through avoidance or cleaning of needles, sexual practices which constitute high risk, low risk, and no risk (including abstinence), and resources for assistance if the person decides to take a test for the etiologic agent for AIDS and receives a positive test result. The program shall also include other relevant medical and prevention information as it becomes available.

(c) A person sentenced to a drug diversion program pursuant to Section 1001.10 shall not be required to participate in an AIDS prevention education program, provided that the drug diversion program includes an AIDS prevention education component that meets the requirements of subdivision (b).

SEC. 10. Section 1463.23 is added to the Penal Code, to read:

1463.23. Notwithstanding Section 1463, out of the moneys deposited with the county treasurer pursuant to Section 1463, fifty dollars ($50) of each fine imposed pursuant to Section 4383 of the Business and Professions Code, subdivision (c) of Section 11377 or subdivision (b) of Section 11550 of the Health and Safety Code or subdivision (b) of Section 264, subdivision (m) of Section 286, subdivision (m) of Section 288a or Section 647.1, shall be deposited in a special account in the county treasury which shall be used

exclusively to pay for the reasonable costs of establishing and providing for the county, or any city within the county, an AIDS (acquired immune deficiency syndrome) education program under the direction of the county health department, in accordance with Chapter 2.71 (commencing with Section 1001.10) of Title 6, and for the costs of collecting and administering funds received for purposes of this section.

SEC. 11. 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.

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## CHAPTER 1244

An act to add Section 1203.076 to the Penal Code, relating to probation.

[Approved by Governor September 23, 1988. Filed with Secretary of State September 26, 1988.]

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

SECTION 1. Section 1203.076 is added to the Penal Code, to read:

1203.076. Any person convicted of violating Section 11352 of the Health and Safety Code relating to the sale of cocaine, cocaine hydrochloride, or heroin, or Section 11379.5 of the Health and Safety Code, who is eligible for probation and who is granted probation shall, as a condition thereof, be confined in the county jail for at least 180 days. The imposition of the minimum 180-day sentence shall be imposed in every case where probation has been granted, except that the court may, in an unusual case where the interests of justice would best be served, absolve a person from spending the 180-day sentence in the county jail if the court specifies on the record and enters into the minutes, the circumstances indicating that the interests of justice would best be served by that disposition.

SEC. 2. 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.

## CHAPTER 1245

An act to repeal and add Chapter 1 (commencing with Section 190) of Title 3 of Part 1 of, and to repeal Sections 600, 601, 602, 603, 604, 605, 610, and 615 of, the Code of Civil Procedure, to repeal Sections 27494, 27495, 27496, and 27496.5 of the Government Code, and to repeal Sections 1046a, 1046.5, 1055, 1057, 1058, 1059, 1060, 1061, 1062, 1063, 1064, 1066, 1067, 1068, 1069, 1070, 1070.5, 1071, 1073, 1074, 1076, 1078, 1081, 1082, 1086, 1087, 1088, 1123, 1136, and 1143 of the Penal Code, relating to juries.

[Approved by Governor September 23, 1988. Filed with Secretary of State September 26, 1988.]

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

SECTION 1. Chapter 1 (commencing with Section 190) of Title 3 of Part 1 of the Code of Civil Procedure is repealed.

SEC. 2. Chapter 1 (commencing with Section 190) is added to Title 3 of Part 1 of the Code of Civil Procedure, to read:

### CHAPTER 1. TRIAL JURY SELECTION AND MANAGEMENT ACT

190. This chapter shall be known and may be cited as the Trial Jury Selection and Management Act.

191. The Legislature recognizes that trial by jury is a cherished constitutional right, and that jury service is an obligation of citizenship.

It is the policy of the State of California that all persons selected for jury service shall be selected at random from the population of the area served by the court; that all qualified persons have an equal opportunity, in accordance with this chapter, to be considered for jury service in the state and an obligation to serve as jurors when summoned for that purpose; and that it is the responsibility of jury commissioners to manage all jury systems in an efficient, equitable, and cost-effective manner, in accordance with this chapter.

192. This chapter applies to the selection of jurors, and the formation of trial juries, for both civil and criminal cases, in all trial courts of the state.

193. Juries are of three kinds:

(a) Grand juries established pursuant to Title 4 (commencing with Section 888) of Part 2 of the Penal Code.

(b) Trial juries.

(c) Juries of inquest.

194. The following definitions govern the construction of this chapter:

(a) "County" means any county or any coterminous city and county.

(b) "Court" means the superior, municipal, and justice courts of

this state, and includes, when the context requires, any judge of the court.

(c) "Deferred jurors" are those prospective jurors whose request to reschedule their service to a more convenient time is granted by the jury commissioner.

(d) "Excused jurors" are those prospective jurors who are excused from service by the jury commissioner for valid reasons based on statute, state or local court rules, and policies.

(e) "Juror pool" means the group of prospective qualified jurors appearing for assignment to trial jury panels.

(f) "Jury of inquest" is a body of persons summoned from the citizens before the sheriff, coroner, or other ministerial officers, to inquire of particular facts.

(g) "Master list" means a list of names randomly selected from the source lists.

(h) "Potential juror" means any person whose name appears on a source list.

(i) "Prospective juror" means a juror whose name appears on the master list.

(j) "Qualified juror" means a person who meets the statutory qualifications for jury service.

(k) "Qualified juror list" means a list of qualified jurors.

(*l*) "Random" means that which occurs by mere chance indicating an unplanned sequence of selection where each juror's name has substantially equal probability of being selected.

(m) "Source list" means a list used as a source of potential jurors.

(n) "Summons list" means a list of prospective or qualified jurors who are summoned to appear or to be available for jury service.

(o) "Trial jurors" are those jurors sworn to try and determine by verdict a question of fact.

(p) "Trial jury" means a body of persons selected from the citizens of the area served by the court and sworn to try and determine by verdict a question of fact.

(q) "Trial jury panel" means a group of prospective jurors assigned to a courtroom for the purpose of voir dire.

195. (a) In each county, there shall be one jury commissioner who shall be appointed by, and serve at the pleasure of, a majority of the judges of the superior court. In any county where there is a superior court administrator or executive officer, that person shall serve as ex officio jury commissioner. The person so appointed shall serve as jury commissioner for all trial courts within the county. In any municipal or justice court district in the county, a majority of the judges may appoint the clerk/administrator to select jurors for their court pursuant to this chapter. In any court jurisdiction where any person other than a court administrator or clerk/administrator is serving as jury commissioner on the effective date of this section, that person shall continue to so serve at the pleasure of a majority or the judges of the appointing court.

(b) Except where the superior court administrator or executive

officer serves as ex officio jury commissioner, the jury commissioner's salary shall be set by joint action of the board of supervisors and a majority of the superior court judges. Any jury commissioner may, whenever the business of court requires, and with consent of the board of supervisors, appoint deputy jury commissioners. Salaries and benefits of such deputies shall be fixed in the same manner as salaries and benefits of other court employees.

(c) The jury commissioner shall be primarily responsible for managing the jury system under the general supervision of the court in conformance with the purpose and scope of this act. He or she shall have authority to establish policies and procedures necessary to fulfill this responsibility.

196. (a) The jury commissioner or the court shall inquire as to the qualifications of persons on the master list or source list who are or may be summoned for jury service. The commissioner or the court may require any person to answer, under oath, orally or in written form, all questions as may be addressed to that person, regarding the person's qualifications and ability to serve as a prospective trial juror. The commissioner and his or her assistants, shall have power to administer oaths and shall be allowed actual traveling expenses incurred in the performance of their duties. Such traveling expenses shall be audited, allowed, and paid out of the general fund of the county.

(b) Response to the jury commissioner or the court concerning an inquiry or summons may be made by any person having knowledge that the prospective juror is unable to respond to such inquiry or summons.

(c) Any person who fails to respond to jury commissioner or court inquiry as instructed, may be summoned to appear before the jury commissioner or the court to answer such inquiry, or may be deemed to be qualified for jury service in the absence of a response to the inquiry. Any information thus acquired by the court or jury commissioner shall be noted in jury commissioner or court records.

197. (a) All persons selected for jury service shall be selected at random, from a source or sources inclusive of a representative cross section of the population of the area served by the court. Sources may include, in addition to other lists, customer mailing lists, telephone directories, or utility company lists.

(b) The list of registered voters and the Department of Motor Vehicles' list of licensed drivers and identification cardholders resident within the area served by the court, are appropriate source lists for selection of jurors. These two source lists, when substantially purged of duplicate names, shall be considered inclusive of a representative cross section of the population, within the meaning of subdivision (a).

(c) The Department of Motor Vehicles shall furnish the jury commissioner of each county with the current list of the names, addresses, and other identifying information of persons residing in the county who are age 18 years or older and who are holders of a

current driver's license or identification card issued pursuant to Article 3 (commencing with Section 12800) of, or Article 5 (commencing with Section 13000) of, Chapter 1 of Division 6 of the Vehicle Code. The conditions under which these lists shall be compiled semiannually shall be determined by the director, consistent with any rules which may be adopted by the Judicial Council. This service shall be provided by the Department of Motor Vehicles pursuant to Section 1812 of the Vehicle Code. The jury commissioner shall not disclose the information furnished by the Department of Motor Vehicles pursuant to this section to any person, organization, or agency.

198. (a) Random selection shall be utilized in creating master and qualified juror lists, commencing with selection from source lists, and continuing through selection of prospective jurors for voir dire.

(b) The jury commissioner shall, at least once in each 12-month period, randomly select names of prospective trial jurors from the source list or lists, to create a master list.

(c) The master jury list shall be used by the jury commissioner, as provided by statute and state and local court rules, for the purpose of (1) mailing juror questionnaires and subsequent creation of a qualified juror list, and (2) summoning prospective jurors to respond or appear for qualification and service.

198.5. In counties where sessions of the superior court are held in cities other than the county seat, the names for master jury lists and qualified jury lists to serve in those cities may be selected from the judicial district in which the city is located and, if the judges of the court determine that it is necessary or advisable, from a judicial district adjacent to a judicial district in which the city is located.

199. In El Dorado County, trial jury venires for the superior court shall be drawn from residents of the supervisorial district, or a portion thereof, within which the court will sit for such trial and from residents of such other immediately adjacent supervisorial district, or portion thereof, as may be specified by local superior court rules. Such venireman shall serve the court sitting in the geographical portion of the county from which this section and such court rules specify trial jury venires shall be drawn; provided that such rules shall afford to each eligible resident of such county an opportunity for selection as a trial jury venireman. Such court may, in its discretion, order a countywide venire in the interest of justice.

199.5. In Santa Barbara County, trial jury venires for the superior court shall be drawn from residents of the supervisorial district within which the court will sit for that trial and from residents of such other immediately adjacent supervisorial district, or portion thereof, as may be specified by local superior court rules. The venireman shall serve the court sitting in the geographical portion of the county from which this section and such court rules specify trial jury venires shall be drawn. However, those rules shall afford to each eligible resident of such county an opportunity for selection as a trial jury venireman. The court may, in its discretion, order a countywide venire in the

interest of justice.

200. Except in Alameda County, when authorized by local superior court rules, a municipal or justice court district pursuant to duly adopted court rule may use the same juror pool as that summoned for use in the superior court. Persons so selected for jury service in those municipal or justice courts need not be residents of the judicial district. In Los Angeles County, the municipal courts shall use the same jury pool as that summoned for use in the superior court.

201. In any county having two or more judges of the superior court, or in any judicial district, or city and county, in which a municipal court having two or more judges is established, a separate trial jury panel may be drawn, summoned, and impaneled for each judge, or any one panel may be drawn, summoned, and impaneled by any one of the judges, for use in the trial of cases before any of the judges, as occasion may require. In those counties or judicial districts, when a panel of jurors is in attendance for service before one or more of the judges, whether impaneled for common use or not, the whole or any number of the jurors from such panel may be required to attend and serve in the trial of cases, or to complete a panel, or jury, before any other of the judges.

202. Mechanical, electric, or electronic equipment, which in the opinion of the jury commissioner is satisfactory therefor, may be used in the performance of any function specified by this chapter for the selection and drawing of jurors.

203. (a) All persons are eligible and qualified to be prospective trial jurors, except the following:

(1) Persons who are not citizens of the United States.

(2) Persons who are less than 18 years of age.

(3) Persons who are not domiciliaries of the State of California, as determined pursuant to Article 2 (commencing with Section 200) of Chapter 1 of Division 1 of the Elections Code.

(4) Persons who are not residents of the jurisdiction wherein they are summoned to serve.

(5) Persons who have been convicted of malfeasance in office or a felony, and whose civil rights have not been restored.

(6) Persons who are not possessed of sufficient knowledge of the English language, provided that no person shall be deemed incompetent solely because of the loss of sight or hearing in any degree or other disability which impedes the person's ability to communicate or which impairs or interferes with the person's mobility.

(7) Persons who are serving as grand or trial jurors in any court of this state.

(8) Persons who are the subject of conservatorship.

(b) No person shall be excluded from eligibility for jury service in the State of California, for any reason other than those reasons provided by this section.

204. (a) No eligible person shall be exempt from service as a trial

juror by reason of occupation, race, color, religion, sex, national origin, or economic status, or for any other reason. No person shall be excused from service as a trial juror except as specified in subdivision (b).

(b) An eligible person may be excused from jury service only for undue hardship, upon themselves or upon the public, as defined by the Judicial Council.

205. (a) If a jury commissioner requires a person to complete a questionnaire, the questionnaire shall ask only questions related to juror identification, qualification, and ability to serve as a prospective juror.

(b) Except as ordered by the court, the questionnaire referred to in subdivision (a) shall be used solely for qualifying prospective jurors, and for management of the jury system, and not for assisting in the courtroom voir dire process of selecting trial jurors for specific cases.

(c) The court may require a prospective juror to complete such additional questionnaires as may be deemed relevant and necessary for assisting in the voir dire process or to ascertain whether a fair cross section of the population is represented as required by law, if such procedures are established by local court rule.

(d) The trial judge may direct a prospective juror to complete additional questionnaires as proposed by counsel in a particular case to assist the voir dire process.

206. (a) Prior to discharging the jury from the case, the judge in a criminal action shall inform the jurors that they have an absolute right to discuss or not to discuss the deliberation or verdict with anyone. The judge shall also inform the jurors of the provisions set forth in subdivisions (b), (c), and (d).

(b) Following the discharge of the jury in a criminal case, the defendant, or his or her attorney or representative, or the prosecutor, or his or her representative, may discuss the jury deliberation or verdict with a member of the jury, provided that the juror consents to the discussion and that the discussion takes place at a reasonable time and place.

(c) Any unreasonable contact with a juror by the defendant, or his or her attorney or representative, or by the prosecutor, or his or her representative, without the juror's consent shall be reported to the trial judge forthwith.

(d) Any violation of this section shall be considered a violation of a lawful court order and shall be subject to reasonable monetary sanctions in accordance with Section 177.5 of the Code of Civil Procedure.

(e) Nothing in the section shall prohibit a peace officer from investigating an allegation of criminal conduct.

207. (a) The jury commissioner shall maintain records regarding selection, qualification, and assignment of prospective jurors.

(b) The jury commissioner shall maintain records providing a clear audit trail regarding a juror's attendance, jury fees, and

mileage.

(c) All records and papers maintained or compiled by the jury commissioner in connection with the selection or service of a juror may be kept on an electronic or microfilm medium and such records shall be preserved for at least three years after the list used in their selection is prepared, or for any longer period ordered by the court or the jury commissioner.

208. The jury commissioner shall estimate the number of prospective jurors that may be required to serve the needs of the trial courts, and shall summon such prospective jurors for service. Prospective jurors shall be summoned by mailing a summons by first-class mail or by personal service or, in urgency situations, as elsewhere provided by law. The summons, when served by mail, shall be mailed at least 10 days prior to the date of required appearance. Once a prospective juror has been summoned, the date, time, or place of appearance may be modified or further specified by the jury commissioner, by means of written, telegraphic, telephonic, or direct oral communication with the prospective juror.

209. Any prospective trial juror who has been summoned for service, and who fails to attend upon the court as directed or to respond to the court or jury commissioner and to be excused from attendance, may be attached and compelled to attend; and, following an order to show cause hearing, the court may find the prospective juror in contempt of court, punishable by fine, incarceration, or both, as otherwise provided by law.

210. The summons shall contain the date, time, and place of appearance required of the prospective juror or, alternatively, instructions as to the procedure for calling the jury commissioner for telephonic instructions for appearance as well as such additional juror information as deemed appropriate by the jury commissioner.

211. When a court has no prospective jurors remaining available for voir dire from panels furnished by, or available from, the jury commissioner, and finds that not proceeding with voir dire will place a party's right to a trial by jury in jeopardy, the court may direct the sheriff, marshal, or constable to summon, serve, and immediately attach the person of a sufficient number of citizens having the qualifications of jurors, to complete the panel.

213. Unless excused by reason of undue hardship, all or any portion of the summoned prospective jurors shall be available on one-hour notice by telephone to appear for service, when the jury commissioner determines that it will efficiently serve the operational requirements of the court.

Jurors available on one-hour telephone notice shall receive credit for each day of such availability towards their jury service obligation, but they shall not be paid unless they are actually required to make an appearance.

214. The jury commissioner shall provide orientation for new jurors, which shall include necessary basic information concerning jury service.

215. Unless a higher fee is provided for each day's attendance by county or city and county ordinance, the fee for jurors in the superior, municipal, and justice courts, in civil and criminal cases, is five dollars ($5) a day for each day's attendance as a juror. Unless a higher rate of mileage is otherwise provided by statute or by county or city and county ordinance, jurors in the superior, municipal, and justice courts shall be reimbursed for mileage at the rate of fifteen cents ($0.15) per mile for each mile actually traveled in attending court as a juror, in going only.

(b) In criminal cases, the board of supervisors of each county shall make sufficient appropriations for the payment of the fees provided for in this section.

216. (a) At each court facility where jury cases are heard, the board of supervisors shall provide a deliberation room or rooms for use of jurors when they have retired for deliberation. Such deliberation rooms shall be designed to minimize unwarranted intrusions by other persons in the court facility, shall have suitable furnishings, equipment, and supplies, and shall also have restroom accommodations for male and female jurors.

(b) If the board of supervisors neglects to provide the facilities required by this section, the court may order the sheriff, marshal, or constable to do so, and the expenses incurred in carrying the order into effect, when certified by the court, are a county charge.

(c) Unless authorized by the jury commissioner, jury assembly facilities shall be restricted to use by jurors and jury commissioner staff.

217. In criminal cases only, while the jury is kept together, either during the progress of the trial or after their retirement for deliberation, the court may direct the sheriff, marshal, or constable to provide the jury with suitable and sufficient food and lodging, or other reasonable necessities. In the superior, municipal, and justice courts, the expenses incurred under the provisions of this section shall be charged against the county or city and county in which the court is held. All such expenses shall be paid on the order of the court.

218. The jury commissioner shall hear the excuses of jurors summoned, in accordance with the standards prescribed by the Judicial Council. It shall be left to the discretion of the jury commissioner to accept an excuse under subdivision (b) of Section 204 without a personal appearance. All excuses shall be in writing setting forth the basis of the request and shall be signed by the juror.

219. The jury commissioner shall randomly select jurors for jury panels to be sent to courtrooms for voir dire; provided that no peace officer, as defined in Section 830.1 and subdivision (a) of Section 830.2 of the Penal Code, shall be selected for voir dire in a criminal case.

220. A trial jury shall consist of 12 persons, except that in civil actions and cases of misdemeanor, it may consist of 12 or any number less than 12, upon which the parties may agree.

221. (a) A trial jury in civil actions in municipal and justice courts may consist of eight persons in the County of Los Angeles, pursuant

to rules adopted by the Judicial Council, as an experimental project operative until July 1, 1989.

(b) The Judicial Council shall appoint an advisory committee which shall include at least one judge of each court or courts in which the project will take place, one court administrator from that court or courts, or his or her designee, and one member of the Los Angeles County Bar Association, Trial Lawyers Section, who practices in the municipal or justice courts, to make recommendations regarding the design of the eight-person jury experiment. The Judicial Council shall adopt rules for the implementation of the project, including rules governing the assignment of cases to eight person juries during the experimental period, and establish procedures for the collection and evaluation of data.

(c) The Judicial Council shall report to the Legislature no later than January 1, 1990, comparing the performance of eight and 12 person juries. The comparison shall include, but not be limited to, the following factors:

(1) Cross-sectional representation of the community.

(2) Numbers of verdicts favoring plaintiffs or defendants, and size of awards.

(3) Accuracy, consistency, and reliability of awards.

(4) Time required for impanelment, trial, and deliberations.

(5) Public and private costs of the jury.

(d) Notwithstanding the provisions of Section 206, the project courts shall collect and provide to the Judicial Council the data required for a proper evaluation of the experiment. Any bona fide researcher or research organization shall be permitted access to any data regarding the conduct or evaluation of the pilot project.

222. (a) Except as provided in subdivision (b), when an action is called for trial by jury, the clerk, or the judge where there is no clerk, shall randomly select the names of the jurors for voir dire, until the jury is selected or the panel is exhausted.

(b) When the jury commissioner has provided the court with a listing of the trial jury panel in random order, the court shall seat prospective jurors for voir dire in the order provided by the panel list.

223. In criminal cases:

(a) It shall be the duty of the trial court to examine the prospective jurors to select a fair and impartial jury. Except as provided in Section 223.5, the trial court shall permit reasonable examination of prospective jurors by counsel for the people and for the defendant, such examination to be conducted orally and directly by counsel.

(b) In each case it shall be the duty of the trial judge to provide for a voir dire process as speedy, focused, and informative as possible, and to protect prospective jurors from undue harassment and embarrassment and from inordinately extensive, repetitive, or unfocused examinations.

(c) In discharging its duties, the court shall have discretion and

control with respect to the form and subject matter and duration of voir dire examination. In exercising that discretion and control, the trial judge shall be guided by, among other criteria, the following:

(1) The nature of the charges and the potential consequences of a conviction.

(2) Any unique or complex elements, legal or factual, in the case.

(3) The individual responses or conduct of jurors which may reveal attitudes inconsistent with suitability to serve as a fair and impartial juror in the particular case.

(4) The attorneys' need, under the circumstances, for information on which to exercise peremptory challenges intelligently.

(d) The trial court shall not permit questions which the trial court concludes would, as their sole purpose, do any of the following:

(1) Educate the jury panel to the particular facts of the case.

(2) Compel the jurors to commit themselves to vote in a particular way.

(3) Prejudice the jury for or against any party.

(4) Argue the case.

(5) Indoctrinate the jury.

(6) Instruct the jury in a matter of law.

(7) Attempt to accomplish any other improper purpose.

(e) The trial court shall require that questions be phrased by counsel in a neutral and nonargumentative form.

223.5. (a) As a pilot project applicable solely to criminal cases in the superior courts in Fresno and Santa Cruz Counties during the period July 1, 1988, to June 30, 1991, inclusive, all questions designed solely for assisting in the intelligent exercise of the right to peremptory challenge and not applicable to the determination of implied or actual bias, shall be propounded by the court. If such a question is requested by the prosecution or by counsel for the defense and is one of the standardized questions developed by the Task Force on Voir Dire, the court shall propound the question unless the court determines that the question is clearly inappropriate. If a nonstandardized question is proposed by the prosecution or by counsel for the defense, the court may propound the question in its discretion.

(b) The Task Force on Voir Dire shall consist of eight members who shall serve without compensation, two of whom shall be appointed by the Judicial Council, two by the Governor, two by the Speaker of the Assembly, and two by the Senate Rules Committee. All appointees shall have been members of the State Bar for at least five years prior to their appointment. The Judicial Council may provide staff to assist the task force.

All appointments to the Task Force on Voir Dire shall be made on or before March 1, 1988. The task force shall submit to the pilot project counties a list of standardized questions which meet the purposes of subdivision (a) on or before July 1, 1988.

(c) Notwithstanding the provisions of Section 206, the Judicial Council and any other bona fide research or research organization

shall be permitted access to any data regarding the conduct or evaluation of the pilot project. On or before January 1, 1992, the Judicial Council shall report to the Legislature on the effects of the pilot project on the efficiency in jury selection and on any effect on the conviction rate for particular crimes compared to a similar prior period in each pilot project county.

224. (a) If a party does not cause the removal by challenge of an individual juror who is handicapped by loss of hearing, sight, or power of speech in any degree and who requires the services of a sign language interpreter, reader, or speech interpreter to facilitate communication, the party shall (1) stipulate to the presence of that attendant in the jury room during jury deliberations, and (2) prepare and deliver to the court proposed jury instructions to that attendant.

(b) If the services of a sign language interpreter, reader, or speech interpreter are required during the course of jury deliberations, the court shall instruct the jury and that attendant that the attendant for the disabled juror is not to participate in the jury's deliberations in any manner except to facilitate communication between the disabled juror and other jurors.

225. A challenge is an objection made to the trial jurors that may be taken by any party to the action, and is of the following classes and types:

(a) A challenge to the trial jury panel for cause.

(1) A challenge to the panel may only be taken before a trial jury is sworn. The challenge shall be reduced to writing, and shall plainly and distinctly state the facts constituting the ground of challenge.

(2) Reasonable notice of the challenge to the jury panel shall be given to all parties and to the jury commissioner, by service of a copy thereof.

(3) The jury commissioner shall be permitted the services of legal counsel in connection with challenges to the jury panel.

(b) A challenge to a prospective juror by either:

(1) A challenge for cause, for one of the following reasons:

(A) General disqualification—that the juror is disqualified from serving in the action on trial.

(B) Implied bias—as, when the existence of the facts as ascertained, in judgment of law disqualifies the juror.

(C) Actual bias—the existence of a state of mind on the part of the juror in reference to the case, or to any of the parties, which will prevent the juror from acting with entire impartiality, and without prejudice to the substantial rights of any party.

(2) A peremptory challenge to a prospective juror.

226. (a) A challenge to an individual juror may only be made before the jury is sworn.

(b) A challenge to an individual juror may be taken orally or may be made in writing, but no reason need be given for a peremptory challenge, and the court shall exclude any juror challenged peremptorily.

(c) All challenges for cause shall be exercised before any

peremptory challenges may be exercised.

(d) All challenges to an individual juror, except a peremptory challenge, shall be taken, first by the defendants, and then by the people or plaintiffs.

227. The challenges of either party for cause need not all be taken at once, but they may be taken separately, in the following order, including in each challenge all the causes of challenge belonging to the same class and type:

(a) To the panel.

(b) To an individual juror, for a general disqualification.

(c) To an individual juror, for an implied bias.

(d) To an individual juror, for an actual bias.

228. Challenges for general disqualification may be taken on one or both of the following grounds, and for no other:

(a) A want of any of the qualifications prescribed by this code to render a person competent as a juror.

(b) A loss of hearing, or the existence of any other incapacity which satisfies the court that the challenged person is incapable of performing the duties of a juror in the particular action without prejudice to the substantial rights of the challenging party.

229. A challenge for implied bias may be taken for one or more of the following causes, and for no other:

(a) Consanguinity or affinity within the fourth degree to any party, to an officer of a corporation which is a party, or to any alleged witness or victim in the case at bar.

(b) Standing in the relation of, or being the parent, spouse, or child of one who stands in the relation of, guardian and ward, conservator and conservatee, master and servant, employer and clerk, landlord and tenant, principal and agent, or debtor and creditor, to either party or to an officer of a corporation which is a party, or being a member of the family of either party; or a partner in business with either party; or surety on any bond or obligation for either party, or being the holder of bonds or shares of capital stock of a corporation which is a party; or having stood within one year previous to the filing of the complaint in the action in the relation of attorney and client with either party or with the attorney for either party. A depositor of a bank or a holder of a savings account in a savings and loan association shall not be deemed a creditor of that bank or savings and loan association for the purpose of this paragraph solely by reason of his or her being a depositor or account holder.

(c) Having served as a trial or grand juror or on a jury of inquest in a civil or criminal action or been a witness on a previous or pending trial between the same parties, or involving the same specific offense or cause of action; or having served as a trial or grand juror or on a jury within one year previously in any criminal or civil action or proceeding in which either party was the plaintiff or defendant or in a criminal action where either party was the defendant.

(d) Interest on the part of the juror in the event of the action, or

in the main question involved in the action, except his or her interest as a member or citizen or taxpayer of a county, city and county, incorporated city or town, or other political subdivision of a county, or municipal water district.

(e) Having an unqualified opinion or belief as to the merits of the action founded upon knowledge of its material facts or of some of them.

(f) The existence of a state of mind in the juror evincing enmity against, or bias towards, either party.

(g) That the juror is party to an action pending in the court for which he or she is drawn and which action is set for trial before the panel of which the juror is a member.

(h) If the offense charged is punishable with death, the entertaining of such conscientious opinions as would preclude the juror finding the defendant guilty; in which case the juror may neither be permitted nor compelled to serve.

230. Challenges for cause shall be tried by the court. The juror challenged and any other person may be examined as a witness in the trial of the challenge, and shall truthfully answer all questions propounded to them.

231. (a) In criminal cases, if the offense charged is punishable with death, or with imprisonment in the state prison for life, the defendant is entitled to 20 and the people to 20 peremptory challenges. Except as provided in subdivision (b), in a trial for any other offense, the defendant is entitled to 10 and the state to 10 peremptory challenges; except when two or more defendants are jointly tried, their challenges shall be exercised jointly, but each defendant shall also be entitled to five additional challenges which may be exercised separately, and the people shall also be entitled to additional challenges equal to the number of all the additional separate challenges allowed the defendants.

(b) If the offense charged is punishable with a maximum term of imprisonment of 90 days or less, the defendant is entitled to six and the state to six peremptory challenges; except that, when two or more defendants are jointly tried, their challenges shall be exercised jointly, but each defendant shall also be entitled to four additional challenges which may be exercised separately, and the state shall also be entitled to additional challenges equal to the number of all the additional separate challenges allowed the defendants.

(c) In civil cases, each party shall be entitled to six peremptory challenges. If there are more than two parties, the court shall, for the purpose of allotting peremptory challenges, divide the parties into two or more sides according to their respective interests in the issues. Each side shall be entitled to eight peremptory challenges. If there are several parties on a side, the court shall divide the challenges among them as nearly equally as possible. If there are more than two sides, the court shall grant such additional peremptory challenges to a side as the interests of justice may require; provided that the peremptory challenges of one side shall not exceed the aggregate

number of peremptory challenges of all other sides. If any party on a side does not use his or her full share of peremptory challenges, the unused challenges may be used by the other party or parties on the same side.

(d) Peremptory challenges shall be taken or passed by the sides alternately, commencing with the plaintiff or people. When each side passes consecutively, the jury shall then be sworn, unless the court, for good cause, shall otherwise order. The number of peremptory challenges remaining with a side shall not be diminished by any passing of a peremptory challenge.

(e) If all the parties on both sides pass consecutively, the jury shall then be sworn, unless the court, for good cause, shall otherwise order. The number of peremptory challenges remaining with a side shall not be diminished by any passing of a peremptory challenge.

232. (a) Prior to the examination of prospective trial jurors in the panel assigned for voir dire, the following perjury admonishment shall be administered to the panel, which shall be acknowledged by the prospective jurors with the statement "I do":

"You do, and each of you, understand and agree that you will accurately and truthfully answer, under penalty of perjury, all questions propounded to you concerning your qualifications and competency to serve as a trial juror in the matter pending before this court; and that failure to do so may subject you to criminal prosecution."

(b) As soon as the selection of the trial jury is completed, the following acknowledgment and agreement shall be obtained from the trial jurors, which shall be acknowledged by the statement "I do":

"You do and each of you understand and agree that you will well and truly try the cause now pending before this court, and a true verdict render according only to the evidence presented to you and to the instructions of the court."

233. If, before the jury has returned its verdict to the court, a juror becomes sick or, upon other good cause shown to the court, is found to be unable to perform his or her duty, the court may order the juror to be discharged. If any alternate jurors have been selected as provided by law, one of them shall then be designated by the court to take the place of the juror so discharged. If after all alternate jurors have been made regular jurors or if there is no alternate juror, a juror becomes sick or otherwise unable to perform the juror's duty and has been discharged by the court as provided in this section, the jury shall be discharged and a new jury then or afterwards impaneled, and the cause may again be tried. Alternatively, with the consent of all parties, the trial may proceed with only the remaining jurors, or another juror may be sworn and the trial begin anew.

234. Whenever, in the opinion of a judge of a superior, municipal, or justice court about to try a civil or criminal action or proceeding, the trial is likely to be a protracted one, or upon stipulation of the parties, the court may cause an entry to that effect to be made in the minutes of the court and thereupon, immediately after the jury is

impaneled and sworn, the court may direct the calling of one or more additional jurors, in its discretion, to be known as "alternate jurors."

These alternate jurors shall be drawn from the same source, and in the same manner, and have the same qualifications, as the jurors already sworn, and shall be subject to the same examination and challenges. However, each side, or each defendant, as provided in Section 231, shall be entitled to as many peremptory challenges to the alternate jurors as there are alternate jurors called.

The alternate jurors shall be seated so as to have equal power and facilities for seeing and hearing the proceedings in the case, and shall take the same oath as the jurors already selected, and shall, unless excused by the court, attend at all times upon the trial of the cause in company with the other jurors, but shall not participate in deliberation unless ordered by the court, and for a failure to do so are liable to be punished for contempt.

They shall obey the orders of and be bound by the admonition of the court, upon each adjournment of the court; but if the regular jurors are ordered to be kept in the custody of the sheriff, marshal, or constable during the trial of the cause, the alternate jurors shall also be kept in confinement with the other jurors; and upon final submission of the case to the jury, the alternate jurors shall be kept in the custody of the sheriff, marshal, or constable who shall not suffer any communication to be made to them except by order of the court, and shall not be discharged until the original jurors are discharged, except as provided in this section.

If at any time, whether before or after the final submission of the case to the jury, a juror dies or becomes ill, or upon other good cause shown to the court is found to be unable to perform his or her duty, or if a juror requests a discharge and good cause appears therefor, the court may order the juror to be discharged and draw the name of an alternate, who shall then take his or her place in the jury box, and be subject to the same rules and regulations as though he or she has been selected as one of the original jurors.

All laws relative to fees, expenses, and mileage or transportation of jurors shall be applicable to alternate jurors, except that in civil cases the sums for fees and mileage or transportation need not be deposited until the judge directs alternate jurors to be impaneled.

235. At the request of the sheriff, coroner, or other ministerial officer, the jury commissioner shall provide such prospective jurors as may be required to form a jury of inquest. Prospective jurors so provided shall be selected, obligated, and compensated in the same manner as other jurors selected under the provisions of this chapter.

236. When six or more prospective jurors of inquest attend, they shall be sworn by the coroner to inquire who the person was, and when, where, and by what means the person came to his or her death, to inquire into the circumstances attending the death, and to render a true verdict thereon, according to the evidence offered them or arising from the inspection of the body.

SEC. 3. Section 600 of the Code of Civil Procedure is repealed.

SEC. 4. Section 601 of the Code of Civil Procedure is repealed.
SEC. 5. Section 602 of the Code of Civil Procedure is repealed.
SEC. 6. Section 603 of the Code of Civil Procedure is repealed.
SEC. 7. Section 604 of the Code of Civil Procedure is repealed.
SEC. 8. Section 605 of the Code of Civil Procedure is repealed.
SEC. 9. Section 610 of the Code of Civil Procedure is repealed.
SEC. 10. Section 615 of the Code of Civil Procedure is repealed.
SEC. 11. Section 27494 of the Government Code is repealed.
SEC. 12. Section 27495 of the Government Code is repealed.
SEC. 13. Section 27496 of the Government Code is repealed.
SEC. 14. Section 27496.5 of the Government Code is repealed.
SEC. 15. Section 1046a of the Penal Code is repealed.
SEC. 16. Section 1046.5 of the Penal Code is repealed.
SEC. 17. Section 1055 of the Penal Code is repealed.
SEC. 18. Section 1057 of the Penal Code is repealed.
SEC. 19. Section 1058 of the Penal Code is repealed.
SEC. 20. Section 1059 of the Penal Code is repealed.
SEC. 21. Section 1060 of the Penal Code is repealed.
SEC. 22. Section 1061 of the Penal Code is repealed.
SEC. 23. Section 1062 of the Penal Code is repealed.
SEC. 24. Section 1063 of the Penal Code is repealed.
SEC. 25. Section 1064 of the Penal Code is repealed.
SEC. 26. Section 1066 of the Penal Code is repealed.
SEC. 27. Section 1067 of the Penal Code is repealed.
SEC. 28. Section 1068 of the Penal Code is repealed.
SEC. 29. Section 1069 of the Penal Code is repealed.
SEC. 30. Section 1070 of the Penal Code is repealed.
SEC. 31. Section 1070.5 of the Penal Code is repealed.
SEC. 32. Section 1071 of the Penal Code is repealed.
SEC. 33. Section 1073 of the Penal Code is repealed.
SEC. 34. Section 1074 of the Penal Code is repealed.
SEC. 35. Section 1076 of the Penal Code is repealed.
SEC. 36. Section 1078 of the Penal Code is repealed.
SEC. 37. Section 1081 of the Penal Code is repealed.
SEC. 38. Section 1082 of the Penal Code is repealed.
SEC. 39. Section 1086 of the Penal Code is repealed.
SEC. 40. Section 1087 of the Penal Code is repealed.
SEC. 41. Section 1088 of the Penal Code is repealed.
SEC. 42. Section 1123 of the Penal Code is repealed.
SEC. 43. Section 1136 of the Penal Code is repealed.
SEC. 44. Section 1143 of the Penal Code is repealed.
SEC. 45. Nothing in this act shall change the permissible scope of voir dire examination of jurors.

SEC. 46. 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 five hundred thousand dollars ($500,000), reimbursement shall be made from the State Mandates Claims Fund.

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## CHAPTER 1246

An act to add and repeal Section 1048.01 of the Penal Code, relating to trials.

[Approved by Governor September 23, 1988. Filed with Secretary of State September 26, 1988.]

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

SECTION 1. Section 1048.01 is added to the Penal Code, to read:

1048.01. (a) Notwithstanding Section 1048, there is hereby created in Alameda County a pilot project whereby 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) Prosecution of a defendant who is an alleged serious drug offender.

(4) Prosecutions for felony, when the defendant is on bail.

(5) 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, 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) For purposes of this section only, "an alleged serious drug offender" means any of the following:

(1) A defendant who is charged with a violation of Section 11353, 11353.5, 11361, 11379.6, 11380, 11380.5, or 11383 of the Health and Safety Code.

(2) A defendant who is charged with an enhancement that is set

forth in Section 11370.4 or 11379.8 of the Health and Safety Code.

(3) A defendant who is charged with an offense that is set forth in Section 11351, 11351.5, 11352, 11378, 11378.5, 11379, 11379.5, 11379.6, or 11383 of the Health and Safety Code and has two or more prior convictions for any of these offenses.

(4) A defendant who has been released from custody on bail or on his or her own recognizance for an offense set forth in paragraph (3) and prior to judgment becoming final is charged with another offense set forth in paragraph (3).

(d) Nothing in this section shall be deemed to provide a statutory right to a trial within 30 days.

(e) This section shall remain in effect only until January 1, 1994, and as of that date is repealed unless a later enacted statute, which is enacted before January 1, 1994, deletes or extends that date.

SEC. 2. On or before July 1, 1994, the presiding judges of the Alameda County municipal and the superior courts, and the District Attorney and the Public Defender of Alameda County shall report jointly to the Legislature on the number and types of cases which have been prosecuted under Section 1048.01 of the Penal Code, as added by this act. The report shall include, but not be limited to, the effectiveness of the pilot project and the desirability, if any, of continuing that system of prosecuting criminal cases.

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 five hundred thousand dollars ($500,000), reimbursement shall be made from the State Mandates Claims Fund.

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## CHAPTER 1247

An act to add and repeal Section 13825 of the Penal Code, relating to gang violence, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 23, 1988. Filed with Secretary of State September 26, 1988 ]

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

SECTION 1. Section 13825 is added to the Penal Code, to read:

13825. (a) The Office of Criminal Justice Planning shall conduct a study regarding the implementation of a computerized data base information system to monitor gang violence and drug trafficking activities, as these relate to gang violence, in California. The office

shall consult with the United States Department of Justice, the State Department of Justice, local law enforcement agencies, and computer systems experts in performing the study. The study shall include, but not be limited to, the following:

(1) The type of computer system to be used.

(2) The agency, or agencies, to operate the system.

(3) The type of information to be placed in the system.

(4) The guidelines to be required to ensure that the data base is uniform.

(5) The personnel to be authorized to receive information from the system.

(6) The type of safeguards to be used to ensure that persons not authorized to receive information shall not have access to the system.

(7) The type of safeguards to be used to ensure that the personal privacy rights of the subject of the information are not violated.

(8) Whether or not additional safeguards are needed to ensure that only information relating to criminal activity is placed in the system.

(9) The type of safeguards to be used to prevent mistaken identity.

(10) The type of guidelines to be implemented to provide for a means to purge the information system of inaccurate or outdated information.

(11) Whether or not additional safeguards are needed beyond other statutory provisions to provide subjects of the information access to the system.

(12) The most cost-effective means of operating the system.

(b) The office shall provide an interim report by December 1, 1989, regarding the progress of the study and a final report by July 1, 1990, regarding the results of the study to the Legislature, the Assembly Committee on Public Safety, and the Senate Judiciary Committee.

(c) It is the intent of the Legislature that should the office recommend that a statewide computerized data base system be implemented from the state level, such a system shall be operated by the Department of Justice.

(d) This section shall remain in effect only until January 1, 1991, and as of that date is repealed, unless a later enacted statute, which is enacted on or before January 1, 1991, deletes or extends that date.

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 for the most efficient means of monitoring criminal gang activity and drug trafficking in this state, it is necessary that this act take effect immediately.

# CHAPTER 1248

An act to add Section 11353.6 to the Health and Safety Code, relating to controlled substances.

[Approved by Governor September 23, 1988 Filed with Secretary of State September 26, 1988 ]

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

SECTION 1. Section 11353.6 is added to the Health and Safety Code, to read:

11353.6. (a) This section shall be known and may be cited as the Juvenile Drug Trafficking and Schoolyard Act of 1988.

(b) Any person 18 years of age or over who is convicted of a violation of Section 11351.5 or of Section 11352 or 11379.6, as those sections apply to paragraph (1) of subdivision (f) of Section 11054 or a conspiracy to commit such offense, where such violation takes place upon the grounds of, or within 1,000 feet of, a public or private elementary, vocational, junior high school or high school, shall receive an additional punishment of 3, 4, or 5 years at the court's discretion.

(c) Any person 18 years of age or older who is convicted of a violation pursuant to subdivision (b) which involves a minor who is at least four years younger than that person shall, as a full and separately served enhancement to that provided in subdivision (b), be punished by imprisonment in the state prison for 3, 4, or 5 years at the court's discretion.

(d) The additional terms provided in this section shall not be imposed unless the allegation is charged in the accusatory pleading and admitted or found to be true by the trier of fact.

(e) The additional terms provided in this section shall be in addition to any other punishment provided by law and shall not be limited by any other provision of law.

(f) Notwithstanding any other provision of law, the court may strike the additional punishment for the enhancements provided in this section 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.

## CHAPTER 1249

An act to add Section 11470.4 to the Health and Safety Code, and amend Sections 12022 and 12022.5 of the Penal Code, relating to crimes.

[Approved by Governor September 23, 1988. Filed with Secretary of State September 26, 1988 ]

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

SECTION 1. Section 11470.4 is added to the Health and Safety Code, to read:

11470.4. The provisions of this chapter apply to any minor who has been found to be a person described in Section 602 of the Welfare and Institutions Code because of a violation of Section 11351, 11351.5, 11352, 11355, 11366, 11366.5, 11366.6, 11378.5, 11379, 11379.5, 11379.6, or 11382.

SEC. 2. Section 12022 of the Penal Code is amended to read:

12022. (a) Except as provided in subdivisions (b) and (c), any person who is armed with a firearm in the commission or attempted commission of a felony shall, upon conviction of such felony or attempted felony, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which he or she has been convicted, be punished by an additional term of one year, unless such arming is an element of the offense of which he or she was convicted. This additional term shall apply to any person who is a principal in the commission or attempted commission of a felony if one or more of the principals is armed with a firearm, whether or not such person is personally armed with a firearm.

(b) Notwithstanding the enhancement set forth in subdivision (a), any person who is personally armed with a firearm in the commission or attempted commission of a violation of Section 11351, 11351.5, 11352, 11366.5, 11366.6, 11378, 11378.5, 11379, 11379.5, or 11379.6 of the Health and Safety Code, shall, upon conviction of that offense and in addition and consecutive to the punishment prescribed for the offense of which he or she has been convicted, be punished by an additional term of imprisonment in the state prison for three, four, or five years in the court's discretion. The court shall order the middle term unless there are circumstances in aggravation or mitigation. The court shall state the reasons for its enhancement choice on the record at the time of the sentence.

(c) Notwithstanding the enhancement set forth in subdivision (a), any person not personally armed with a firearm who, knowing that another principal is personally armed with a firearm, is a principal in the commission or attempted commission of an offense specified in subdivision (b), shall, upon conviction of that offense, be punished by an additional term of one, two, or three years in the court's discretion. The court shall order the imposition of the middle

term unless there are circumstances in aggravation or mitigation. The court shall state the reasons for its enhancement choice on the record at the time of sentencing.

(d) Any person who personally uses a deadly or dangerous weapon in the commission or attempted commission of a felony shall, upon conviction of such felony or attempted felony, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which he or she has been convicted, be punished by an additional term of one year, unless use of a deadly or dangerous weapon is an element of the offense of which he or she was convicted.

When a person is found to have personally used a deadly or dangerous weapon in the commission or attempted commission of a felony as provided in this subdivision and the weapon is owned by that person, the court shall order that the weapon be deemed a nuisance and disposed of in the manner provided in Section 12028.

(e) For purposes of imposing an enhancement under Section 1170.1, the enhancements under this section shall count as one, single enhancement.

(f) Notwithstanding any other provision of law, the court may strike the additional punishment for the enhancements provided in subdivision (b) or (c) in an unusual case where the interests of justice would best be served, if the court specifies on the record and enters into the minutes the circumstances indicating that the interests of justice would best be served by that disposition.

SEC. 3. Section 12022.5 of the Penal Code is amended to read:

12022.5. (a) Except as provided in subdivisions (b) and (c), any person who personally uses a firearm in the commission or attempted commission of a felony shall, upon conviction of such felony or attempted felony, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which he or she has been convicted, be punished by an additional term of imprisonment in the state prison for two years, unless use of a firearm is an element of the offense of which he or she was convicted.

(b) Notwithstanding subdivision (a), any person who is convicted of a felony or an attempt to commit a felony, including murder or attempted murder, in which that person discharged a firearm at an occupied motor vehicle which caused great bodily injury or death to the person of another, shall, upon conviction of that felony or attempted felony, in addition and consecutive to the sentence prescribed for the felony or attempted felony, be punished by an additional term of imprisonment in the state prison for five years.

(c) Notwithstanding the enhancement set forth in subdivision (a), any person who personally uses a firearm in the commission or attempted commission of a violation of Section 11351, 11351.5, 11352, 11366.5, 11366.6, 11378, 11378.5, 11379, 11379.5, or 11379.6 of the Health and Safety Code, shall, upon conviction of that offense and in addition and consecutive to the punishment prescribed for the offense of which he or she has been convicted, be punished by an

additional term of imprisonment in the state prison for three, four, or five years in the court's discretion. The court shall order the imposition of middle term unless there are circumstances in aggravation or mitigation. The court shall state the reasons for its enhancement choice on the record.

(d) The additional term provided by this section may be imposed in cases of assault with a firearm under paragraph (2) of subdivision (a) of Section 245, or assault with a deadly weapon which is a firearm under Section 245.

(e) When a person is found to have personally used a firearm in the commission or attempted commission of a felony as provided in this section and the firearm is owned by that person, the court shall order that the firearm be deemed a nuisance and disposed of in the manner provided in Section 12028.

(f) For purposes of imposing an enhancement under Section 1170.1, the enhancements under this section shall count as one, single enhancement.

(g) Notwithstanding any other provision of law, the court may strike the additional punishment for the enhancement provided in subdivision (c) in an unusual case where the interests of justice would best be served, if the court specifies on the record and enters into the minutes the circumstances indicating that the interests of justice would best be served by that disposition.

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## CHAPTER 1250

An act to amend Section 13863 of the Penal Code, relating to gang violence intervention programs.

[Approved by Governor September 23, 1988. Filed with Secretary of State September 26, 1988.]

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

SECTION 1. The Legislature finds and declares that gang violence has caused a tremendous strain on the progress of the communities impacted. The loss of life, property, and positive opportunity for growth caused by gang violence has reached an intolerable level.

The Legislature further finds and declares that youth gang violence can be effectively reduced in California schools through the involvement of parents, teachers, school administrators, community organizations, and individuals with a firsthand knowledge of the problem.

The Legislature further finds and declares that a strong and consistent relationship between the home and schools would facilitate the learning process and inevitably help control problems associated with gang violence.

SEC. 2. It is the intent of the Legislature to cause the development of positive intervention pilot programs for elementary and secondary age students in Los Angeles County, through cooperation between individual schools and existing organizations in communities. It is also the intent of the Legislature that if the intervention pilot programs in Los Angeles County are determined to be effective in reducing problems associated with gang violence, that other counties in the state be eligible to receive special state funding to establish similar positive intervention programs.

SEC. 3. Unless the context otherwise requires, the following definitions shall apply:

(a) "School" means any public school within Los Angeles County, in kindergarten and grades 1 to 12, inclusive.

(b) "Private, nonprofit organization" means any organization registered in that category with the Secretary of State.

(c) "Gang Risk Intervention Pilot Program" means a community-based positive intervention program for elementary through high school students directed at all of the following:

(1) Reducing the probability of youth involvement in gang activities and consequent violence.

(2) Establishing ties, at an early age, between youth and community organizations.

(3) Committing local business and community resources to positive programming for youth.

SEC. 4. The State Department of Education shall contract with the Los Angeles County Office of Education for the development, administration, and implementation in Los Angeles County of community-based Gang Risk Intervention Pilot Programs (GRIPP). The programs may be established in incorporated or unincorporated territory of the county, or both.

SEC. 5. (a) The Los Angeles County Office of Education may request and review proposals for, and award grants to, private nonprofit organizations, and public entities which apply jointly with individual schools, for the purpose of establishing a Gang Risk Intervention Pilot Program.

(b) The Los Angeles County Office of Education, upon its election to enter into a contract pursuant to Section 4 of this act, shall no later than March 1, 1989, distribute a standard request for proposal and shall select Gang Risk Intervention Pilot Programs to receive grants through a competitive bidding process. Proposals to the Los Angeles County Office of Education for Gang Risk Intervention Pilot Program grant funding shall begin with school years no sooner than the 1989–90 session, for a duration of two years, and shall include all of the following:

(1) A description of the program goals, activities, and curriculum. The description of the program goals shall include a list of measurable objectives for the purpose of evaluation by the Los Angeles County Office of Education. To the extent possible, proposals shall contain empirical data on current problems, such as

dropout rates and occurrences of violence on and off campus by school age individuals.

(2) A description of the individual school or schools and the geographic area to be effected by the program.

(3) A demonstration of broad-based support for the program from business and community organizations.

(4) A clear description of the experience, expertise, and other qualifications of the private nonprofit agencies to conduct an effective intervention program in cooperation with a school or a group of schools.

(5) A proposed budget for expenditure of the grant.

(c) The office shall additionally monitor and evaluate the Gang Risk Intervention Pilot Programs pursuant to the following criteria:

(1) Success in obtaining stated goals.

(2) Reduction in dropout rates.

(3) Reduction in violence among students, on and off campus.

(4) Development of techniques for early identification of at-risk youth.

For the purposes of evaluating the programs, the office shall, to the extent feasible, compare the data submitted by each applicant pursuant to paragraph (1) of subdivision (b) with comparable data collected after the intervention pilot program has been implemented to determine the effectiveness of the program in slowing down and, to the extent possible, reversing the trends of problems such as increased dropout rates and violence on and off campus.

SEC. 6. (a) Gang Risk Intervention Pilot Programs (GRIPP), funded by grants awarded by the Los Angeles County Office of Education, shall be initiated at the local level through voluntary cooperation between a local school, or group of schools, and a private nonprofit community-based organization or organizations, and shall place at each school, or group of schools, a community organizer to be selected by the private nonprofit organization or organizations involved.

(b) Gang Risk Intervention Pilot Programs shall include, but are not limited to:

(1) Counseling for targeted at-risk students, parents, and families, individually and collectively.

(2) Exposure to positive sports and cultural activities, promoting affiliations between youth and the local community.

(3) Job training, which may include apprentice programs in coordination with local businesses, job skills development at the school, or information about vocational opportunities in the community.

(4) Positive interaction with local law enforcement personnel.

(c) Grants for Gang Risk Intervention Pilot Programs (GRIPP) awarded by the Los Angeles County Office of Education, shall not exceed one hundred thousand dollars ($100,000) per individual proposal.

SEC. 7. Section 13863 of the Penal Code is amended to read:

13863. Criteria for selection of law enforcement agencies and school districts to receive Suppression of Drug Abuse in Schools Program funding shall be developed by the State Suppression of Drug Abuse in Schools Advisory Committee.

(a) The State Suppression of Drug Abuse in Schools Advisory Committee shall be composed of two police chiefs, two sheriffs, two district attorneys, one attorney primarily engaged in criminal defense, one representative of parent groups, one representative of the Department of Alcohol and Drug Programs, one county drug program administrator designated pursuant to Section 11962 of the Health and Safety Code, a school peace officer, and a representative of community-based drug abuse programs, all of whom are appointed by the Governor. In addition, the Attorney General shall designate one member representing the Department of Justice and the Superintendent of Public Instruction shall designate four members, one representing the Department of Education, and three schoolsite personnel. Staff services to the committee shall be provided by the Executive Director of the Office of Criminal Justice Planning. Committee members shall be reimbursed for actual expenses involved in the conduct of committee business. The committee shall review applications for grant awards and shall recommend approval for those applications which are deemed appropriate and are consistent with the guidelines and administrative procedures established pursuant to this section and this chapter.

(b) Each committee member shall be personally present to cast a vote or be counted toward a quorum. An appointed member of the committee unable to attend any meeting may designate a representative to attend such meetings on his or her behalf. Such a representative shall be accorded full privilege to address the committee on any matter under consideration but shall not have the right to vote on any motions entertained by the committee.

(c) The State Suppression of Drug Abuse in Schools Advisory Committee shall develop specific guidelines and administrative procedures for the Suppression of Drug Abuse in Schools Program.

(d) These guidelines and administrative procedures shall set forth the terms and conditions upon which the Office of Criminal Justice Planning is prepared to offer grants of funds pursuant to statutory authority. The guidelines and administrative procedures do not constitute rules, regulations, orders, or standards of general application.

(e) Administration of the overall program and the evaluation and monitoring of all grants made under this chapter shall be performed by the Office of Criminal Justice Planning.

(f) The Office of Criminal Justice Planning shall, to the extent possible, coordinate the administration of the Suppression of Drug Abuse in Schools Program with those of the Department of Alcohol and Drug Programs and the Department of Education established

pursuant to Article 2 (commencing with Section 11965) of Chapter 2 of Part 3 of Division 10.5 of the Health and Safety Code.

(g) Local assistance grants made pursuant to this chapter shall not be subject to review pursuant to Section 14780 of the Government Code.

(h) Funds disbursed under this chapter shall not be used for the acquisition of equipment.

(i) Funds disbursed under this chapter shall not be used to purchase information or drugs.

(j) In the interest of maximizing the use of funds for program support and implementation, local law enforcement agencies and school districts receiving funds under this chapter are expressly discouraged from using Suppression of Drug Abuse in Schools Program funds for personnel costs, except that local law enforcement agencies may use these funds for the purpose of personnel costs incurred during overtime hours. Otherwise, where it can be demonstrated that personnel costs are essential to the success of the program and that sufficient law enforcement and school personnel are not available to carry out the program, exceptions to this section may be requested through the Executive Director of the Office of Criminal Justice Planning.

(k) No more than 5 percent of the total amount of funds disbursed under this chapter shall be used for administrative costs.

SEC. 8. The Los Angeles County Office of Education shall not be required to grant any funds in excess of amounts received for this purpose.

SEC. 9. The Los Angeles County Office of Education is hereby authorized to receive funds disbursed from the Asset Forfeiture Distribution Fund pursuant to subparagraph (B) of paragraph (4) of subdivision (b) of Section 11489 of the Health and Safety Code.

SEC. 10. Due to the unique circumstances concerning the need to receive appropriate information in order to develop a statewide gang violence intervention policy and program, the Legislature finds and declares that a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the Constitution. The Legislature further finds and declares that there are significant and diverse gang violence problems in Los Angeles County, and that Los Angeles County is therefore an appropriate location from which to gather information and develop a pilot program pursuant to this act.

# CHAPTER 1251

An act to amend Sections 12657, 12826, and 12840 of, and to add Sections 12585.5 and 12585.6 to, the Water Code, relating to flood control.

[Approved by Governor September 23, 1988. Filed with Secretary of State September 26, 1988.]

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

SECTION 1. Section 12585.5 is added to the Water Code, to read:

12585.5. Notwithstanding any other provision of Chapter 2 (commencing with Section 12639), Chapter 3 (commencing with Section 12800), and this chapter, the following policy shall apply to projects authorized by the Legislature after January 1, 1987, and to small flood control projects authorized by Section 12750 for which the department made the findings required by Section 12750.1 after January 1, 1987:

(a) The state shall pay 70 percent of the nonfederal capital costs required by Section 103(a) of Public Law 99-662.

(b) The state shall pay 70 percent of the nonfederal capital costs of fish and wildlife mitigation.

(c) The state shall pay 70 percent of the nonfederal planning and engineering costs required by Section 105(b) and the nonfederal design costs required by Section 105(c) of Public Law 99-662.

(d) The local agency may receive credit against its share of the costs of lands, easements, and rights-of-way, as determined in subdivision (a), for lands required for the project which were acquired not more than five years prior to federal authorization of the project. The amount of this credit shall be determined by the department or the Reclamation Board by applying the 70 percent state portion as determined in subdivision (a) to the actual costs of the local agency in the case of acquisition by purchase or condemnation and to the fair market value at the time the title is transferred in the case of acquisition free of charge.

(e) The state payments under subdivisions (a), (b), (c), and (d) are subject to Section 12585.1.

SEC. 2. Section 12585.6 is added to the Water Code, to read:

12585.6. For projects authorized by the Legislature prior to January 1, 1987, or for small flood control projects authorized by Section 12750 for which the department made the findings required by Section 12750.1 prior to January 1, 1987, which have been determined by the Corps of Engineers to be subject to the nonfederal costs of Sections 103(a), 105(b), and 105(c) of Public Law 99-662, the state shall pay the costs specified in Section 12585.2 or in Section 12585.5, at the election of the local agency.

SEC. 3. Section 12657 of the Water Code is amended to read:

12657. (a) Except as otherwise provided in Chapter 1

(commencing with Section 12570) and this chapter, the Reclamation Board shall give assurances satisfactory to the Secretary of the Army that the local cooperation, required by Section 3 of the Act of Congress approved December 22, 1944 (Public Law 534, 78th Congress, Second Session), Section 2 of the Act of Congress approved August 18, 1941 (Public Law 228, 78th Congress, First Session), and Section 103 of the Act of Congress approved November 17, 1986 (Public Law 99-662, 99th Congress, Second Session) will be furnished by the state in connection with the flood control projects authorized and adopted in Sections 12648, 12648.1, 12648.2, 12648.3, 12648.4, 12648.5, 12648.6, 12648.7, 12649.1, 12650, 12651, 12652, 12654, 12656.5, 12666, and 12667 and on any flood control projects on any stream flowing into or in the Sacramento Valley or the San Joaquin Valley heretofore or hereafter approved and authorized by Congress.

(b) Assurances provided pursuant to subdivision (a) shall not be made until the local agency has, by binding agreement with the Reclamation Board, agreed to assume all obligations under Sections 12585 to 12585.5, inclusive.

SEC. 4. Section 12826 of the Water Code is amended to read:

12826. (a) No money appropriated for flood control projects shall be allocated for the purchase of lands, easements, and rights-of-way necessary for multiple purpose dams or reservoirs constructed by the United States, and authorized by the Legislature prior to January 1, 1987, except the projects on the Fresno and Merced County Stream Groups.

(b) For projects involving dams or reservoirs authorized by the Legislature after January 1, 1987, the state shall pay for the costs of the flood control components of the project as specified in Section 12585.5.

SEC. 5. Section 12840 of the Water Code is amended to read:

12840. Notwithstanding any other provisions of Chapter 2 (commencing with Section 12639) and Chapter 3 (commencing with Section 12800), the policy set forth in this chapter shall apply to watershed protection and flood prevention projects under Chapter 4 (commencing with Section 12850), to small watershed projects approved by the State Conservationist of the United States Department of Agriculture, to small flood control projects authorized by Section 12750, and to flood control projects authorized by Congress and adopted and authorized by the Legislature pursuant to Chapter 2 (commencing with Section 12639). It is not the intent of this chapter to affect the responsibility for the maintenance and operation of those projects pursuant to the applicable provisions of law.

## CHAPTER 1252

An act relating to school finance.

[Approved by Governor September 23, 1988. Filed with Secretary of State September 26, 1988.]

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

SECTION 1. Notwithstanding any other provision of law, the amount of any property tax revenues received by any county superintendent of schools from the release of impounds during the 1985–86 fiscal year due to the resolution of litigation regarding the assessment of oil bearing property, which amount was deemed restricted for that fiscal year pursuant to subdivision (e) of Section 2558 of the Education Code, shall not be considered local property tax revenue by the Superintendent of Public Instruction in calculating any state apportionment for that county superintendent of schools for the 1986–87 fiscal year.

SEC. 2. Any funds received pursuant to Section 1 of this act shall be repaid within 10 years of receipt at no interest.

SEC. 3. It is not the intent of the Legislature that the provisions of Section 1 be deemed as a precedent for future exemptions from Section 2558 of the Education Code.

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## CHAPTER 1253

An act to amend Sections 3771, 3772, 3773, 3774, 3776, and 3779 of, to add Section 3776.3 to, and to repeal and add Section 3775 of, the Financial Code, relating to financial institutions, and making an appropriation therefor.

[Approved by Governor September 23, 1988. Filed with Secretary of State September 26, 1988.]

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

SECTION 1. Section 3771 of the Financial Code is amended to read:

3771. Unless the context otherwise requires, the following definitions govern the construction of this chapter:

(a) "Bank holding company" means (1) any company that has control over any bank or over any company that has control over any bank or (2) any foreign bank.

(b) "Bank" means a bank, as that term is defined in Section 102, and includes a national banking association, but does not include a bank that engages only in a trust business.

(c) "California bank" means a bank that maintains its head office

in this state.

(d) "California bank holding company" means a bank holding company the operations of which are principally conducted in this state.

(e) "Company" means any person, bank, corporation, trust company, partnership, trust, association, or similar organization. However, company shall not include an individual. Also, company shall not include any corporation the majority of the shares of which are owned by the United States or by any state.

(f) "Control" means any of the following:

(1) Direct or indirect ownership of, or power to vote, 25 percent or more of any class of voting securities of a company.

(2) Direct or indirect power to control in any manner the election of a majority of directors of a company.

(3) Direct or indirect power to exercise in any manner a controlling influence over the management or policies of a company.

(g) "Foreign bank holding company" means any bank holding company other than a California bank holding company.

(h) "Parent foreign bank holding company" means, with respect to a foreign bank holding company, any and all companies that control that foreign bank holding company.

(i) "Foreign bank," "foreign (other nation) bank," and "foreign (other state) bank" have the meanings set forth in Section 1700.

(j) "Subsidiary" means any company that is controlled by another company.

(k) "State" means any state of the United States or the District of Columbia.

(*l*) "Substantial reciprocity" means (1) that the statute laws of a state have the effect of authorizing, for the purposes of subsection (d) of Section 3 of the Bank Holding Company Act of 1956, as amended (12 U.S.C. Sec. 1841 et seq.), and that these laws as interpreted and applied authorize, any California bank holding company to acquire up to 100 percent ownership (except for directors' qualifying shares) of any bank that maintains its head office in that state on terms and conditions substantially the same as terms and conditions pursuant to which a bank holding company the operations of which are principally conducted in the state may acquire a bank located in the same state, and (2) that, under the laws of that state as interpreted and applied, banks that maintain their head offices therein, when acquired, directly or indirectly, by any California bank holding company, have substantially all the powers and capabilities, without limitation, restriction or condition, that such a bank would have if it were acquired by a bank holding company the operations of which are principally conducted in the state in which the bank maintains its head office.

SEC. 2. Section 3772 of the Financial Code is amended to read:

3772. For purposes of this chapter:

(a) (1) In the case of a foreign (other nation) bank which (A) at the time, or (B) (if it had no such home state previously) as a result,

of effecting a transaction of the type described in Section 3774 with respect to a California bank or California bank holding company, has a home state under Section 5 of the International Banking Act of 1978 (12 U.S.C. Sec. 3103) and related regulations, the state in which the operations of the foreign (other nation) bank are principally conducted is that home state.

(2) In the case of a bank holding company which (A) controls a foreign (other nation) bank of the type described in paragraph (1), (B) is not a bank that maintains its head office in a state, and (C) does not, except indirectly through the foreign (other nation) bank, control any bank that maintains its head office in a state, the state in which the operations of the bank holding company are principally conducted is the home state of the foreign (other nation) bank.

(3) In the case of a foreign (other state) bank, the state in which the operations of the foreign (other state) bank are principally conducted is that state in which the total deposits of the foreign (other state) bank and of all of its subsidiary banks are largest.

(4) In the case of any other bank holding company, the state in which the operations of the bank holding company are principally conducted is that state in which the total deposits of all of the bank holding company's subsidiary banks are largest.

(b) The definitions in Chapter 1 (commencing with Section 99) of this division apply to this chapter, except with respect to terms defined by Section 3771.

(c) Shares owned or controlled by any subsidiary of a bank holding company shall be deemed to be indirectly owned or controlled by such bank holding company.

(d) Shares held or controlled, directly or indirectly, by trustees for the benefit of (1) a company, (2) the shareholders or members of a company, or (3) the employees (whether exclusively or not) of a company, shall be deemed to be controlled by that company.

(e) A company shall not be deemed to control another company solely on account of any of the following circumstances:

(1) In case a company acquires ownership or control of shares of another company in a fiduciary capacity, unless the acquiring company has sole discretionary authority to exercise any voting rights with respect to the shares or unless the transaction is subject to subdivision (d).

(2) In case a company acquires ownership or control of shares of another company in connection with the acquiring company's underwriting of securities, provided that the acquiring company holds the shares only for such period as will permit it to sell the shares on a reasonable basis.

(3) In case a company formed for the sole purpose of participating in a proxy solicitation acquires control of the voting rights of shares of another company in the course of the solicitation.

(4) In case a company acquires ownership or control of shares of another company in the regular course of securing or collecting a debt previously contracted in good faith, provided that the acquiring

company obtains the superintendent's approval under Section 3776.3 before acquiring the shares and disposes of the shares within two years after the date of acquisition or within such additional period (not to exceed three years) as the superintendent may approve.

SEC. 3. Section 3773 of the Financial Code is amended to read:

3773. On and after July 1, 1987, a foreign bank holding company whose operations are principally conducted in any of the states of Alaska, Arizona, Colorado, Hawaii, Idaho, Nevada, New Mexico, Oregon, Texas, Utah, or Washington, and that is not controlled by any parent foreign bank holding company whose operations are not principally conducted in one of these states, may, with the prior approval of the superintendent and pursuant to and in accordance with the provisions of this chapter and division, do any of the following:

(a) Cause or permit an existing California bank or California bank holding company to become its subsidiary.

(b) Acquire direct or indirect ownership of, or power to vote, more than 5 percent of the voting shares of any California bank or California bank holding company.

(c) Acquire, directly or indirectly, all or substantially all of the assets of any California bank or assume, directly or indirectly, any of the deposits of a California office of a California bank.

(d) Merge or consolidate with any California bank or California bank holding company.

SEC. 4. Section 3774 of the Financial Code is amended to read:

3774. Except as otherwise permitted by this chapter, no foreign bank holding company shall do any of the following:

(a) Cause or permit a California bank or California bank holding company to become its subsidiary.

(b) Cause or permit a subsidiary to become a California bank or California bank holding company.

(c) Acquire direct or indirect ownership of, or power to vote, more than 5 percent of the voting shares of any California bank or California bank holding company.

(d) Acquire, directly or indirectly, all or substantially all of the assets of any California bank or assume, directly or indirectly, any of the deposits of a California office of a California bank.

(e) Merge or consolidate with any California bank or California bank holding company.

SEC. 5. Section 3775 of the Financial Code is repealed.

SEC. 6. Section 3775 is added to the Financial Code, to read:

3775. (a) Sections 3773 and 3774 shall not apply to any of the following:

(1) Any acquisition by a bank of shares in good faith in a fiduciary capacity, unless the transaction is subject to subdivision (d) of Section 3772 or unless the shares are held under a trust which is a business trust or any trust other than a trust which by its terms terminates within 25 years or not later than 21 years and 10 months after the death of individuals living on the effective date of the trust.

(2) Any acquisition by a bank of shares in the regular course of securing or collecting a debt previously contracted in good faith; provided that the bank shall obtain the superintendent's approval under Section 3776.3 before acquiring the shares and shall dispose of the shares within two years after the date of acquisition or within such additional period (not to exceed three years) as the superintendent may approve.

(b) Subdivision (c) of Section 3773 and subdivision (d) of Section 3774 shall not apply to the merger or consolidation of a California bank with another California bank, or the aquisition of any assets or the assumption of any deposits of a California bank by another California bank. However, the surviving bank in the case of a merger, the resulting bank in the case of a consolidation, the acquiring bank in the case of an acquisition of assets, or the assuming bank in the case of an assumption of deposits, shall be a "bank," as defined in Section 2(c) of the Bank Holding Company Act of 1956 (12 U.S.C. Sec. 1841(c)), as in effect August 9, 1987, unless the other bank is not a "bank" as so defined.

(c) Sections 3773 and 3774 shall not apply to the merger of a foreign bank holding company with a California bank or California bank holding company, provided that all of the following requirements are met:

(1) The California bank or California bank holding company shall be the surviving corporation.

(2) The merger shall not result in any change of control of the surviving corporation.

(3) The persons who own the shares of the California bank or California bank holding company immediately before the merger shall, immediately after the merger, own not less than a majority of the shares of the surviving corporation. For purposes of this paragraph, a person shall not be considered to own any shares of the surviving corporation acquired pursuant to the merger as a result of ownership by that person of shares of the foreign bank holding company, but all shares so acquired shall be counted when calculating the total number of shares outstanding. Also, for purposes of calculations under this paragraph, the conversion of all securities convertible immediately or at some future time into shares shall be assumed but the exercise of any warrant or right to subscribe for or purchase shares shall not be assumed.

(4) Immediately after the merger, either (A) the surviving corporation shall principally conduct its operations in an eligible state, or (B) the aggregate of the total deposits of the surviving corporation and the total deposits of all of its subsidiary and affiliate banks which maintain their head offices in eligible states shall be greater than the aggregate of the total deposits of all of the surviving corporation's subsidiary and affiliate banks which maintain their head offices in the United States but not in eligible states, and, in either event, the surviving corporation shall not be controlled by any foreign bank holding company or parent foreign bank holding

company whose operations are not principally conducted in an eligible state. As used in this paragraph, "eligible state" means California or a state listed in Section 3773 which has substantial reciprocity with California, as determined by the superintendent, and "affiliate bank" means a bank controlled by a bank holding company which controls the surviving corporation.

SEC. 7. Section 3776 of the Financial Code is amended to read:

3776. (a) An application for approval of a transaction described in Section 3773 shall be in such form, shall contain such information, shall be signed in such manner, and shall (if the superintendent so requires) be verified in such manner, as the superintendent may require. The fee for filing such an application shall be two thousand five hundred dollars ($2,500).

(b) The superintendent shall approve the transaction if the superintendent makes both of the following findings, but shall otherwise deny the application:

(1) That there is substantial reciprocity between this state and the state or states in which the operations of the foreign bank holding company and any parent foreign bank holding company of the foreign bank holding company are principally conducted.

(2) That the transaction will not have an adverse effect on the public convenience or advantage in this state.

Nothing in this subdivision requires substantial reciprocity with respect to any jurisdiction that is not a state.

(c) Before a foreign bank holding company effects a transaction of a kind described in Section 3773 which would result in its controlling a bank organized under the laws of this state, the foreign bank holding company and each parent foreign bank holding company of the foreign bank holding company shall file with the superintendent an agreement that it will comply, and that it will cause any company which it from time to time controls to comply, with all applicable provisions of this division and of any regulation or order issued under this division. This agreement shall be in such form, shall be signed in such manner, and shall (if the superintendent so requires) be acknowledged in such manner, as the superintendent may require.

SEC. 8. Section 3776.3 is added to the Financial Code, to read:

3776.3. (a) An application for approval to acquire shares under paragraph (4) of subdivision (e) of Section 3772 or paragraph (2) of subdivision (a) of Section 3775 shall be in such form, shall contain such information, shall be signed in such manner, and shall (if the superintendent so requires) be verified in such manner, as the superintendent may require. The fee for filing the application is five hundred dollars ($500).

(b) The superintendent shall not approve the acquisition of shares unless the superintendent finds that the acquisition is not part of a plan to evade the provisions of this chapter.

SEC. 9. Section 3779 of the Financial Code is amended to read:

3779. (a) The superintendent may provide to any federal

regulatory agency or to any regulatory agency of any other state of the United States information relating to any of the following:

(1) Any foreign bank holding company which has applied for approval to effect a transaction described in Section 3773 or which controls a California bank.

(2) Any California bank or other company which such a foreign bank holding company controls or proposes to control.

(3) Any parent foreign bank holding company of such a foreign bank holding company.

(4) Any California bank, California bank holding company, or other company which is or is proposed to be in control of, or under common control with, a bank which maintains its head office in another state.

(b) The provisions of this section shall be in addition to, and not in limitation of, the provisions of Section 1909.

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## CHAPTER 1254

An act to amend Section 48902 of the Education Code, to amend Section 13202.5 of, and to add Section 14601.4 to, the Vehicle Code, and to amend Section 783 of the Welfare and Institutions Code, relating to driving offenses.

[Approved by Governor September 23, 1988 Filed with Secretary of State September 26, 1988.]

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

SECTION 1. (a) The Legislature finds and declares as follows:

(1) It is unlawful to use, purchase, possess, or distribute controlled substances unless expressly permitted by law.

(2) It is unlawful for any driver to be under the influence of drugs or alcohol.

(3) Individuals who abuse drugs or alcohol demonstrate a dangerous disregard for the safe legal operation of motor vehicles. The risk is particularly acute for individuals under the age of 21.

(4) The increased potential for teenage deaths in vehicle collisions and other nondriving accidents, homicides, and suicides, while being under the influence of drugs or alcohol, requires special attention in order to reduce the statewide youth fatality rate and to control unlawful and unsafe driving practices.

(b) It is, therefore, the intent of the Legislature to enact this measure in an attempt to reduce the incidence of young drivers on the highways and roads of this state who, because of their use of alcohol or other illegal drugs, pose a danger to the health and safety of other drivers by all or a combination of the following methods:

(1) To prevent use of motor vehicles by drivers under the age of 21 years by suspending their driving privileges for one year from the

date of conviction, because a one year suspension of these drivers' privileges may provide a means of deterring use of alcohol and other illegal drugs by these young persons.

(2) To make the one year suspension of driving privileges a mandatory requirement for any person under the age of 21 years who has been convicted of possessing or using alcohol or other illegal drugs.

(3) In order to discourage the possession and use of alcohol and other illegal drugs by potential drivers of motor vehicles, a one year delay of the ability to apply for a driver's license if the potential driver is 13 years of age or older and is convicted of possession or use of alcohol or other illegal drugs.

SEC. 2. Section 48902 of the Education Code is amended to read:

48902. (a) The principal of a school or the principal's designee shall, prior to the suspension or expulsion of any pupil, notify the appropriate law enforcement authorities of the county or city in which the school is situated, of any acts of the student which may violate Section 245 of the Penal Code.

(b) The principal of a school or the principal's designee may, prior to suspension or expulsion of any pupil, notify the appropriate law enforcement authority of the county or the school district in which the school is situated of any acts of the students which may violate subdivision (c) or (d) of Section 48900 of the Education Code.

(c) A principal, the principal's designee, or any other person reporting a known or suspected act described in subdivision (a) or (b) is not civilly or criminally liable as a result of any report authorized by this article unless it can be proven that a false report was made and that the person knew the report was false or the report was made with reckless disregard for the truth or falsity of the report.

SEC. 3. Section 13202.5 of the Vehicle Code is amended to read:

13202.5. (a) For each conviction of a person for any offense specified in subdivision (d), committed while the person was under the age of 21 years, but 13 years of age or older, the court shall suspend the person's driving privilege for one year. If the person convicted does not yet have the privilege to drive, the court shall 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 conviction for any offense specified in subdivision (d) in a 12-month period after the conviction, the court, upon petition of the person affected, may modify the order imposing the delay of the privilege. For each successive offense, the court shall suspend the person's driving privilege for those possessing a license or delay the eligibility for those not in possession of a license at the time of their conviction for one additional year.

As used in this section, the term "conviction" includes the findings in juvenile proceedings specified in Section 13105.

(b) Whenever the court suspends driving privileges pursuant to subdivision (a), the court in which the conviction is had shall require

all driver's licenses held by the person to be surrendered to the court. The court shall within 10 days following the conviction transmit certified abstract of the conviction, together with any driver's licenses surrendered, to the department.

Violation of restrictions imposed pursuant to this section are subject to Section 14603.

(c) After a court has issued an order suspending or delaying driving privileges pursuant to subdivision (a), the court, upon petition of the person affected, may review the order and may impose restrictions on the person's privilege to drive based upon a showing of a critical need to drive. The restriction shall remain in effect for the balance of the period of suspension or restriction in this section. The court shall notify the department of any modification within 10 days of the order of modification.

(d) This section applies to violations involving controlled substances or alcohol contained in Article 7 (commencing with Section 4211) of Chapter 9 of Division 2 of, and Sections 25658, 25661, and 25662 of, the Business and Professions Code, Division 10 (commencing with Section 11000) of the Health and Safety Code, Section 191.5, paragraph (3) of subdivision (c) of Section 192, subdivision (c) or (d) of Section 192.5, and subdivision (f) of Section 647 of the Penal Code, and Article 2 (commencing with Section 23152) of Chapter 12 of Division 11 of this code.

(e) Suspension, restriction, or delay of driving privileges pursuant to this section shall be in addition to any penalty imposed upon conviction of any violation specified in subdivision (d).

SEC. 4. Section 14601.4 is added to the Vehicle Code, to read:

14601.4. (a) It is unlawful for any person, while driving a vehicle with a license suspended or revoked pursuant to Section 14601.2 to do any act forbidden by law or neglect any duty imposed by law in the driving of the vehicle, which act or neglect proximately causes bodily injury to any person other than the driver. In proving the person neglected any duty imposed by law in the driving of the vehicle, it is not necessary to prove that any specific section of this code was violated.

(b) Any person convicted under this section shall be imprisoned in the county jail and shall not be released upon work release, community service, or any other release program before the minimum period of imprisonment, prescribed in Section 14601.2, is served. If a person is convicted of such an offense and is granted probation, the court shall require that the person convicted serve at least the minimum time of imprisonment, as specified in those sections, as a term or condition of probation.

SEC. 5. Section 783 of the Welfare and Institutions Code is amended to read:

783. An adjudication that a minor violated any of the provisions enumerated in subdivision (d) of Section 13202.5 of the Vehicle Code shall be reported to the Department of Motor Vehicles at its office in Sacramento within 10 days of the adjudication pursuant to Section

1803 of the Vehicle Code.

SEC. 6. 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 five hundred thousand dollars ($500,000), reimbursement shall be made from the State Mandates Claims Fund.

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## CHAPTER 1255

An act relating to electrical power.

[Approved by Governor September 23, 1988. Filed with Secretary of State September 26, 1988.]

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

SECTION 1. The Public Utilities Commission shall monitor and periodically report to the Legislature concerning negotiations between the Southern San Joaquin Valley Power Authority and Pacific Gas and Electric Company and Southern California Edison Company regarding the assignment or transmission of the authority's allocation of capacity in the California-Oregon Transmission Project.

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## CHAPTER 1256

An act to amend Section 272 of, to add and repeal Chapter 11 (commencing with Section 186.20) of Title 7 of Part 1 of, to add Title 11.5 (commencing with Section 422) to Part 1 of, and to add Chapter 2.9B (commencing with Section 1001.70) to Title 6 of Part 2 of, the Penal Code, relating to crime, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 23, 1988. Filed with Secretary of State September 26, 1988.]

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

SECTION 1. Chapter 11 (commencing with Section 186.20) is added to Title 7 of Part 1 of the Penal Code, to read:

## CHAPTER 11. STREET TERRORISM ENFORCEMENT AND PREVENTION ACT

186.20. This chapter shall be known and may be cited as the "California Street Terrorism Enforcement and Prevention Act."

186.21. The Legislature hereby finds and declares that it is the right of every person, regardless of race, color, creed, religion, national origin, sex, age, sexual orientation, or handicap, to be secure and protected from fear, intimidation, and physical harm caused by the activities of violent groups and individuals. It is not the intent of this chapter to interfere with the exercise of the constitutionally protected rights of freedom of expression and association. The Legislature hereby recognizes the constitutional right of every citizen to harbor and express beliefs on any lawful subject whatsoever, to lawfully associate with others who share similar beliefs, to petition lawfully constituted authority for a redress of perceived grievances, and to participate in the electoral process.

The Legislature, however, further finds that the State of California is in a state of crisis which has been caused by violent street gangs whose members threaten, terrorize, and commit a multitude of crimes against the peaceful citizens of their neighborhoods. These activities, both individually and collectively, present a clear and present danger to public order and safety and are not constitutionally protected. The Legislature finds that there are nearly 600 criminal street gangs operating in California, and that the number of gang-related murders is increasing. The Legislature also finds that in Los Angeles County alone there were 328 gang-related murders in 1986, and that gang homicides in 1987 have increased 80 percent over 1986. It is the intent of the Legislature in enacting this chapter to seek the eradication of criminal activity by street gangs by focusing upon patterns of criminal gang activity and upon the organized nature of street gangs, which together, are the chief source of terror created by street gangs. The Legislature further finds that an effective means of punishing and deterring the criminal activities of street gangs is through forfeiture of the profits, proceeds, and instrumentalities acquired, accumulated, or used by street gangs.

186.22. (a) Any person who actively participates in any criminal street gang with knowledge that its members engage in or have engaged in a pattern of criminal gang activity, and who willfully promotes, furthers, or assists in any felonious criminal conduct by members of that gang, shall be punished by imprisonment in the

county jail for a period not to exceed one year, or by imprisonment in the state prison for one, two, or three years.

(b) Any person who is convicted of a felony or a misdemeanor which is committed for the benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, shall be punished in the following manner:

(1) Any person who violates this subdivision in the commission of a misdemeanor, shall be punished by imprisonment in the county jail not to exceed one year, or by imprisonment in the state prison for one, two, or three years, provided that any person sentenced to imprisonment in the county jail pursuant to subdivision (b) of Section 17, shall be imprisoned for a period not to exceed one year, but not less than 180 days, and shall not be eligible for release upon completion of sentence, parole, or any other basis, until he or she has served 180 days. If the court grants probation or suspends the execution of sentence imposed upon the defendant, it shall require as a condition thereof that the defendant serve 180 days in the county jail.

(2) Except as provided in paragraph (3), any person who violates this subdivision in the commission of a felony shall, upon conviction of that felony, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which he or she has been convicted, be punished by an additional term of one, two, or three years at the court's discretion. The court shall order the imposition of the middle term of the sentence enhancement, unless there are circumstances in aggravation or mitigation. The court shall state the reasons for its choice of sentence enhancements on the record at the time of the sentencing.

(3) Any person who violates this subdivision in the commission of a felony punishable by imprisonment in the state prison for life, shall not be paroled until a minimum of 15 calendar years have been served.

(4) Notwithstanding any other provision of law, the court may strike the additional punishment for the enhancements provided in this section in an unusual case where the interests of justice would best be served, if the court specifies on the record and enters into the minutes the circumstances indicating that the interests of justice would best be served by that disposition.

(c) As used in this chapter, "pattern of criminal gang activity" means the commission, attempted commission, or solicitation of two or more of the following offenses, provided at least one of those offenses occurred after the effective date of this chapter and the last of those offenses occurred within three years after a prior offense, and the offenses are committed on separate occasions, or by two or more persons:

(1) Assault with a deadly weapon or by means of force likely to produce great bodily injury, as defined in Section 245.

(2) Robbery, as defined in Chapter 4 (commencing with Section

211) of Title 8 of Part 1.

(3) Unlawful homicide or manslaughter, as defined in Chapter 1 (commencing with Section 187) of Title 8 of Part 1.

(4) The sale, possession for sale, transportation, manufacture, offer for sale, or offer to manufacture controlled substances as defined in Sections 11054, 11055, 11056, 11057, and 11058 of the Health and Safety Code.

(5) Shooting at an inhabited dwelling or occupied motor vehicle, as defined in Section 246.

(6) Arson, as defined in Chapter 1 (commencing with Section 450) of Title 13.

(7) The intimidation of witnesses and victims, as defined in Section 136.1.

(d) As used in this chapter, "criminal street gang" means any ongoing organization, association, or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of one or more of the criminal acts enumerated in paragraphs (1) to (7), inclusive, of subdivision (c), which has a common name or common identifying sign or symbol, whose members individually or collectively engage in or have engaged in a pattern of criminal gang activity.

186.22a. (a) Every building or place, other than residential buildings in which there are three or fewer dwelling units, used by members of a criminal street gang for the purpose of the commission of the offenses listed in subdivision (c) of Section 186.22 or any offense involving dangerous or deadly weapons, burglary, or rape, and every building or place, other than residential buildings in which there are three or fewer dwelling units, wherein or upon which that criminal conduct by gang members takes place, is a nuisance which shall be enjoined, abated, and prevented, and for which damages may be recovered, whether it is a public or private nuisance.

(b) Any action for injunction or abatement filed pursuant to this section shall proceed according to the provisions of Article 3 (commencing with Section 11570) of Chapter 10 of Division 10 of the Health and Safety Code, except that all of the following shall apply:

(1) The court shall not assess a civil penalty against any person unless that person knew or should have known of the unlawful acts.

(2) No order of eviction or closure may be entered.

(3) All injunctions issued shall be limited to those necessary to protect the health and safety of the residents or the public or those necessary to prevent further criminal activity.

(4) Suit may not be filed until 30-day notice of the unlawful use or criminal conduct has been provided to the owner by mail, return receipt requested, postage prepaid, to the last known address.

(c) No nonprofit or charitable organization which is conducting its affairs with ordinary care or skill, and no governmental entity, shall be abated pursuant to this chapter.

(d) Nothing in this chapter shall preclude any aggrieved person from seeking any other remedy provided by law.

186.23. This chapter does not apply to employees engaged in concerted activities for their mutual aid and protection, or the activities of labor organizations or their members or agents.

186.24. If any part or provision of this chapter, or the application thereof to any person or circumstance, is held invalid, the remainder of the chapter, including the application of that part or provision to other persons or circumstances, shall not be affected thereby and shall continue in full force and effect. To this end, the provisions of this chapter are severable.

186.25. Nothing in this chapter shall prevent a local governing body from adopting and enforcing laws consistent with this chapter relating to gangs and gang violence. Where local laws duplicate or supplement this chapter, this chapter shall be construed as providing alternative remedies and not as preempting the field.

186.27. This chapter shall remain in effect only until January 1, 1992, and as of that date is repealed, unless a later enacted statute, which is chaptered before January 1, 1992, deletes or extends that date.

SEC. 2. Section 272 of the Penal Code is amended to read:

272. Every person who commits any act or omits the performance of any duty, which act or omission causes or tends to cause or encourage any person under the age of 18 years to come within the provisions of Section 300, 601, or 602 of the Welfare and Institutions Code or which act or omission contributes thereto, or any person who, by any act or omission, or by threats, commands, or persuasion, induces or endeavors to induce any person under the age of 18 years or any ward or dependent child of the juvenile court to fail or refuse to conform to a lawful order of the juvenile court, or to do or to perform any act or to follow any course of conduct or to so live as would cause or manifestly tend to cause any such person to become or to remain a person within the provisions of Section 300, 601, or 602 of the Welfare and Institutions Code, is guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not exceeding two thousand five hundred dollars ($2,500), or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment in a county jail, or may be released on probation for a period not exceeding five years. For purposes of this section, a parent or legal guardian to any person under the age of 18 years shall have the duty to exercise reasonable care, supervision, protection, and control over their minor child.

SEC. 3. Chapter 2.9B (commencing with Section 1001.70) is added to Title 6 of Part 2 of the Penal Code, to read:

## CHAPTER 2.9B. PARENTAL DIVERSION

1001.70. (a) Every local prosecutor with jurisdiction to prosecute violations of Section 272 shall review annually any diversion program established pursuant to this chapter, and no program shall commence or continue without the approval of the local prosecutor.

No person shall be diverted under a program unless it has been approved by the local prosecutor. Nothing in this subdivision shall authorize the prosecutor to determine whether a particular defendant shall be diverted.

(b) As used in this chapter, "pretrial diversion" means the procedure of postponing prosecution either temporarily or permanently at any point in the judicial process from the point at which the accused is charged until adjudication.

1001.71. This chapter shall apply whenever a case is before any court upon an accusatory pleading alleging a parent or legal guardian to have violated subdivision (a) or (b) of Section 272 with respect to his or her minor child, and all of the following apply to the defendant:

(a) The defendant's record does not indicate that probation or parole has ever been revoked without thereafter being completed.

(b) The defendant's record does not indicate that he or she has previously been diverted pursuant to this chapter.

1001.72. (a) If the defendant consents and waives his or her right to a speedy trial, the case shall be referred to the probation department. The probation department shall conduct an investigation as is necessary to determine whether the defendant qualifies for diversion under this chapter, and whether he or she is a person who would be benefited by education, treatment, or rehabilitation. The probation department shall also determine which education, treatment, or rehabilitative plan would benefit the defendant. The probation department shall report its findings and recommendations to the court. If the recommendation includes referral to a community program, the report shall contain a statement regarding the program's willingness to accept the defendant and the manner in which the services they offer can assist the defendant in completing the diversion program successfully.

(b) No statement, or any information procured therefrom, made by the defendant to any probation officer, which is made during the course of any investigation conducted by the probation department pursuant to subdivision (a), and prior to the reporting of the probation department's findings and recommendations to the court, shall be admissible in any action or proceeding brought subsequent to the investigation.

No statement, or any information procured therefrom, with respect to the specific offense with which the defendant is charged which is made to any probation officer subsequent to the granting of diversion, shall be admissible in any action or proceeding.

In the event that diversion is either denied or is subsequently revoked once it has been granted, neither the probation investigation nor statements or information divulged during that investigation shall be used in any pretrial sentencing procedures.

1001.73. The court shall hold a hearing and, after consideration of the probation department's report, and any other relevant information, shall determine if the defendant consents to further proceedings under this chapter and waives his or her right to a

speedy trial. If the court orders a defendant to be diverted, the court may make inquiry into the financial condition of the defendant, and upon a finding that the defendant is able, in whole or in part, to pay the reasonable cost of diversion, the court may order him or her to pay all or part of the expense. The reasonable cost of diversion shall not exceed the amount determined to be the actual average cost of diversion services.

If the court does not deem the defendant to be a person who would be benefited by diversion or if the defendant does not consent to participate, the proceedings shall continue as in any other case.

At the time that a defendant's case is diverted, any bail bond or undertaking, or deposit in lieu thereof, on file by or on behalf of the defendant shall be exonerated, and the court shall enter an order so directing.

The period during which the further criminal proceedings against the defendant may be diverted shall be for the length of time required to complete and verify the diversion program but in no case shall it exceed two years.

1001.74. If it appears to the probation department that the divertee is performing unsatisfactorily in the assigned program, or that the divertee is not benefiting from education, treatment, or rehabilitation, or that the divertee is convicted of a misdemeanor in which force or violence was used, or if the divertee is convicted of a felony, after notice to the divertee, the court shall hold a hearing to determine whether the criminal proceedings should be reinstituted. If the court finds that the divertee is not performing satisfactorily in the assigned program, or that the divertee has been convicted of a crime as indicated above, the criminal case shall be referred back to the court for resumption of the criminal proceedings. If the divertee has performed satisfactorily during the period of diversion, the criminal charges shall be dismissed.

1001.75. Any record filed with the Department of Justice shall indicate the disposition in those cases diverted pursuant to this chapter. Upon successful completion of a diversion program, the arrest upon which the diversion was based shall be deemed to have never occurred. The divertee may indicate in response to any question concerning his or her prior criminal record that he or she was not arrested or diverted for that offense. A record pertaining to an arrest resulting in successful completion of a diversion program shall not, without the divertee's consent, be used in any way which would result in the denial of any employment, benefit, license, or certificate.

SEC. 4. Title 11.5 (commencing with Section 422) is added to Part 1 of the Penal Code, to read:

## TITLE 11.5. TERRORIST THREATS

422. Any person who willfully threatens to commit a crime which will result in death or great bodily injury to another person, with the

specific intent that the statement is to be taken as a threat, even if there is no intent of actually carrying it out, which, on its face and under the circumstances in which it is made is so unequivocal, unconditional, immediate, and specific as to convey to the person threatened a gravity of purpose and an immediate prospect of execution, shall be punished by imprisonment in the county jail not to exceed one year, or by imprisonment in the state prison if he or she causes another person reasonably to be in sustained fear for his or her or their immediate family's safety. For the purposes of this section, the term "immediate family" means any spouse, whether by marriage or not, parent, child, any person related by consanguinity or affinity within the second degree, or any other person who regularly resides in the household, or who, within the prior six months, regularly resided in the household.

SEC. 5. On or before January 1, 1991, the District Attorney of Los Angeles County and the City Attorney of the City of Los Angeles shall submit a report to the Legislature on the effect of this act on the control of criminal street gang activity in the County of Los Angeles. The report shall include, but need not be limited to, all of the following:

(a) The number of arrests under this act.

(b) The number of prosecutions under this act.

(c) The number of trials which have resulted from prosecutions under this act, and the number of pleas which resulted.

(d) The number of convictions under this act.

(e) The number and type of sentence enhancements which have been sought under this act, and the number and kind which have been ordered by the courts.

(f) The number of nuisance abatement actions under this act.

SEC. 6. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because: (1) 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; and (2) 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.

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 provide the tools necessary for law enforcement to stem the tide of illegal gang warfare without infringing upon the constitutional rights of any individual, at the earliest possible time, it is necessary that this act take effect immediately.

## CHAPTER 1257

An act to amend Sections 653h, 653s, 653u, and 653w of the Penal Code, relating to crime.

[Approved by Governor September 23, 1988. Filed with Secretary of State September 26, 1988.]

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

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

653h. (a) Every person is guilty of a public offense punishable as provided in subdivisions (b) and (c), who:

(1) Knowingly and willfully transfers or causes to be transferred any sounds that have been recorded on a phonograph record, disc, wire, tape, film or other article on which sounds are recorded, with intent to sell or cause to be sold, or to use or cause to be used for commercial advantage or private financial gain through public performance, the article on which the sounds are so transferred, without the consent of the owner.

(2) Transports for monetary or like consideration within this state or causes to be transported within this state any such article with the knowledge that the sounds thereon have been so transferred without the consent of the owner.

(b) 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, 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 transfer or transportation, or conduct causing that transfer or transportation, of not less than 1,000 of the articles described in subdivision (a).

(c) Any person who has been convicted of any other violation of subdivision (a) not described in subdivision (b), shall be punished by imprisonment in the county jail not to exceed one year, or by a fine of not more than twenty-five thousand dollars ($25,000), or by both. A second or subsequent conviction under subdivision (a) not described in subdivision (b) shall be punished by imprisonment in the state prison or by a fine not to exceed one hundred thousand dollars ($100,000), or by both.

(d) 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 transferred without the consent of the owner is guilty of a public offense.

(1) A violation of subdivision (d) 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.

(e) As used in this section, "person" means any individual, partnership, partnership's member or employee, corporation, association or corporation or association employee, officer or director; "owner" means the person who owns the original master recording embodied in the master phonograph record, master disc, master tape, master film or other article used for reproducing recorded sounds on phonograph records, discs, tapes, films or other articles on which sound is or can be recorded, and from which the transferred recorded sounds are directly or indirectly derived; and "master recording" means the original fixation of sounds upon a recording from which copies can be made.

(f) This section shall neither enlarge nor diminish the right of parties in private litigation.

(g) This section does not apply to any person engaged in radio or television broadcasting who transfers, or causes to be transferred, any such sounds (other than from the sound track of a motion picture) intended for, or in connection with broadcast transmission or related uses, or for archival purposes.

(h) This section does not apply to any not-for-profit educational institution or any federal or state governmental entity, if the institution or entity has as a primary purpose the advancement of the public's knowledge and the dissemination of information regarding America's musical cultural heritage, provided that this purpose is clearly set forth in the institution's or entity's charter, bylaws, certificate of incorporation, or similar document, and the institution or entity has, prior to the transfer, made a good faith effort to identify and locate the owner or owners of the sound recordings to be transferred and, provided that the owner or owners could not be and have not been located. Nothing in this section shall be construed to relieve an institution or entity of its contractual or other obligation to compensate the owners of sound recordings to be transferred. In order to continue the exemption permitted by this subdivision, the institution or entity shall make continuing efforts to locate such owners and shall make an annual public notice of the fact of the

transfers in newspapers of general circulation serving the jurisdictions where the owners were incorporated or doing business at the time of initial affixations. The institution or entity shall keep on file a record of the efforts made to locate such owners for inspection by appropriate governmental agencies.

(i) This section applies only to such articles that were initially mastered prior to February 15, 1972.

SEC. 2. 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.

(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. 3. Section 653u of the Penal Code is amended to read:

653u. (a) Any person who records or masters or causes to be recorded or mastered on any article with the intent to sell for commercial advantage or private financial gain, the 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 subdivisions (d) and (e).

(b) 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.

(c) 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.

(d) 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 recording, mastering, or causing to be recorded or mastered at least 1,000 articles described in subdivision (a).

(e) Any person who has been convicted of any other violation of subdivision (a) not described in subdivision (d), 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 by both. A second or subsequent conviction under subdivision (a) not described in subdivision (d) 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.

SEC. 4. Section 653w of the Penal Code is amended to read:

653w. (a) A person is guilty of failure to disclose the origin of a recording when, for commercial advantage or private financial gain, he or she knowingly advertises or offers for sale or resale, or sells or resells, or causes the sale or resale, or rents, or possesses for these purposes, any recording, the outside cover box or jacket of which does not clearly and conspicuously disclose the actual true name and address of the manufacturer thereof and the name of the actual author, artist, performer, producer, programmer, or group. This section does not require the original manufacturer or authorized licensees of software producers to disclose the contributing authors or programmers.

As used in this section, "recording" means any tangible medium upon which information, sounds, or images are recorded or otherwise stored, including any phonograph record, disc, tape, audio or video cassette, wire, film, or other medium on which information, sounds, or images are recorded or otherwise stored.

(b) 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 advertising, offer for sale or resale, selling, rental, or possession for

these purposes, of at least 1,000 articles described in subdivision (a).

(c) Any person who has been convicted of any other violation of subdivision (a) not described in subdivision (b) 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 (b) 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.

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## CHAPTER 1258

An act to add Section 654.1 to the Welfare and Institutions Code, relating to juvenile court law.

[Approved by Governor September 23, 1988. Filed with Secretary of State September 26, 1988.]

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

SECTION 1. Section 654.1 is added to the Welfare and Institutions Code, to read:

654.1. (a) Notwithstanding Section 654 or any other provision of law, in any case in which a minor has been charged with a violation of Section 23140 or 23152 of the Vehicle Code, the probation officer may, in lieu of requesting that a petition be filed by the prosecuting attorney to declare the minor a ward of the court under Section 602, proceed in accordance with Section 654 and delineate a program of supervision for the minor. However, the probation officer shall cause the citation for a violation of Section 23140 or 23152 of the Vehicle Code to be heard and disposed of by the judge, referee, or traffic hearing officer pursuant to Sections 257 and 258 as a condition of any program of supervision.

(b) Nothing in this section shall be construed to prevent the probation officer from requesting the prosecuting attorney to file a petition to declare the minor a ward of the court under Section 602 for a violation of Section 23140 or 23152 of the Vehicle Code. However, when in the judgment of the probation officer, the interest of the minor and the community can be protected by adjudication of a violation of Section 23140 or 23152 of the Vehicle Code in accordance with subdivision (a), the probation officer shall proceed under subdivision (a).

## CHAPTER 1259

An act to add Sections 29034.6 and 29034.7 to the Public Utilities Code, relating to transit.

[Approved by Governor September 23, 1988. Filed with Secretary of State September 26, 1988.]

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

SECTION 1. Section 29034.6 is added to the Public Utilities Code, to read:

29034.6. (a) Not later than 1991, the district shall proceed to commence construction of an extension of its facilities to West Pittsburg, or to a point east of that location, if the funding described in subdivision (b) is sufficient and all of the following occur:

(1) The voters of Contra Costa County, at the November 8, 1988, general election, approve an additional one-half of 1 percent sales tax for transportation purposes.

(2) An increase in San Francisco Bay area bridge tolls, as proposed by Senate Bill No. 45 of the 1987–88 Regular Session, is approved.

(3) Sufficient funds are provided to the district from paragraphs (1) and (2) which, together with funds identified in subdivision (b), would result in the generation of at least four hundred twenty-five million dollars ($425,000,000) for the West Pittsburg BART extension.

(b) The district board of directors shall set aside at least thirty-four million dollars ($34,000,000) from district reserve funds and, if the district receives two hundred million dollars ($200,000,000) from the San Mateo County Transit District as a result of an agreement between the district and the San Mateo County Transit District, the district board of directors shall set aside at least an additional seventy-four million dollars ($74,000,000) for the purposes of this section. The district shall seek other funding as may be available from state and other sources to meet the objective of completing construction of an extension to West Pittsburg.

(c) It is the intent of the Legislature that the district extend its service and facilities to eastern Contra Costa County as far as the four hundred twenty-five million dollars ($425,000,000) funding amount will permit.

(d) If funds generated from the additional Contra Costa County transportation sales tax or the increase in bridge tolls do not become available to the district, it is the intent of the Legislature that the district proceed with service and facilities extension as far as available funding sources permit.

SEC. 2. Section 29034.7 is added to the Public Utilities Code, to read:

29034.7. (a) Not later than December 31, 1991, the district shall proceed to commence construction of an extension of its facilities to Dublin if an agreement is then existing between the district and the

Alameda County Transportation Authority to provide funding for that extension in accordance with the Alameda County Transportation Expenditure Plan adopted pursuant to Section 131055.

(b) Not later than December 31, 1991, the district shall proceed to commence construction of an extension of its facilities to Warm Springs, subject to each of the following conditions:

(1) The Dublin extension is fully funded and ready for implementation.

(2) Appropriate federal and environmental approvals are obtained in a timely manner.

(3) Adequate funding is available from the sources described in subdivision (c).

(c) In order to meet the objective of completing construction of the Dublin and Warm Springs extensions of the district's facilities, as contemplated by the Alameda County Transportation Expenditure Plan, the board of directors of the district shall take the following actions:

(1) Set aside, for expenditure on those projects, not less than fifty-eight million dollars ($58,000,000) from the district's reserve funds.

(2) Commit for expenditure on those projects, an additional amount of not less than one hundred twenty-six million dollars ($126,000,000) if, pursuant to an agreement between the district and the San Mateo Transit District, the district is to receive two hundred million dollars ($200,000,000) as a capital contribution from the San Mateo County Transit District.

(3) Seek additional funding as may be available from an increase in San Francisco Bay area bridge tolls pursuant to Chapter 406 of the Statutes of 1988, together with funding from state and other sources, to provide not less than six hundred two million dollars ($602,000,000) to fund the Dublin and Warm Springs extensions as provided for in the Alameda County Transportation Expenditure Plan.

(d) It is the intent of the Legislature, if funding, as provided for in the Alameda County Transportation Expenditure Plan and pursuant to paragraphs (2) and (3) of subdivision (c), do not become available to the district for the full extension of service and facilities described in subdivisions (a) and (b), that the district nevertheless undertake to provide the described extensions to the extent that available funding permits.

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.

## CHAPTER 1260

An act to amend Section 15383 of the Government Code, relating to economic development.

[Approved by Governor September 23, 1988. Filed with Secretary of State September 26, 1988.]

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

SECTION 1. Section 15383 of the Government Code is amended to read:

15383. The SBDC plan shall describe the purpose of the centers, the services to be provided to small businesses, the location of the central SBDC and branch centers, the timetable for the operation of the center, how the provision of services will be made to small businesses, and how the local service centers will become independent of state funds.

The plan shall also describe how the SBDC will provide at least the following:

(a) Business startup analyses, technical assistance, financial planning services and seminars and conferences for persons establishing or expanding small businesses.

(b) Information on the availability of federal and state tax incentives for investment in small businesses and employee training programs.

(c) The collection and dissemination of economic and business data pertinent to small businesses, such as demography, market analyses and work force surveys.

(d) A system whereby small businesses can be linked to research and development institutions for the purposes of transferring new technology to a new or expanding small business.

(e) Access to all existing resources of small business assistance from the local, state, and federal governments and any or all private organizations.

(f) Information on, and promotion of, small business incubators. As used in this subdivision, small business incubators means facilities that allow new small businesses to increase their probability of success by sharing needed capital equipment, services, and facilities. Information on small business incubators shall include:

(1) Methods of funding without the expenditure of state tax dollars.

(2) Other possible sources of funds.

SEC. 2. Section 15383 of the Government Code, as added by Senate Bill 1255, is amended to read:

15383. (a) There is hereby created within the Department of Commerce, in the Office of Small Business, a California Small Business Development Center Program which shall operate according to a statewide plan developed by the department.

The plan shall describe the objectives of the program, the purpose of the centers,the geographical distribution of the centers based on need, the services to be provided to small businesses, the timetable for the operation of the center, how services will be delivered to the small business community, budget and cost considerations, and public and private financial support.

(b) The plan shall also describe how the SBDC will provide at least all of the following:

(1) Referrals and dissemination of information regarding such topics as legal requirements for starting a business, public and private financing opportunities, local business development profiles, site inventory, and listing of professional service providers.

(2) Specialized one-on-one counseling and technical assistance in the areas of business planning and management, financing, and marketing for small business with the greatest potential for job retention and creation.

(3) Regional workshops and conferences in cooperation with the department and local "how to" workshops, courses and seminars with local cosponsors such as community colleges, federal Minority Business Development Agency grantees, federal Small Business Administration, and Chambers of Commerce.

(4) Coordination with employee training and placement programs.

(5) Services whereby small businesses can be linked to research and development institutions for the purposes of transferring new technology to a new or expanding small business.

(6) Information on, and promotion of, small business incubators. As used in this subdivision, small business incubators means facilities that allow new small businesses to increase their probability of success by sharing needed capital equipment, services, and facilities. Information on small business incubators shall include:

(A) Methods of funding without the expenditure of state tax dollars.

(B) Other possible sources of funds.

SEC. 3. Section 2 of this bill shall become operative only if (1) both this bill and SB 1255 are enacted and become effective on or before January 1, 1989, (2) each bill affects Section 15383 of the Government Code, and (3) this bill is enacted after SB 1255, in which case Section 15383 of the Government Code, as enacted by SB 1255, 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 1261

An act to add and repeal Section 2884.2 of the Public Utilities Code, relating to telephones.

[Approved by Governor September 23, 1988. Filed with Secretary of State September 26, 1988.]

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

SECTION 1. Section 2884.2 is added to the Public Utilities Code, to read:

2884.2. (a) Except as specified in subdivision (b), the billing and collection practices of a telephone corporation for services rendered to or for an information provider engaged in furnishing any live or recorded video text or audio information service which contains harmful matter, as defined in subdivision (a) of Section 313 of the Penal Code, are not subject to the jurisdiction and control of the commission, notwithstanding Section 2884, but are a matter for contractual arrangement between the telephone corporation and the information provider.

(b) Nothing in subdivision (a) affects the commission's jurisdiction over billing and collection for services rendered to an information provider furnishing any other category of information service or for services rendered to or for any other class of subscriber.

(c) The commission may, on complaint or on its own motion, after a hearing, find and determine that circumstances including, but not limited to, anticompetitive results, require the exercise of jurisdiction and control by it over those matters removed from its jurisdiction and control by subdivision (a), and may then exercise that jurisdiction and control.

(d) Subdivision (a) applies only to that class of information-access telephone service furnished within a service area, as defined in Section 230.3, through the use of either a "976" prefix or a "900" access code telephone number, and applies only to billing and collection services in that class of service.

(e) The commission shall prepare and submit to the Legislature, on or before January 1, 1990, and annually thereafter, a report on all of the following:

(1) Any anticompetitive effects it finds and determines to have resulted from the implementation of this section.

(2) Any significant proposals for further deregulation made to the commission based on this section.

(3) The commission's findings and recommendations concerning the effectiveness and continuing need for this section.

(f) The commission may investigate and consider, for purposes of establishing telephone rates, revenues and expenses related to any billing or collection services rendered by a telephone corporation to or for an information provider.

(g) A telephone corporation shall, before refusing to provide billing and collection services for any information provider, give that information provider and the commission not less than 30 days' advance notice.

(h) If a telephone corporation elects to enter into a contractual arrangement to provide billing and collection services to an information provider, the telephone corporation shall provide those services to the information provider under the same terms, conditions, and rates that the service is offered to all other information providers contracting for the services. The telephone corporation shall provide copies of the contracts to the commission and, on request, to any other interested party.

(i) Notwithstanding Section 17024 of the Business and Professions Code, billing and collection services described in subdivision (a) are services subject to Part 2 (commencing with Section 16600) of Division 7 of that code. A person or firm claiming a violation of Section 17045 of that code, with respect to those services, may proceed in accordance with Article 4 (commencing with Section 17070) of Chapter 4 of Part 2 of Division 7 of that code, or pursue any other remedy available under law.

(j) This section shall become inoperative on July 1, 1991, and, as of January 1, 1992, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 1992, deletes or extends the dates on which it becomes inoperative and is repealed.

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.

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## CHAPTER 1262

An act to amend Section 43830 of the Health and Safety Code, relating to air pollution.

[Approved by Governor September 23, 1988 Filed with Secretary of State September 26, 1988 ]

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

SECTION 1. The Legislature determines that it is in the best interests of the public health and safety that ethyl alcohol be blended with gasoline to provide cleaner-burning automotive fuels. The addition of 10 percent ethyl alcohol to gasoline will provide significant reductions in exhaust hydrocarbon and carbon monoxide emissions.

SEC. 2. Section 43830 of the Health and Safety Code is amended

to read:

43830. (a) The state board shall establish, by regulation, maximum standards for the volatility of gasoline at nine pounds per square inch Reid vapor pressure as determined by the American Society for Testing and Materials, Test D 323-58, or by an appropriate test determined by the state board, for gasoline sold in this state.

(b) The state board, in adopting the regulations, shall give full consideration to topography and climatic conditions and may provide that the standards imposed thereby shall apply in those areas which the state board determines necessary in order to carry out the purposes of this division.

(c) Notwithstanding any other law or regulation, until October 1, 1993, any blend of gasoline of at least 10 percent ethyl alcohol shall not result in a violation of any regulation adopted by the state board pursuant to this section unless the volatility of the gasoline used in the blend exceeds the applicable standard of the state board.

(d) For the purposes of this section, "ethyl alcohol" (also known as ethanol) means fuel that meets all of the following requirements:

(1) It is produced from agricultural commodities, renewable resources, or coal.

(2) It is rendered unsuitable for human consumption at the time of its manufacture or immediately thereafter.

(e) For the purposes of determining the percentage of ethyl alcohol contained in gasoline, the volume of alcohol includes the volume of any denaturant approved for that purpose by the United States Bureau of Alcohol, Tobacco and Firearms, provided these denaturants do not exceed 5 percent of the volume of alcohol (including denaturants).

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## CHAPTER 1263

An act to amend Sections 11112.2 and 11112.7 of the Penal Code, relating to criminal justice, and making an appropriation therefor.

[Approved by Governor September 23, 1988. Filed with Secretary of State September 26, 1988.]

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

SECTION 1. Section 11112.2 of the Penal Code is amended to read:

11112.2. The department shall develop a master plan recommending the type, number, and location of equipment necessary to implement RAN. The department shall also develop policy guidelines and administrative procedures to facilitate the implementation and use of RAN. The RAN master plan shall include reasonable interface specifications to access Cal-ID and shall be provided to any supplier of automated fingerprint identification

systems interested in bidding on RAN by May 15, 1986.

The master plan shall provide for the use of facsimile and direct image "live read" fingerprint equipment under RAN, including point-of-booking terminals.

The department shall amend the master plan to include additional processing, matching, and communications equipment at the Department of Justice, and to recommend the type, number, and location of equipment necessary to implement facsimile and direct image "live read" fingerprint equipment as part of RAN, including point-of-booking terminals. Funding shall be on a shared basis between the state and a region pursuant to Section 11112.5.

SEC. 2. The sum of one million dollars ($1,000,000) is hereby appropriated from the Fingerprint Fees Account in the General Fund to the Department of Justice to provide the funding for purchases of the equipment and services to implement the system described in this act.

SEC. 3. Section 11112.7 of the Penal Code is amended to read:

11112.7. The Attorney General shall provide an annual status report to the Legislature beginning January 1, 1987, with the final report due January 1, 1990. The report shall include the status of the project to date, funds expended, and need, if any, for revision to the master plan.

SEC. 4. It is the intent of the Legislature that funding to purchase equipment for the remote access network serving the California Identification System be provided solely from the Fingerprint Fee Account in the General Fund through the Budget Act, commencing in the 1989–90 fiscal year.

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## CHAPTER 1264

An act to amend Section 23182 of the Vehicle Code, relating to driving offenses.

[Approved by Governor September 23, 1988. Filed with Secretary of State September 26, 1988.]

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

SECTION 1. Section 23182 of the Vehicle Code is amended to read:

23182. Any person who proximately causes bodily injury or death to more than one victim in any one instance of driving in violation of Section 23153 of this code or in violation of Section 191.5 or paragraph (3) of subdivision (c) of Section 192 of the Penal Code, shall, upon a felony conviction, receive an enhancement of one year in the state prison for each additional injured victim. The enhanced sentence provided for in this section shall not be imposed unless the fact of the bodily injury to each additional victim is charged in the

accusatory pleading and admitted or found to be true by the trier of fact. The maximum number of one year enhancements which may be imposed pursuant to this section is three.

Notwithstanding any other provision of law, the court may strike the enhancements provided in this section 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.

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## CHAPTER 1265

An act to amend Sections 231 and 8003 of the Financial Code, and to add Section 830.11 to the Penal Code, relating to investigators, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 23, 1988 Filed with Secretary of State September 26, 1988.]

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

SECTION 1. Section 231 of the Financial Code is amended to read:

231. The superintendent may employ deputies in addition to the chief deputy, and examiners, appraisers, technical assistants, investigators, administrative assistants, clerks, and other employees that he or she may need to discharge in a proper manner the duties imposed upon him or her by law. He or she shall prescribe their duties and fix their compensation in accordance with classifications made by the State Personnel Board. The superintendent may also, at those times and on those terms as may be approved by the Governor, employ those attorneys as he or she may need.

SEC. 2. Section 8003 of the Financial Code is amended to read:

8003. (a) The commissioner may appoint attorneys subject to the provisions of the California Constitution, and deputies, investigators, examiners, accountants, appraisers, and other employees that are required to properly discharge the duties imposed upon the commissioner by law. Appointments shall not terminate upon the appointment of a successor to the commissioner.

(b) The commissioner shall prescribe the powers and duties of persons appointed under this section. Their compensation shall be fixed, with the approval of the Department of Finance, in accordance with classifications made by the State Personnel Board.

SEC. 3. Section 830.11 is added to the Penal Code, to read:

830.11. (a) The following persons are not peace officers but may exercise the powers of arrest of a peace officer as specified in Section 836 and the power to serve warrants as specified in Sections 1523 and 1530 during the course and within the scope of their employment, if they receive a course in the exercise of those powers pursuant to

Section 832. The authority and powers of the persons designated under this section shall extend to any place in the state:

(1) Persons employed by the State Banking Department designated by the Superintendent of Banks, provided that the primary duty of those persons shall be the enforcement of, and investigations relating to, the provisions of law administered by the State Banking Department.

(2) Persons employed by the Department of Savings and Loan designated by the Commissioner of Savings and Loan, provided that the primary duty of those persons shall be the enforcement of, and investigations relating to, the provisions of law administered by the Department of Savings and Loan.

(3) Persons employed by the Department of Real Estate designated by the Real Estate Commissioner, provided that the primary duty of these persons shall be the enforcement of the laws set forth in Part 1 (commencing with Section 11000) of Division 4 of the Business and Professions Code. The Real Estate Commissioner may designate persons under this section, who at the time of their designation, are assigned to the Special Investigations Unit, internally known as the Crisis Response Team.

(b) Notwithstanding any other provision of law, persons designated pursuant to this section shall not carry firearms.

(c) Persons designated pursuant to this section shall be included as "peace officers of the state" under paragraph (2) of subdivision (c) of Section 11105 for the purpose of receiving state summary criminal history information and shall be furnished that information on the same basis as peace officers of the state designated in paragraph (2) of subdivision (c) of Section 11105.

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:

The 1988–89 Budget Bill provides the State Banking Department and the Department of Savings and Loan each with two investigator positions. In order that both departments achieve maximum benefit from the investigator positions relative to the laws each department administers it is necessary that this act go into immediate effect.

## CHAPTER 1266

An act to amend Section 11353.5 of the Health and Safety Code, relating to controlled substances.

[Approved by Governor September 23, 1988. Filed with Secretary of State September 26, 1988.]

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

SECTION 1. Section 11353.5 of the Health and Safety Code is amended to read:

11353.5. Except as authorized by law, any person 18 years of age or older who unlawfully prepares for sale upon school grounds or a public playground, or sells or gives away a controlled substance to a minor under the age of 18 years upon the grounds of, or within, any school providing instruction in kindergarten, or any of grades 1 through 12, inclusive, during hours in which the school is open for classes or school-related programs, or upon the grounds of a public playground during the hours in which school-related programs for minors are being conducted, shall be punished by imprisonment in the state prison for five, seven, or nine years. Application of this section shall be limited to persons at least five years older than the minor to whom he or she prepares for sale, sells, or gives away a controlled substance.

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.

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## CHAPTER 1267

An act to amend Section 5602 of, and to amend, repeal, and add Sections 12809, 22523, and 22524 of, the Vehicle Code, relating to vehicles, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 23, 1988. Filed with Secretary of State September 26, 1988.]

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

SECTION 1. Section 5602 of the Vehicle Code is amended to read:

5602. An owner who has made a bona fide sale or transfer of a vehicle and has delivered possession of the vehicle to a purchaser is

not, by reason of any of the provisions of this code, the owner of the vehicle so as to be subject to civil liability or criminal liability for the parking, abandoning, or operation of the vehicle thereafter by another when the owner, in addition to that delivery and that bona fide sale or transfer has fulfilled either of the following requirements:

(a) He or she has made proper endorsement and delivery of the certificate of ownership as provided in this code.

(b) He or she has delivered to the department or has placed in the United States mail, addressed to the department, either the notice as provided in Section 5900 or Section 5901 or appropriate documents and fees for registration of the vehicle to the new owner pursuant to the sale or transfer.

SEC. 2. Section 12809 of the Vehicle Code is amended to read:

12809. The department may refuse to issue or renew a driver's license to any person:

(a) If the department is satisfied that the applicant is not entitled to the license under this code.

(b) If the applicant has failed to furnish the department the information required in the application or reasonable additional information requested by the department.

(c) If the department determines that the applicant has made or permitted unlawful use of any driver's license.

(d) If the department determines that such person has knowingly used a false or fictitious name in any application for a license or has impersonated another in making application or in taking any test, or has knowingly made a false statement or knowingly concealed a material fact, or otherwise committed any fraud in any such application.

(e) If the department determines that the applicant is a negligent or incompetent operator of a motor vehicle.

(f) If the applicant is convicted of any offense involving the transportation for purpose of sale, or the transportation for compensation, of a controlled substance under Division 10 (commencing with Section 11000) of the Health and Safety Code, and the commission of such offense involved the use or operation of a motor vehicle.

If, however, the driving privilege of the applicant is on probation for a cause related to the use or possession of a narcotic controlled substance, the department may refuse to issue or renew a driver's license to such applicant if the applicant is subsequently convicted of any offense involving the use or possession of a narcotic controlled substance, whether or not the commission of such offense involved the use or operation of a motor vehicle.

The maximum period of time for which the department may refuse to issue or renew a driver's license to any person pursuant to this subdivision shall be three years from the date of conviction.

(g) If the applicant fails or refuses to surrender to the department, upon its lawful demand, a nonresident minor's certificate which has been canceled.

(h) This section shall remain in effect only until July 1, 1989, and as of that date is repealed.

SEC. 3. Section 12809 is added to the Vehicle Code, to read:

12809. The department may refuse to issue or renew a driver's license to any person:

(a) If the department is satisfied that the applicant is not entitled to the license under this code.

(b) If the applicant has failed to furnish the department the information required in the application or reasonable additional information requested by the department.

(c) If the department determines that the applicant has made or permitted unlawful use of any driver's license.

(d) If the department determines that the person has knowingly used a false or fictitious name in any application for a license or has impersonated another in making application or in taking any test, or has knowingly made a false statement or knowingly concealed a material fact, or otherwise committed any fraud in any application.

(e) If the department determines that the applicant is a negligent or incompetent operator of a motor vehicle.

(f) If the applicant is convicted of any offense involving the transportation for purpose of sale, or the transportation for compensation, of a controlled substance under Division 10 (commencing with Section 11000) of the Health and Safety Code, and the commission of the offense involved the use or operation of a motor vehicle.

If, however, the driving privilege of the applicant is on probation for a cause related to the use or possession of a narcotic controlled substance, the department may refuse to issue or renew a driver's license to the applicant if the applicant is subsequently convicted of any offense involving the use or possession of a narcotic controlled substance, whether or not the commission of the offense involved the use or operation of a motor vehicle.

The maximum period of time for which the department may refuse to issue or renew a driver's license to any person pursuant to this subdivision shall be three years from the date of conviction.

(g) If the applicant fails or refuses to surrender to the department, upon its lawful demand, a nonresident minor's certificate which has been canceled.

(h) If the applicant has failed to appear regarding a citation issued for vehicle abandonment as specified in Section 22523.

(i) This section shall become operative on July 1, 1989.

SEC. 4. Section 22523 of the Vehicle Code is amended to read:

22523. (a) No person shall abandon a vehicle upon any highway.

(b) No person shall abandon a vehicle upon public or private property without the express or implied consent of the owner or person in lawful possession or control of the property.

(c) Any person convicted of a violation of this section shall be punished by a fine of not less than one hundred dollars ($100). No part of any fine imposed shall be suspended. The fine may be paid

in installments if the court determines that the defendant is unable to pay the entire amount in one payment.

(d) This section shall remain in effect only until July 1, 1989, and as of that date is repealed.

SEC. 5. Section 22523 is added to the Vehicle Code, to read:

22523. (a) No person shall abandon a vehicle upon any highway.

(b) No person shall abandon a vehicle upon public or private property without the express or implied consent of the owner or person in lawful possession or control of the property.

(c) Any person convicted of a violation of this section shall be punished by a fine of not less than one hundred dollars ($100) and shall provide proof that the costs of removal and disposition of the vehicle have been paid. No part of any fine imposed shall be suspended. The fine may be paid in installments if the court determines that the defendant is unable to pay the entire amount in one payment.

(d) Proof that the costs of removal and disposition of the vehicle have been paid shall not be required if proof is provided to the court that the vehicle was stolen prior to abandonment. That proof may consist of a police report or other evidence acceptable to the court.

(e) In no case shall the costs required to be paid for removal and disposition of the vehicle exceed those for towing and seven days of storage.

(f) This section shall become operative on July 1, 1989.

SEC. 6. Section 22524 of the Vehicle Code is amended to read:

22524. (a) The abandonment of any vehicle in a manner as provided in Section 22523 shall constitute a prima facie presumption that the last registered owner of record, not having complied with the provisions of Section 5900, is responsible for such abandonment and is thereby liable for the cost of removal and disposition of the vehicle.

(b) This section shall remain in effect only until July 1, 1989, and as of that date is repealed.

SEC. 7. Section 22524 is added to the Vehicle Code, to read:

22524. (a) The abandonment of any vehicle in a manner as provided in Section 22523 shall constitute a prima facie presumption that the last registered owner of record is responsible for the abandonment and is thereby liable for the cost of removal and disposition of the vehicle.

(b) An owner who has made a bona fide sale or transfer of a vehicle and has delivered possession of the vehicle to a purchaser may overcome the presumption prescribed in subdivision (a) by demonstrating that he or she has complied with Section 5900 or providing other proof satisfactory to the court.

(c) This section shall become operative on July 1, 1989.

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 clarify provisions regarding the release of criminal and civil liability when a vehicle changes ownership, it is necessary that this act take effect immediately.

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## CHAPTER 1268

An act to amend Sections 4457, 4602, 5600, 5602, 5902, 5911, 6050, 9254, 9255, 9552, 9554, 9802, 9860, 9900, 9901, 9902, 9905, 9917, 24007, 38085, 38090, 38135, 38205, 38250, 38265, and 39001 of, and to add and repeal Section 9558.5 of, the Vehicle Code, relating to vehicles, and making an appropriation therefor.

[Approved by Governor September 23, 1988. Filed with Secretary of State September 26, 1988.]

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

SECTION 1. Section 4457 of the Vehicle Code is amended to read:

4457. If any registration card or license plate is stolen, lost, mutilated, or illegible, the owner of the vehicle for which the same was issued, as shown by the records of the department, shall immediately make application for and may, upon the applicant furnishing information satisfactory to the department, obtain a duplicate or a substitute or a new registration under a new registration number, as determined to be most advisable by the department. An application for a duplicate registration card is not required in conjunction with any other application.

SEC. 2. Section 4602 of the Vehicle Code is amended to read:

4602. Application for renewal of a vehicle registration shall be made by the owner not later than midnight of the expiration date, and shall be made by presentation of the registration card last issued for the vehicle or by presentation of a potential registration card issued by the department for use at the time of renewal and by payment of the full registration year fee for the vehicle as provided in this code. If the registration card and potential registration card are unavailable, a fee as specified in Section 9265 shall not be paid.

SEC. 3. Section 5600 of the Vehicle Code is amended to read:

5600. No transfer of the title or any interest in or to a vehicle registered under this code shall pass, and any attempted transfer shall not be effective, until the parties thereto have fulfilled either of the following requirements:

(a) The transferor has made proper endorsement and delivery of the certificate of ownership to the transferee as provided in this code and the transferee has delivered to the department or has placed the certificate in the United States mail addressed to the department when and as required under this code with the proper transfer fee, together with the amount required to be paid under Part 1

(commencing with Section 6001), Division 2 of the Revenue and Taxation Code with respect to the use by the transferee of the vehicle, and thereby makes application for a transfer of registration except as otherwise provided in Sections 5905, 5906, 5907, and 5908.

(b) The transferor has delivered to the department or has placed in the United States mail addressed to the department the appropriate documents for the registration or transfer of registration of the vehicle pursuant to the sale or transfer except as provided in Section 5602.

SEC. 4. Section 5602 of the Vehicle Code is amended to read:

5602. An owner who has made a bona fide sale or transfer of a vehicle and has delivered possession of the vehicle to a purchaser is not, by reason of any of the provisions of this code, the owner of the vehicle so as to be subject to civil liability or criminal liability for the parking, abandoning, or operation of the vehicle thereafter by another when the selling or transferring owner, in addition to that delivery and that bona fide sale or transfer has fulfilled either of the following requirements:

(a) He or she has made proper endorsement and delivery of the certificate of ownership as provided in this code.

(b) He or she has delivered to the department or has placed in the United States mail, addressed to the department, either the notice as provided in Section 5900 or Section 5901 or appropriate documents and fees for registration of the vehicle to the new owner pursuant to the sale or transfer.

SEC. 5. 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.

(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. 6. Section 5911 of the Vehicle Code is amended to read:

5911. Whenever application is made to the department for a transfer of registration of a vehicle to a new owner or legal owner and the applicant is unable to present the certificate of ownership issued for the vehicle by reason of the same being lost or otherwise not available, the department may receive the application and examine into the circumstances of the case and may require the filing of certifications or other information, and when the department is satisfied that the applicant is entitled to a transfer of registration the department may transfer the registration of the vehicle, or reregister

the vehicle under a new registration number, and issue a new certificate of ownership and registration card to the person or persons found to be entitled thereto. The department, however, shall not issue a new certificate of ownership and registration card to the applicant if the department has received notice by registered or certified mail in which it is indicated that the existing ownership certificate is being held for nonpayment of the vehicle. The notice may be forwarded by the registered owner, recorded lienholder, or by a person exempted from recording ownership by Section 5906.

SEC. 7. Section 6050 of the Vehicle Code is amended to read:

6050. The department upon receipt of a properly endorsed certificate of ownership and the required fee shall reregister the vehicle under its registration number in the name of the new owner and new legal owner, if any, and shall issue a new registration card and certificate of ownership as provided upon an original registration.

SEC. 8. Section 9254 of the Vehicle Code is amended to read:

9254. A service fee of ten dollars ($10) shall be paid to the department for a certificate of ownership issued without registration of the vehicle.

SEC. 9. Section 9255 of the Vehicle Code is amended to read:

9255. Upon application for the transfer of the title or any interest of an owner or legal owner in or to a vehicle registered under this code, or for which a certificate of ownership has been issued without registration under Section 4452, other than upon a transfer to a chattel mortgagee and other than upon a transfer to a transferee not required under this code to obtain the issuance to the owner of a new certificate of ownership and registration card, there shall be paid the following fees:

| | |
|---|---|
| (a) For a transfer by the owner | $9 |
| (b) For a transfer by the legal owner | 9 |
| (c) When application is presented showing a transfer by both the owner and legal owner ..... Total Fee | 9 |

SEC. 10. Section 9552 of the Vehicle Code is amended to read:

9552. (a) Whenever any vehicle is operated upon any highway of this state without the registration fee having first been paid as required by this code that fee is delinquent.

(b) Whenever any person has received as transferee a properly endorsed certificate of ownership and the transfer fee has not been paid as required by this code within 10 days, the fee is delinquent.

(c) Whenever any person becomes an automobile dismantler, dealer, manufacturer, manufacturer branch, distributor, distributor branch, or transporter without first having paid the license and special plate fees as required by this code, the fees are delinquent.

SEC. 11. Section 9554 of the Vehicle Code is amended to read:

9554. (a) The penalty shall be computed as provided in Sections 9406 and 9559 and shall be collected with the fee, except that the

penalty for deliquency with respect to any transfer is ten dollars ($10), and applies only to the last transfer.

(b) A penalty shall be added on any application for original or renewal of registration made later than midnight of the date of expiration or on or after the date penalties become due. The penalty shall be computed after the registration and weight fees have been combined with the license fee specified in Section 10751 of the Revenue and Taxation Code.

(c) For a delinquency period of one year or less, the penalty is 20 percent of the fee.

(d) For a delinquency period of more than one year to and including two years, the penalty is 40 percent of the fee.

(e) For a delinquency period of more than two years, the penalty is 80 percent of the fee.

SEC. 11.5. Section 9558.5 is added to the Vehicle Code, to read:

9558.5. (a) The department shall establish a pilot program for the acceptance of credit cards as a method of paying specified fees due to the department. The pilot program shall be conducted at the site or sites of one or more departmental telephone service units in conjunction with the receipt of payments to obtain or replace registration indicia, to replace drivers' licenses and identification cards, and to deposit fees on incomplete applications.

(b) The pilot program shall be implemented as soon as possible, but not later than July 1, 1989.

(c) The department shall submit an interim report on or before December 31, 1990, and shall submit a final report and recommendations to the Legislature on or before December 31, 1991. The report shall address any and all costs to the department, and any impact on customer service, fiscal advantages associated with the faster collection of revenue and greater fund security, and impact on compliance with registration laws.

(d) This section shall remain in effect only until January 1, 1992, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1992, deletes or extends that date.

SEC. 12. Section 9802 of the Vehicle Code is amended to read:

9802. (a) The Registrar of Vehicles or authorized representative shall conduct the sale in the same manner as provided by law for the seizure and sale of personal property by the assessor for the collection of taxes due on personal property.

(b) The department may bid for the vehicle an amount equal to the lien held by the department for registration, transfer, and license fees, use taxes, bail, and any interest, penalties, and costs added thereto. In all cases where the vehicle becomes the property of the department, it shall be reduced to junk and sold.

(c) The proceeds of any sale shall be allocated by the department for the following purposes and in the following order:

(1) Costs incurred by the department.

(2) Registration and transfer fees and any penalty added thereto.

(3) License fees and any penalty added thereto.

(4) Use taxes and any interest or penalty added thereto.

(5) Perfected mechanics' liens.

(6) Perfected security interests.

(7) Bail for offenses relating to the standing or parking of a vehicle and any administrative service fee added thereto.

(8) All other fees due the department.

(9) Any remainder to the person whose claim of interest in the vehicle is approved by the department.

(d) Notwithstanding Section 42270, the proceeds of a sale allocated pursuant to paragraphs (4) to (9), inclusive, of subdivision (c) shall not be transmitted to the Treasurer for deposit in the Motor Vehicle Account in the State Transportation Fund.

(e) The department shall transmit to the State Board of Equalization all use taxes, interest, and penalties collected under this article within 60 days after receipt thereof in the form which may be prescribed and approved jointly by the department and the board.

SEC. 13. Section 9860 of the Vehicle Code is amended to read:

9860. Certificates of number shall be renewed before midnight of the expiration date every year by presentation of the certificate of number last issued for the vessel or by presentation of a potential registration card issued by the department. The fee for renewal shall be five dollars ($5) per year and shall accompany the request for renewal. If the certificate of number and potential registration card are unavailable, a fee as specified in Section 9867 shall not be paid.

SEC. 14. Section 9900 of the Vehicle Code is amended to read:

9900. No transfer of the title or any interest in or to an undocumented vessel numbered under this code shall pass, and any attempted transfer shall not be effective, until the parties thereto have fulfilled either of the following requirements:

(a) The transferor has made proper endorsement and delivery of the certificate of ownership to the transferee as provided in this code and the transferee has delivered to the department or has placed the certificates in the United States mail addressed to the department when and as required under this code with the proper transfer fee and thereby makes application for a new certificate of ownership and a new certificate of number.

(b) The transferor has delivered to the department or has placed in the United States mail addressed to the department the appropriate documents for the transfer of ownership of the vessel pursuant to the sale or transfer except as otherwise provided.

SEC. 15. Section 9901 of the Vehicle Code is amended to read:

9901. Whenever any person has received as transferee a properly endorsed certificate of ownership he or she shall within 10 days thereafter file the certificates accompanied by a fee of eight dollars ($8) with the department, and thereby make application for a certificate of ownership and certificate of number.

SEC. 16. Section 9902 of the Vehicle Code is amended to read:

9902. The department, upon receipt of a properly endorsed certificate of ownership and a new application form and the required

fee, shall issue a new certificate of ownership and a new certificate of number in the same manner as provided for in the initial issuance of number and the number may be reassigned to the new owner, provided, however, in the case of a transfer of a part interest which does not affect the owner's right to operate such undocumented vessel the transfer shall not terminate the certificate of number.

SEC. 17. Section 9905 of the Vehicle Code is amended to read:

9905. An owner who has made a bona fide sale or transfer of an undocumented vessel and has delivered possession thereof to a purchaser shall not by reason of any of the provisions of this code or of the Harbors and Navigation Code be deemed the owner of the vessel so as to be subject to civil liability for the operation of the vessel thereafter by another when the owner in addition to the foregoing has fulfilled both of the following requirements:

(a) When he or she has made proper endorsement and delivery of the certificate of ownership as provided in this code.

(b) When he or she has delivered to the department or has placed in the United States mail, addressed to the department, either the notice as provided in Section 9911 and Section 9912 or appropriate documents for transfer of the vessel pursuant to the sale or transfer.

SEC. 18. Section 9917 of the Vehicle Code is amended to read:

9917. Whenever application is made to the department for a transfer of ownership of a vessel to a new owner or legal owner and the applicant is unable to present the certificate of ownership issued for the vessel by reason of the same being lost or otherwise not available, the department may receive the application and examine into the circumstances of the case and may require the filing of affidavits or other information, and when the department is satisfied that the applicant is entitled to a transfer of ownership, the department may transfer the ownership of the vessel, and issue a new certificate of ownership, and certificate of number to the person or persons found to be entitled thereto.

SEC. 18.5. Section 24007 of the Vehicle Code is amended to read:

24007. (a) No dealer or person holding a retail seller's permit shall sell a new or used vehicle which is not in compliance with this code and departmental regulations adopted pursuant to this code, unless the vehicle is sold to another dealer, sold for the purpose of being wrecked or dismantled, or sold exclusively for off-highway use.

(b) (1) Except as provided in Section 24007.5, no person shall sell, or offer or deliver for sale, to the ultimate purchaser or to any subsequent purchaser a new or used motor vehicle, as those terms are defined in Chapter 2 (commencing with Section 39010) of Part 1 of Division 26 of the Health and Safety Code, subject to Part 5 (commencing with Section 43000) of that Division 26 which is not in compliance with that Part 5 and the rules and regulations of the State Air Resources Board, unless the vehicle is either sold to a dealer, or sold for the purpose of being wrecked or dismantled.

(2) Prior to or at the time of delivery for sale, the seller shall provide the purchaser a valid certificate of compliance or certificate

of noncompliance as appropriate, issued in accordance with Section 44015 of the Health and Safety Code.

(c) (1) With each application for initial registration of a new motor vehicle or transfer of registration of a motor vehicle subject to that Part 5, a dealer, the purchaser, or his or her authorized representative, shall transmit to the Department of Motor Vehicles a valid certificate of compliance or noncompliance, as appropriate, issued in accordance with Section 44015 of the Health and Safety Code.

(2) Notwithstanding paragraph (1) of this subdivision, with respect to new vehicles certified pursuant to Chapter 2 (commencing with Section 43100) of Part 5 of Division 26 of the Health and Safety Code, a dealer may transmit, in lieu of a certificate of compliance, a statement, in a form and containing information deemed necessary and appropriate by the Director of Motor Vehicles and the Executive Officer of the State Air Resources Board, to attest to the vehicles compliance with that Chapter 2. The statement shall be certified under penalty of perjury, and shall be signed by the dealer or the dealer's authorized representative.

SEC. 19. Section 38085 of the Vehicle Code is amended to read:

38085. (a) Every owner upon receipt of an identification certificate shall maintain the same or a facsimile copy thereof with the vehicle for which it is issued at all times when the vehicle is operated or transported.

(b) The provisions of this section do not apply when an identification certificate is removed from the vehicle for the purpose of application for renewal or transfer of identification.

SEC. 20. Section 38090 of the Vehicle Code is amended to read:

38090. If any identification certificate or identification plate or device is stolen, lost, mutilated or illegible, the owner of the vehicle for which the same was issued, as shown by the records of the department, shall immediately make application for and may, upon furnishing information satisfactory to the department, obtain a duplicate or substitute or a new identification under a new number, as determined to be most advisable by the department. An application for a duplicate identification certificate is not required in conjunction with any other application.

SEC. 21. Section 38135 of the Vehicle Code is amended to read:

38135. The department may, upon renewing of an identification of off-highway motor vehicles subject to identification, issue a new identification certificate or may endorse or authorize the endorsement of a receipt or validation upon payment of the required fees. The receipt or validation to be stamped upon the identification certificate last issued for the vehicle during the preceding period, or upon a potential identification certificate issued near the close of the preceding period, which identification certificate so endorsed or validated shall constitute the identification certificate for the ensuing two-year period. If the identification certificate and potential identification certificate are unavailable, a fee as specified in Section

38260 shall not be paid.

SEC. 22. 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.

SEC. 23. Section 38250 of the Vehicle Code is amended to read:

38250. Whenever any person has received as transferee a properly endorsed certificate of ownership and the transfer fee has not been paid as required by this division within 10 days, the fee is delinquent.

SEC. 24. Section 38265 of the Vehicle Code is amended to read:

38265. (a) The penalty for delinquency in respect to any transfer shall be ten dollars ($10), and shall apply only to the last transfer.

(b) The penalty for delinquency in respect to the fees imposed by Sections 38225 and 38230 shall be equal to one-half the fee after it has been computed.

SEC. 25. Section 39001 of the Vehicle Code is amended to read:

39001. (a) The department shall procure and distribute bicycle license indicia and registration forms to all counties and cities which have adopted a bicycle licensing ordinance or resolution. Those counties and cities shall issue the indicia and registration form to the owner of any new bicycle, and may, upon request of the owner, issue an indicia and registration form to the owner of any bicycle which complies with Section 39007.

The department shall charge and collect a fee, not to exceed the cost of procuring and distributing the license indicia and registration form, for each bicycle license indicia and registration form issued. All fees collected pursuant to this section shall be deposited in the Motor Vehicle Account in the State Transportation Fund. Those fees are hereby continuously appropriated from the account for use by the department to defray costs to procure and distribute the bicycle license indicia and registration forms.

(b) The director shall design the bicycle license indicia and registration form described in subdivision (a), and shall establish procedures for the distribution of the indicia and registration form to counties and cities. The indicia shall be adhesive, durable, flexible, and of a size to permit it to be affixed to the front of the seat tube of the bicycle frame. Each indicia shall bear a unique license number and shall be permanently assigned to a bicycle. Each registration form shall comply with Section 39005.

(c) Bicycle licenses shall be renewed uniformly throughout the state on January 1 of the third year following the year of registration. Renewal of a bicycle license shall be indicated by a supplementary adhesive device affixed parallel to, and above or below, the indicia, with the expiration date showing.

SEC. 26. The State Bicycle License Registration Fund is hereby

abolished, and any moneys remaining in that fund are hereby transferred to the Motor Vehicle Account in the State Transportation Fund.

SEC. 27. Sections 25 and 26 of this act shall become operative on July 1, 1989.

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## CHAPTER 1269

An act to amend Sections 12001, 12001.5, 12020, and 12029 of, and to repeal and add Article 6 (commencing with Section 12095) of Title 2 of Part 4 of, the Penal Code, and to amend Section 8104 of the Welfare and Institutions Code, relating to crimes.

[Approved by Governor September 23, 1988 Filed with Secretary of State September 26, 1988.]

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

SECTION 1. Section 12001 of the Penal Code, as amended by Chapter 163 of the Statutes of 1988, is amended to read:

12001. (a) As used in this chapter, the terms "pistol," "revolver," and "firearm capable of being concealed upon the person" shall apply to and include any device, designed to be used as a weapon, from which is expelled a projectile by the force of any explosion, or other form of combustion, and which has a barrel less than 16 inches in length. These terms also include any device which has a barrel 16 inches or more in length which is designed to be interchanged with a barrel less than 16 inches in length.

(b) As used in Sections 12021, 12021.1, 12070, 12072, and 12073 of this code, and Sections 8100 and 8103 of the Welfare and Institutions Code, the terms "pistol," "revolver," and "firearm capable of being concealed upon the person" include the frame or receiver of any such weapon.

(c) For the purpose of Sections 12025 and 12031 the term "firearm" shall also include any rocket, rocket propelled projectile launcher or similar device containing any explosive or incendiary material whether or not such device is designed for emergency or distress signaling purposes.

(d) For purposes of Sections 12070, 12071, and subdivisions (c) and (d) of Section 12072, the terms "pistol," "revolver," or "firearm capable of being concealed upon the person" do not include an unloaded firearm which is defined as an "antique firearm" in Section 921(a)(16) of Title 18 of the United States Code or a curio, or relic, as defined in Section 178.11 of Title 27 of the Code of Federal Regulations if the antique, curio, or relic is not designed or redesigned to fire rimfire or conventional center fire fixed ammunition.

(e) Nothing shall prevent a device defined as a "pistol,"

"revolver," or "firearm capable of being concealed upon the person" from also being found to be a short-barreled shotgun or a short-barreled rifle, as defined in Section 12020.

SEC. 1.1. Section 12001.5 of the Penal Code is amended to read:

12001.5. Except as expressly provided in Section 12020, and solely in accordance with Section 12020, no person may manufacture, import into this state, keep for sale, offer for sale, give, lend, or possess any short-barreled shotgun or short-barreled rifle, as defined in Section 12020, and nothing else in this chapter shall be construed as authorizing the manufacture, importation into the state, keeping for sale, offering for sale, or giving, lending, or possession of any short-barreled shotgun or short-barreled rifle, as defined in Section 12020.

SEC. 2. Section 12020 of the Penal Code is amended to read:

12020. (a) Any person in this state who manufactures or causes to be manufactured, imports into the state, keeps for sale, or offers or exposes for sale, or who gives, lends, or possesses any cane gun or wallet gun, any firearm which is not immediately recognizable as a firearm, any camouflaging firearm container, any ammunition which contains or consists of any flechette dart, any bullet containing or carrying an explosive agent, any ballistic knife, any short-barreled shotgun, any short-barreled rifle, any nunchaku, any metal knuckles, any shuriken, or any instrument or weapon of the kind commonly known as a blackjack, slungshot, billy, sandclub, or sandbag, or who carries concealed upon his or her person any explosive substance, other than fixed ammunition or who carries concealed upon his or her person any dirk or dagger, is guilty of a felony, and upon conviction shall be punishable by imprisonment in the county jail not exceeding one year or in a state prison. A bullet containing or carrying an explosive agent is not a destructive device as that term is used in Section 12301.

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

(1) The sale to, purchase by, or possession of short-barreled shotguns or short-barreled rifles, by police departments, sheriffs' offices, city marshals' offices, the California Highway Patrol, the Department of Justice, or the military or naval forces of this state or of the United States for use in the discharge of their official duties or the possession of short-barreled shotguns and short-barreled rifles by regular, salaried, full-time members of a police department, sheriffs' office, city marshals' office, the California Highway Patrol, or the Department of Justice when on duty and the use is authorized by the agency and is within the course and scope of their duties.

(2) The manufacture, possession, transportation, or sale of short-barreled shotguns or short-barreled rifles when authorized by the Department of Justice pursuant to Article 6 (commencing with Section 12095) of this chapter and not in violation of federal law.

(3) The possession of a nunchaku on the premises of a school which holds a regulatory or business license and teaches the arts of self-defense.

(4) The manufacture of a nunchaku for sale to, or the sale of a nunchaku to, a school which holds a regulatory or business license and teaches the arts of self-defense.

(5) Any antique firearm. For purposes of this section, "antique firearm" means any firearm not designed or redesigned for using rim fire or conventional center fire ignition with fixed ammunition and manufactured in or before 1898 (including any matchlock, flintlock, percussion cap, or similar type of ignition system or replica thereof, whether actually manufactured before or after the year 1898) and also any firearm using fixed ammunition manufactured in or before 1898, for which ammunition is no longer manufactured in the United States and is not readily available in the ordinary channels of commercial trade.

(6) Tracer ammunition manufactured for use in shotguns.

(7) Any firearm or ammunition which is a curio or relic as defined in Section 178.11 of Title 27 of the Code of Federal Regulations and which is in the possession of a person permitted to possess such items pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto. Any person prohibited by Section 12021 or 12021.5 of this code or Section 8103 of the Welfare and Institutions Code from possessing such firearms or ammunition who obtains title to such items by bequest or intestate succession may retain title for not more than one year, but actual possession of such items at any time shall be punishable pursuant to Section 12021 or 12021.5 of this code or Section 8103 of the Welfare and Institutions Code. Within such year the person shall transfer title to such firearms or ammunition by sale, gift, or other disposition. Any person who violates this paragraph is in violation of subdivision (a).

(8) Any other weapon as defined in subsection (e) of Section 5845 of Title 26 of the United States Code and which is in the possession of a person permitted to possess the weapons pursuant to the federal Gun Control Act of 1968 (Public Law 90-618), as amended, and the regulations issued pursuant thereto. Any person prohibited by Section 12021 or 12021.5 of this code or Section 8103 of the Welfare and Institutions Code from possessing these weapons who obtains title to these weapons by bequest or intestate succession may retain title for not more than one year, but actual possession of these weapons at any time is punishable pursuant to Section 12021 or 12021.5 of this code or Section 8103 of the Welfare and Institutions Code. Within that year the person shall transfer title to the weapons by sale, gift, or other disposition. Any person who violates this paragraph is in violation of subdivision (a). The exemption provided in this subdivision does not apply to pen guns.

(9) The sale to, possession of, or purchase of, any weapon, device, or ammunition, other than a short-barreled rifle or short-barreled shotgun, by any federal, state, county, city and county, or city agency that is charged with the enforcement of any law for use in the discharge of their official duties, or the possession of any weapon,

device, or ammunition, other than short-barreled rifles and shotguns, when on duty and the use is authorized by the agency and is within the course and scope of their duties.

(10) Weapons, devices, and ammunition, other than short-barreled rifles and short-barreled shotguns, that are sold by, manufactured by, exposed, or kept for sale by, possessed by, imported by, or lent by, persons who are in the business of selling weapons, devices, and ammunition listed in subdivision (a) solely to the entities referred to in paragraph (9) when engaging in transactions with those entities.

(11) The manufacture for, sale to, exposing or keeping for sale to, importation of, or lending of, wooden clubs or batons to special police officers or uniformed security guards authorized to carry any wooden club or baton pursuant to Section 12002 by entities that are in the business of selling wooden batons or clubs to special police officers and uniformed security guards when engaging in transactions with those persons.

(c) (1) As used in this section, a "short-barreled shotgun" means any of the following:

(A) A firearm which is designed or redesigned to fire a fixed shotgun shell and having a barrel or barrels of less than 18 inches in length.

(B) A firearm which has an overall length of less than 26 inches and which is designed or redesigned to fire a fixed shotgun shell.

(C) Any weapon made from a shotgun (whether by alteration, modification, or otherwise) if that weapon, as modified, has an overall length of less than 26 inches or a barrel or barrels of less than 18 inches in length.

(D) Any device which may be readily restored to fire a fixed shotgun shell which, when so restored, is a device defined in subparagraphs (A) to (C), inclusive.

(E) Any part, or combination of parts, designed and intended to convert a device into a device defined in subparagraphs (A) to (C), inclusive, or any combination of parts from which a device defined in subparagraphs (A) to (C), inclusive, can be readily assembled if those parts are in the possession or under the control of the same person.

(2) As used in this section, a "short-barreled rifle" means any of the following:

(A) A rifle having a barrel or barrels of less than 16 inches in length.

(B) A rifle with an overall length of less than 26 inches.

(C) Any weapon made from a rifle (whether by alteration, modification, or otherwise) if that weapon as modified has an overall length of less than 26 inches or a barrel or barrels of less than 16 inches in length.

(D) Any device which may be readily restored to fire a fixed cartridge which, when so restored, is a device defined in subparagraphs (A) to (C), inclusive.

(E) Any part, or combination of parts, designed and intended to convert a device into a device defined in subparagraphs (A) to (C), inclusive, or any combination of parts from which a device defined in subparagraphs (A) to (C), inclusive, may be readily assembled if those parts are in the possession or under the control of the same person.

(3) As used in this section, a "nunchaku" means an instrument consisting of two or more sticks, clubs, bars or rods to be used as handles, connected by a rope, cord, wire or chain, in the design of a weapon used in connection with the practice of a system of self-defense such as karate.

(4) As used in this section, a "wallet gun" means any firearm mounted or enclosed in a case, resembling a wallet, designed to be or capable of being carried in a pocket or purse, if such firearm may be fired while mounted or enclosed in such case.

(5) As used in this section, a "cane gun" means any firearm mounted or enclosed in a stick, staff, rod, crutch or similar device, designed to be or capable of being used as an aid in walking, if such firearm may be fired while mounted or enclosed therein.

(6) As used in this section, a "flechette dart" means a dart, capable of being fired from a firearm, which measures approximately one inch in length, with tail fins which take up five-sixteenths of an inch of the body.

(7) As used in this section, "metal knuckles" means any device or instrument made wholly or partially of metal which is worn for purposes of offense or defense in or on the hand and which either protects the wearer's hand while striking a blow or increases the force of impact from the blow or injury to the individual receiving the blow. The metal contained in the device may help support the hand or fist, provide a shield to protect it, or consist of projections or studs which would contact the individual receiving a blow.

(8) As used in this section, "ballistic knife" means a device that propels a knife-like blade as a projectile by means of a coil spring, elastic material, or compressed gas. Ballistic knife does not include any device which propels an arrow or a bolt by means of any common bow, compound bow, crossbow, or underwater spear gun.

(9) As used in this section, "camouflaging firearm container" means a container which meets all of the following:

(A) It is designed and intended to enclose a firearm.

(B) It is designed and intended to allow the firing of the enclosed firearm by external controls while the firearm is in the container.

(C) It is not readily recognizable as containing a firearm.

"Camouflaging firearm container" does not include any camouflaging covering used while engaged in lawful hunting or while going to or returning from a lawful hunting expedition.

(10) As used in this section, the term "rifle" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed cartridge to fire only a

single projectile through a rifled bore for each single pull of the trigger.

(11) As used in this section, the term "shotgun" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed shotgun shell to fire through a smooth bore either a number or projectiles (ball shot) or a single projectile for each pull of the trigger.

(12) As used in this section, the term "shuriken" means any instrument, without handles, consisting of a metal plate having three or more radiating points with one or more sharp edges and designed in the shape of a polygon, trefoil, cross, star, diamond, or other geometric shape for use as a weapon for throwing.

(d) Knives carried in sheaths which are worn openly suspended from the waist of the wearer are not concealed within the meaning of this section.

SEC. 2.5. Section 12020 of the Penal Code is amended to read:

12020. (a) Any person in this state who manufactures or causes to be manufactured, imports into the state, keeps for sale, or offers or exposes for sale, or who gives, lends, or possesses any cane gun or wallet gun, any firearm which is not immediately recognizable as a firearm, any camouflaging firearm container, any ammunition which contains or consists of any flechette dart, any bullet containing or carrying an explosive agent, any ballistic knife, any short-barreled shotgun, any short-barreled rifle, any metal knuckles, any belt buckle knife, any leaded cane, any zip gun, any shuriken, any unconventional pistol, any lipstick case knife, any cane sword, any shobi-zue, any air gauge knife, any writing pen knife, or any instrument or weapon of the kind commonly known as a blackjack, slungshot, billy, nunchaku, sandclub, sap, or sandbag, or who carries concealed upon his or her person any explosive substance, other than fixed ammunition or who carries concealed upon his or her person any dirk or dagger, is guilty of a felony, and upon conviction shall be punishable by imprisonment in the county jail not exceeding one year or in a state prison. A bullet containing or carrying an explosive agent is not a destructive device as that term is used in Section 12301.

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

(1) The sale to, purchase by, or possession of short-barreled shotguns or short-barreled rifles, by police departments, sheriffs' offices, city marshals' offices, the California Highway Patrol, the Department of Justice, or the military or naval forces of this state or of the United States for use in the discharge of their official duties or the possession of short-barreled shotguns and short-barreled rifles by regular, salaried, full-time members of a police department, sheriff's office, city marshal's office, the California Highway Patrol, or the Department of Justice when on duty and the use is authorized by the agency and is within the course and scope of their duties.

(2) The manufacture, possession, transportation or sale of short-barreled shotguns or short-barreled rifles when authorized by

the Department of Justice pursuant to Article 6 (commencing with Section 12095) of this chapter and not in violation of federal law.

(3) The possession of a nunchaku on the premises of a school which holds a regulatory or business license and teaches the arts of self-defense.

(4) The manufacture of a nunchaku for sale to, or the sale of a nunchaku to, a school which holds a regulatory or business license and teaches the arts of self-defense.

(5) Any antique firearm. For purposes of this section, "antique firearm" means any firearm not designed or redesigned for using rim fire or conventional center fire ignition with fixed ammunition and manufactured in or before 1898 (including any matchlock, flintlock, percussion cap, or similar type of ignition system or replica thereof, whether actually manufactured before or after the year 1898) and also any firearm using fixed ammunition manufactured in or before 1898, for which ammunition is no longer manufactured in the United States and is not readily available in the ordinary channels of commercial trade.

(6) Tracer ammunition manufactured for use in shotguns.

(7) Any firearm or ammunition which is a curio or relic as defined in Section 178.11 of Title 27 of the Code of Federal Regulations and which is in the possession of a person permitted to possess such items pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto. Any person prohibited by Section 12021 or 12021.5 of this code or Section 8103 of the Welfare and Institutions Code from possessing such firearms or ammunition who obtains title to such items by bequest or intestate succession may retain title for not more than one year, but actual possession of such items at any time shall be punishable pursuant to Section 12021 or 12021.5 of this code or Section 8103 of the Welfare and Institutions Code. Within such year the person shall transfer title to such firearms or ammunition by sale, gift, or other disposition. Any person who violates this paragraph is in violation of subdivision (a).

(8) Any other weapon as defined in subsection (e) of Section 5845 of Title 26 of the United States Code and which is in the possession of a person permitted to possess the weapons pursuant to the federal Gun Control Act of 1968 (Public Law 90-618), as amended, and the regulations issued pursuant thereto. Any person prohibited by Section 12021 or 12021.5 of this code or Section 8103 of the Welfare and Institutions Code from possessing these weapons who obtains title to these weapons by bequest or intestate succession may retain title for not more than one year, but actual possession of these weapons at any time is punishable pursuant to Section 12021 or 12021.5 of this code or Section 8103 of the Welfare and Institutions Code. Within that year the person shall transfer title to the weapons by sale, gift, or other disposition. Any person who violates this paragraph is in violation of subdivision (a). The exemption provided in this subdivision does not apply to pen guns.

(9) Instruments or devices that are possessed by federal, state, and local historical societies, museums, and institutional collections which are open to the public, provided that these instruments or devices are properly housed, secured from unauthorized handling, and, if the instrument or device is a firearm, unloaded.

(10) Instruments or devices, other than short-barreled shotguns or short-barreled rifles, that are possessed or utilized during the course of a motion picture, television, or video production or entertainment event by an authorized participant therein in the course of making that production or event or by an authorized employee or agent of the entity producing that production or event.

(11) Instruments or devices, other than short-barreled shotguns or short-barreled rifles, that are sold by, manufactured by, exposed or kept for sale by, possessed by, imported by, or lent by persons who are in the business of selling instruments or devices listed in subdivision (a) solely to the entities referred in paragraphs (9) and (10) when engaging in transactions with those entities.

(12) The sale to, possession of, or purchase of, any weapon, device, or ammunition, other than a short-barreled rifle or short-barreled shotgun, by any federal, state, county, city and county, or city agency that is charged with the enforcement of any law for use in the discharge of their official duties, or the possession of any weapon, device, or ammunition, other than short-barreled rifles and shotguns, when on duty and the use is authorized by the agency and is within the course and scope of their duties.

(13) Weapons, devices, and ammunition, other than short-barreled rifles and short-barreled shotguns, that are sold by, manufactured by, exposed, or kept for sale by, possessed by, imported by, or lent by, persons who are in the business of selling weapons, devices, and ammunition listed in subdivision (a) solely to the entities referred to in paragraph (12) when engaging in transactions with those entities.

(14) The manufacture for, sale to, exposing or keeping for sale to, importation of, or lending of, wooden clubs or batons to special police officers or uniformed security guards authorized to carry any wooden club or baton pursuant to Section 12002 by entities that are in the business of selling wooden batons or clubs to special police officers and uniformed security guards when engaging in transactions with those persons.

(c) (1) As used in this section, a "short-barreled shotgun" means any of the following:

(A) A firearm which is designed or redesigned to fire a fixed shotgun shell and having a barrel or barrels of less than 18 inches in length.

(B) A firearm which has an overall length of less than 26 inches and which is designed or redesigned to fire a fixed shotgun shell.

(C) Any weapon made from a shotgun (whether by alteration, modification, or otherwise) if that weapon, as modified, has an overall length of less than 26 inches or a barrel or barrels of less than

18 inches in length.

(D) Any device which may be readily restored to fire a fixed shotgun shell which, when so restored, is a device defined in subparagraphs (A) to (C), inclusive.

(E) Any part, or combination of parts, designed and intended to convert a device into a device defined in subparagraphs (A) to (C), inclusive, or any combination of parts from which a device defined in subparagraphs (A) to (C), inclusive, can be readily assembled if those parts are in the possession or under the control of the same person.

(2) As used in this section, a "short-barreled rifle" means any of the following:

(A) A rifle having a barrel or barrels of less than 16 inches in length.

(B) A rifle with an overall length of less than 26 inches.

(C) Any weapon made from a rifle (whether by alteration, modification, or otherwise) if that weapon as modified has an overall length of less than 26 inches or a barrel or barrels of less than 16 inches in length.

(D) Any device which may be readily restored to fire a fixed cartridge which, when so restored, is a device defined in subparagraphs (A) to (C), inclusive.

(E) Any part, or combination of parts, designed and intended to convert a device into a device defined in subparagraphs (A) to (C), inclusive, or any combination of parts from which a device defined in subparagraphs (A) to (C), inclusive, may be readily assembled if those parts are in the possession or under the control of the same person.

(3) As used in this section, a "nunchaku" means an instrument consisting of two or more sticks, clubs, bars or rods to be used as handles, connected by a rope, cord. wire or chain, in the design of a weapon used in connection with the practice of a system of self-defense such as karate.

(4) As used in this section, a "wallet gun" means any firearm mounted or enclosed in a case, resembling a wallet, designed to be or capable of being carried in a pocket or purse, if such firearm may be fired while mounted or enclosed in such case.

(5) As used in this section, a "cane gun" means any firearm mounted or enclosed in a stick, staff, rod, crutch or similar device, designed to be or capable of being used as an aid in walking, if such firearm may be fired while mounted or enclosed therein.

(6) As used in this section, a "flechette dart" means a dart, capable of being fired from a firearm, which measures approximately one inch in length, with tail fins which take up five-sixteenths of an inch of the body.

(7) As used in this section, "metal knuckles" means any device or instrument made wholly or partially of metal which is worn for purposes of offense or defense in or on the hand and which either protects the wearer's hand while striking a blow or increases the

force of impact from the blow or injury to the individual receiving the blow. The metal contained in the device may help support the hand or fist, provide a shield to protect it, or consist of projections or studs which would contact the individual receiving a blow.

(8) As used in this section, "ballistic knife" means a device that propels a knife-like blade as a projectile by means of a coil spring, elastic material, or compressed gas. Ballistic knife does not include any device which propels an arrow or a bolt by means of any common bow, compound bow, crossbow, or underwater spear gun.

(9) As used in this section, "camouflaging firearm container" means a container which meets all of the following:

(A) It is designed and intended to enclose a firearm.

(B) It is designed and intended to allow the firing of the enclosed firearm by external controls while the firearm is in the container.

(C) It is not readily recognizable as containing a firearm.

"Camouflaging firearm container" does not include any camouflaging covering used while engaged in lawful hunting or while going to or returning from a lawful hunting expedition.

(10) As used in this section, a "zip gun" means any weapon or device which meets all of the following criteria:

(A) It was not imported as a firearm by an importer licensed pursuant to Chapter 44 (commencing with Section 921) of Title 44 of the United States Code and the regulations issued pursuant thereto.

(B) It was not originally designed to be a firearm by a manufacturer licensed pursuant to Chapter 44 (commencing with Section 921) of Title 44 of the United States Code and the regulations issued pursuant thereto.

(C) No tax was paid on the weapon or device nor was an exemption from paying tax on that weapon or device granted under Section 4181 and subchapters F (commencing with Section 4216) and G (commencing with Section 4221) of Chapter 32 of Title 26 of the United States Code, as amended, and the regulations issued pursuant thereto.

(D) It is made or altered to expel a projectile by the force of an explosion or other form of combustion.

(E) It has a barrel or barrels less than 18 inches in length or an overall length of less than 26 inches.

(11) As used in this section, a "shuriken" means any instrument, without handles, consisting of a metal plate having three or more radiating points with one or more sharp edges and designed in the shape of a polygon, trefoil, cross, star, diamond, or other geometric shape for use as a weapon for throwing.

(12) As used in this section, an "unconventional pistol" means a pistol or revolver that does not have a rifled bore and has a barrel or barrels of less than 18 inches in length or has an overall length of less than 26 inches.

(13) As used in this section, a "belt buckle knife" is a knife which is made an integral part of a belt buckle and consists of a blade with

a length of at least 2½ inches.

(14) As used in this section, a "lipstick case knife" means a knife enclosed within and made an integral part of a lipstick case.

(15) As used in this section, a "cane sword" means a cane, swagger stick, stick, staff, rod, pole, umbrella, or similar device, having concealed within it a blade that may be used as a sword or stiletto.

(16) As used in this section, a "shobi-zue" means a staff, crutch, stick, rod, or pole concealing a knife or blade within it which may be exposed by a flip of the wrist or by a mechanical action.

(17) As used in this section, a "leaded cane" means a staff, crutch, stick, rod, pole, or similar device, unnaturally weighted with lead.

(18) As used in this section, an "air gauge knife" means a device that appears to be an air gauge but has concealed within it a pointed, metallic shaft that is designed to be a stabbing instrument which is exposed by mechanical action or gravity which locks into place when extended.

(19) As used in this section, a "writing pen knife" means a device that appears to be a writing pen but has concealed within it a pointed, metallic shaft that is designed to be a stabbing instrument which is exposed by mechanical action or gravity which locks into place when extended or the pointed, metallic shaft is exposed by the removal of the cap or cover on the device.

(20) As used in this section, the term "rifle" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed cartridge to fire only a single projectile through a rifled bore for each single pull of the trigger.

(21) As used in this section, the term "shotgun" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed shotgun shell to fire through a smooth bore either a number or projectiles (ball shot) or a single projectile for each pull of the trigger.

(d) Knives carried in sheaths which are worn openly suspended from the waist of the wearer are not concealed within the meaning of this section.

SEC. 2.6. Section 12020 of the Penal Code is amended to read:

12020. (a) Any person in this state who manufactures or causes to be manufactured, imports into the state, keeps for sale, or offers or exposes for sale, or who gives, lends, or possesses any cane gun or wallet gun, any plastic firearm, any firearm which is not immediately recognizable as a firearm, any camouflaging firearm container, any ammunition which contains or consists of any flechette dart, any bullet containing or carrying an explosive agent, any ballistic knife, any short-barreled shotgun, any short-barreled rifle, any nunchaku, any metal knuckles, any shuriken, or any instrument or weapon of the kind commonly known as a blackjack, slungshot, billy, sandclub, or sandbag, or who carries concealed upon his or her person any

explosive substance, other than fixed ammunition or who carries concealed upon his or her person any dirk or dagger, is guilty of a felony, and upon conviction shall be punishable by imprisonment in the county jail not exceeding one year or in a state prison. A bullet containing or carrying an explosive agent is not a destructive device as that term is used in Section 12301.

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

(1) The sale to, purchase by, or possession of short-barreled shotguns or short-barreled rifles, by police departments, sheriffs' offices, city marshals' offices, the California Highway Patrol, the Department of Justice, or the military or naval forces of this state or of the United States for use in the discharge of their official duties or the possession of short-barreled shotguns and short-barreled rifles by regular, salaried, full-time members of a police department, sheriff's office, city marshal's office, the California Highway Patrol, or the Department of Justice when on duty and the use is authorized by the agency and is within the course and scope of their duties.

(2) The manufacture, possession, transportation or sale of short-barreled shotguns or short-barreled rifles when authorized by the Department of Justice pursuant to Article 6 (commencing with Section 12095) of this chapter and not in violation of federal law.

(3) The possession of a nunchaku on the premises of a school which holds a regulatory or business license and teaches the arts of self-defense.

(4) The manufacture of a nunchaku for sale to, or the sale of a nunchaku to, a school which holds a regulatory or business license and teaches the arts of self-defense.

(5) Any antique firearm. For purposes of this section, "antique firearm" means any firearm not designed or redesigned for using rim fire or conventional center fire ignition with fixed ammunition and manufactured in or before 1898 (including any matchlock, flintlock, percussion cap, or similar type of ignition system or replica thereof, whether actually manufactured before or after the year 1898) and also any firearm using fixed ammunition manufactured in or before 1898, for which ammunition is no longer manufactured in the United States and is not readily available in the ordinary channels of commercial trade.

(6) Tracer ammunition manufactured for use in shotguns.

(7) Any firearm or ammunition which is a curio or relic as defined in Section 178.11 of Title 27 of the Code of Federal Regulations and which is in the possession of a person permitted to possess such items pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto. Any person prohibited by Section 12021 or 12021.5 of this code or Section 8103 of the Welfare and Institutions Code from possessing such firearms or ammunition who obtains title to such items by bequest or intestate succession may retain title for not more than one year, but actual possession of such items at any time shall be punishable pursuant to Section 12021 or 12021.5 of this code or

Section 8103 of the Welfare and Institutions Code. Within such year the person shall transfer title to such firearms or ammunition by sale, gift, or other disposition. Any person who violates this paragraph is in violation of subdivision (a).

(8) Any other weapon as defined in subsection (e) of Section 5845 of Title 26 of the United States Code and which is in the possession of a person permitted to possess the weapons pursuant to the federal Gun Control Act of 1968 (Public Law 90-618), as amended, and the regulations issued pursuant thereto. Any person prohibited by Section 12021 or 12021.5 of this code or Section 8103 of the Welfare and Institutions Code from possessing these weapons who obtains title to these weapons by bequest or intestate succession may retain title for not more than one year, but actual possession of these weapons at any time is punishable pursuant to Section 12021 or 12021.5 of this code or Section 8103 of the Welfare and Institutions Code. Within that year the person shall transfer title to the weapons by sale, gift, or other disposition. Any person who violates this paragraph is in violation of subdivision (a). The exemption provided in this subdivision does not apply to pen guns.

(9) The sale to, possession of, or purchase of, any weapon, device, or ammunition, other than a short-barreled rifle or short-barreled shotgun, by any federal, state, county, city and county, or city agency that is charged with the enforcement of any law for use in the discharge of their official duties, or the possession of any weapon, device, or ammunition, other than short-barreled rifles and shotguns, when on duty and the use is authorized by the agency and is within the course and scope of their duties.

(10) Weapons, devices, and ammunition, other than short-barreled rifles and short-barreled shotguns, that are sold by, manufactured by, exposed, or kept for sale by, possessed by, imported by, or lent by, persons who are in the business of selling weapons, devices, and ammunition listed in subdivision (a) solely to the entities referred to in paragraph (9) when engaging in transactions with those entities.

(11) The manufacture for, sale to, exposing or keeping for sale to, importation of, or lending of, wooden clubs or batons to special police officers or uniformed security guards authorized to carry any wooden club or baton pursuant to Section 12002 by entities that are in the business of selling wooden batons or clubs to special police officers and uniformed security guards when engaging in transactions with those persons.

(c) (1) As used in this section, a "short-barreled shotgun" means any of the following:

(A) A firearm which is designed or redesigned to fire a fixed shotgun shell and having a barrel or barrels of less than 18 inches in length.

(B) A firearm which has an overall length of less than 26 inches and which is designed or redesigned to fire a fixed shotgun shell.

(C) Any weapon made from a shotgun (whether by alteration,

modification, or otherwise) if that weapon, as modified, has an overall length of less than 26 inches or a barrel or barrels of less than 18 inches in length.

(D) Any device which may be readily restored to fire a fixed shotgun shell which, when so restored, is a device defined in subparagraphs (A) to (C), inclusive.

(E) Any part, or combination of parts, designed and intended to convert a device into a device defined in subparagraphs (A) to (C), inclusive, or any combination of parts from which a device defined in subparagraphs (A) to (C), inclusive, can be readily assembled if those parts are in the possession or under the control of the same person.

(2) As used in this section, a "short-barreled rifle" means any of the following:

(A) A rifle having a barrel or barrels of less than 16 inches in length.

(B) A rifle with an overall length of less than 26 inches.

(C) Any weapon made from a rifle (whether by alteration, modification, or otherwise) if that weapon as modified has an overall length of less than 26 inches or a barrel or barrels of less than 16 inches in length.

(D) Any device which may be readily restored to fire a fixed cartridge which, when so restored, is a device defined in subparagraphs (A) to (C), inclusive.

(E) Any part, or combination of parts, designed and intended to convert a device into a device defined in subparagraphs (A) to (C), inclusive, or any combination of parts from which a device defined in subparagraphs (A) to (C), inclusive, may be readily assembled if those parts are in the possession or under the control of the same person.

(3) As used in this section, a "nunchaku" means an instrument consisting of two or more sticks, clubs, bars or rods to be used as handles, connected by a rope, cord, wire or chain, in the design of a weapon used in connection with the practice of a system of self-defense such as karate.

(4) As used in this section, a "wallet gun" means any firearm mounted or enclosed in a case, resembling a wallet, designed to be or capable of being carried in a pocket or purse, if such firearm may be fired while mounted or enclosed in such case.

(5) As used in this section, a "cane gun" means any firearm mounted or enclosed in a stick, staff, rod, crutch or similar device, designed to be or capable of being used as an aid in walking, if such firearm may be fired while mounted or enclosed therein.

(6) As used in this section, a "flechette dart" means a dart, capable of being fired from a firearm, which measures approximately one inch in length, with tail fins which take up five-sixteenths of an inch of the body.

(7) As used in this section, "metal knuckles" means any device or instrument made wholly or partially of metal which is worn for

purposes of offense or defense in or on the hand and which either protects the wearer's hand while striking a blow or increases the force of impact from the blow or injury to the individual receiving the blow. The metal contained in the device may help support the hand or fist, provide a shield to protect it, or consist of projections or studs which would contact the individual receiving a blow.

(8) As used in this section, "ballistic knife" means a device that propels a knife-like blade as a projectile by means of a coil spring, elastic material, or compressed gas. Ballistic knife does not include any device which propels an arrow or a bolt by means of any common bow, compound bow, crossbow, or underwater spear gun.

(9) As used in this section, "camouflaging firearm container" means a container which meets all of the following:

(A) It is designed and intended to enclose a firearm.

(B) It is designed and intended to allow the firing of the enclosed firearm by external controls while the firearm is in the container.

(C) It is not readily recognizable as containing a firearm.

"Camouflaging firearm container" does not include any camouflaging covering used while engaged in lawful hunting or while going to or returning from a lawful hunting expedition.

(10) As used in this section, the term "rifle" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed cartridge to fire only a single projectile through a rifled bore for each single pull of the trigger.

(11) As used in this section, the term "shotgun" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed shotgun shell to fire through a smooth bore either a number or projectiles (ball shot) or a single projectile for each pull of the trigger.

(12) As used in this section, a "shuriken" means any instrument, without handles, consisting of a metal plate having three or more radiating points with one or more sharp edges and designed in the shape of a polygon, trefoil, cross, star, diamond, or other geometric shape for use as a weapon for throwing.

(13) As used in this section, "plastic firearm" means any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive and which meets one of the following requirements:

(A) It contains less than 3.7 ounces of electromagnetically detectable metal.

(B) One of its major components, which includes the barrel, slide, cylinder, frame, or receiver, does not generate an image that accurately depicts the shape of the component when subjected to inspection by X-ray machines commonly used at airports. The purpose of this requirement is satisfied if the required image results from the infusion into the component of barium sulfate or other

compound.

All firearm detection equipment newly installed in nonfederal public buildings in this state shall be of a type identified by either the United States Attorney General, the Secretary of Transportation, or the Secretary of the Treasury, as appropriate, as available state-of-the-art equipment capable of detecting a plastic firearm, as defined, while distinguishing innocuous metal objects likely to be carried on one's person sufficient for reasonable passage of the public.

(d) Knives carried in sheaths which are worn openly suspended from the waist of the wearer are not concealed within the meaning of this section.

SEC. 2.7. Section 12020 of the Penal Code is amended to read:

12020. (a) Any person in this state who manufactures or causes to be manufactured, imports into the state, keeps for sale, or offers or exposes for sale, or who gives, lends, or possesses any cane gun or wallet gun, any plastic firearm, and firearm which is not immediately recognizable as a firearm, any camouflaging firearm container, any ammunition which contains or consists of any flechette dart, any bullet containing or carrying an explosive agent, any ballistic knife, any short-barreled shotgun, any short-barreled rifle, any metal knuckles, any belt buckle knife, any leaded cane, any zip gun, any shuriken, any unconventional pistol, any lipstick case knife, any cane sword, any shobi-zue, any air gauge knife, any writing pen knife, or any instrument or weapon of the kind commonly known as a blackjack, slungshot, billy, nunchaku, sandclub, sap, or sandbag, or who carries concealed upon his or her person any explosive substance, other than fixed ammunition or who carries concealed upon his or her person any dirk or dagger, is guilty of a felony, and upon conviction shall be punishable by imprisonment in the county jail not exceeding one year or in a state prison. A bullet containing or carrying an explosive agent is not a destructive device as that term is used in Section 12301.

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

(1) The sale to, purchase by, or possession of short-barreled shotguns or short-barreled rifles, by police departments, sheriffs' offices, city marshals' offices, the California Highway Patrol, the Department of Justice, or the military or naval forces of this state or of the United States for use in the discharge of their official duties or the possession of short-barreled shotguns and short-barreled rifles by regular, salaried, full-time members of a police department, sheriff's office, city marshal's office, the California Highway Patrol, or the Department of Justice when on duty and the use is authorized by the agency and is within the course and scope of their duties.

(2) The manufacture, possession, transportation or sale of short-barreled shotguns or short-barreled rifles when authorized by the Department of Justice pursuant to Article 6 (commencing with Section 12095) of this chapter and not in violation of federal law.

(3) The possession of a nunchaku on the premises of a school

which holds a regulatory or business license and teaches the arts of self-defense.

(4) The manufacture of a nunchaku for sale to, or the sale of a nunchaku to, a school which holds a regulatory or business license and teaches the arts of self-defense.

(5) Any antique firearm. For purposes of this section, "antique firearm" means any firearm not designed or redesigned for using rim fire or conventional center fire ignition with fixed ammunition and manufactured in or before 1898 (including any matchlock, flintlock, percussion cap, or similar type of ignition system or replica thereof, whether actually manufactured before or after the year 1898) and also any firearm using fixed ammunition manufactured in or before 1898, for which ammunition is no longer manufactured in the United States and is not readily available in the ordinary channels of commercial trade.

(6) Tracer ammunition manufactured for use in shotguns.

(7) Any firearm or ammunition which is a curio or relic as defined in Section 178.11 of Title 27 of the Code of Federal Regulations and which is in the possession of a person permitted to possess such items pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto. Any person prohibited by Section 12021 or 12021.5 of this code or Section 8103 of the Welfare and Institutions Code from possessing such firearms or ammunition who obtains title to such items by bequest or intestate succession may retain title for not more than one year, but actual possession of such items at any time shall be punishable pursuant to Section 12021 or 12021.5 of this code or Section 8103 of the Welfare and Institutions Code. Within such year the person shall transfer title to such firearms or ammunition by sale, gift, or other disposition. Any person who violates this paragraph is in violation of subdivision (a).

(8) Any other weapon as defined in subsection (e) of Section 5845 of Title 26 of the United States Code and which is in the possession of a person permitted to possess the weapons pursuant to the federal Gun Control Act of 1968 (Public Law 90-618), as amended, and the regulations issued pursuant thereto. Any person prohibited by Section 12021 or 12021.5 of this code or Section 8103 of the Welfare and Institutions Code from possessing these weapons who obtains title to these weapons by bequest or intestate succession may retain title for not more than one year, but actual possession of these weapons at any time is punishable pursuant to Section 12021 or 12021.5 of this code or Section 8103 of the Welfare and Institutions Code. Within that year the person shall transfer title to the weapons by sale, gift, or other disposition. Any person who violates this paragraph is in violation of subdivision (a). The exemption provided in this subdivision does not apply to pen guns.

(9) Instruments or devices that are possessed by federal, state, and local historical societies, museums, and institutional collections which are open to the public, provided that these instruments or

devices are properly housed, secured from unauthorized handling, and, if the instrument or device is a firearm, unloaded.

(10) Instruments or devices, other than short-barreled shotguns or short-barreled rifles, that are possessed or utilized during the course of a motion picture, television, or video production or entertainment event by an authorized participant therein in the course of making that production or event or by an authorized employee or agent of the entity producing that production or event.

(11) Instruments or devices, other than short-barreled shotguns or short-barreled rifles, that are sold by, manufactured by, exposed or kept for sale by, possessed by, imported by, or lent by persons who are in the business of selling instruments or devices listed in subdivision (a) solely to the entities referred in paragraphs (9) and (10) when engaging in transactions with those entities.

(12) The sale to, possession of, or purchase of, any weapon, device, or ammunition, other than a short-barreled rifle or short-barreled shotgun, by any federal, state, county, city and county, or city agency that is charged with the enforcement of any law for use in the discharge of their official duties, or the possession of any weapon, device, or ammunition, other than short-barreled rifles and shotguns, when on duty and the use is authorized by the agency and is within the course and scope of their duties.

(13) Weapons, devices, and ammunition, other than short-barreled rifles and short-barreled shotguns, that are sold by, manufactured by, exposed, or kept for sale by, possessed by, imported by, or lent by, persons who are in the business of selling weapons, devices, and ammunition listed in subdivision (a) solely to the entities referred to in paragraph (12) when engaging in transactions with those entities.

(14) The manufacture for, sale to, exposing or keeping for sale to, importation of, or lending of, wooden clubs or batons to special police officers or uniformed security guards authorized to carry any wooden club or baton pursuant to Section 12002 by entities that are in the business of selling wooden batons or clubs to special police officers and uniformed security guards when engaging in transactions with those persons.

(c) (1) As used in this section, a "short-barreled shotgun" means any of the following:

(A) A firearm which is designed or redesigned to fire a fixed shotgun shell and having a barrel or barrels of less than 18 inches in length.

(B) A firearm which has an overall length of less than 26 inches and which is designed or redesigned to fire a fixed shotgun shell.

(C) Any weapon made from a shotgun (whether by alteration, modification, or otherwise) if that weapon, as modified, has an overall length of less than 26 inches or a barrel or barrels of less than 18 inches in length.

(D) Any device which may be readily restored to fire a fixed shotgun shell which, when so restored, is a device defined in

subparagraphs (A) to (C), inclusive.

(E) Any part, or combination of parts, designed and intended to convert a device into a device defined in subparagraphs (A) to (C), inclusive, or any combination of parts from which a device defined in subparagraphs (A) to (C), inclusive, can be readily assembled if those parts are in the possession or under the control of the same person.

(2) As used in this section, a "short-barreled rifle" means any of the following:

(A) A rifle having a barrel or barrels of less than 16 inches in length.

(B) A rifle with an overall length of less than 26 inches.

(C) Any weapon made from a rifle (whether by alteration, modification, or otherwise) if that weapon as modified has an overall length of less than 26 inches or a barrel or barrels of less than 16 inches in length.

(D) Any device which may be readily restored to fire a fixed cartridge which, when so restored, is a device defined in subparagraphs (A) to (C), inclusive.

(E) Any part, or combination of parts, designed and intended to convert a device into a device defined in subparagraphs (A) to (C), inclusive, or any combination of parts from which a device defined in subparagraphs (A) to (C), inclusive, may be readily assembled if those parts are in the possession or under the control of the same person.

(3) As used in this section, a "nunchaku" means an instrument consisting of two or more sticks, clubs, bars or rods to be used as handles, connected by a rope, cord, wire or chain, in the design of a weapon used in connection with the practice of a system of self-defense such as karate.

(4) As used in this section, a "wallet gun" means any firearm mounted or enclosed in a case, resembling a wallet, designed to be or capable of being carried in a pocket or purse, if such firearm may be fired while mounted or enclosed in such case.

(5) As used in this section, a "cane gun" means any firearm mounted or enclosed in a stick, staff, rod, crutch or similar device, designed to be or capable of being used as an aid in walking, if such firearm may be fired while mounted or enclosed therein.

(6) As used in this section, a "flechette dart" means a dart, capable of being fired from a firearm, which measures approximately one inch in length, with tail fins which take up five-sixteenths of an inch of the body.

(7) As used in this section, "metal knuckles" means any device or instrument made wholly or partially of metal which is worn for purposes of offense or defense in or on the hand and which either protects the wearer's hand while striking a blow or increases the force of impact from the blow or injury to the individual receiving the blow. The metal contained in the device may help support the hand or fist, provide a shield to protect it, or consist of projections or

studs which would contact the individual receiving a blow.

(8) As used in this section, "ballistic knife" means a device that propels a knife-like blade as a projectile by means of a coil spring, elastic material, or compressed gas. Ballistic knife does not include any device which propels an arrow or a bolt by means of any common bow, compound bow, crossbow, or underwater spear gun.

(9) As used in this section, "camouflaging firearm container" means a container which meets all of the following:

(A) It is designed and intended to enclose a firearm.

(B) It is designed and intended to allow the firing of the enclosed firearm by external controls while the firearm is in the container.

(C) It is not readily recognizable as containing a firearm.

"Camouflaging firearm container" does not include any camouflaging covering used while engaged in lawful hunting or while going to or returning from a lawful hunting expedition.

(10) As used in this section, a "zip gun" means any weapon or device which meets all of the following criteria:

(A) It was not imported as a firearm by an importer licensed pursuant to Chapter 44 (commencing with Section 921) of Title 44 of the United States Code and the regulations issued pursuant thereto.

(B) It was not originally designed to be a firearm by a manufacturer licensed pursuant to Chapter 44 (commencing with Section 921) of Title 44 of the United States Code and the regulations issued pursuant thereto.

(C) No tax was paid on the weapon or device nor was an exemption from paying tax on that weapon or device granted under Section 4181 and subchapters F (commencing with Section 4216) and G (commencing with Section 4221) of Chapter 32 of Title 26 of the United States Code, as amended, and the regulations issued pursuant thereto.

(D) It is made or altered to expel a projectile by the force of an explosion or other form of combustion.

(E) It has a barrel or barrels less than 18 inches in length or an overall length of less than 26 inches.

(11) As used in this section, a "shuriken" means any instrument, without handles, consisting of a metal plate having three or more radiating points with one or more sharp edges and designed in the shape of a polygon, trefoil, cross, star, diamond, or other geometric shape for use as a weapon for throwing.

(12) As used in this section, an "unconventional pistol" means a pistol or revolver that does not have a rifled bore and has a barrel or barrels of less than 18 inches in length or has an overall length of less than 26 inches.

(13) As used in this section, a "belt buckle knife" is a knife which is made an integral part of a belt buckle and consists of a blade with a length of at least 2½ inches.

(14) As used in this section, a "lipstick case knife" means a knife enclosed within and made an integral part of a lipstick case.

(15) As used in this section, a "cane sword" means a cane, swagger stick, stick, staff, rod, pole, umbrella, or similar device, having concealed within it a blade that may be used as a sword or stiletto.

(16) As used in this section, a "shobi-zue" means a staff, crutch, stick, rod, or pole concealing a knife or blade within it which may be exposed by a flip of the wrist or by a mechanical action.

(17) As used in this section, a "leaded cane" means a staff, crutch, stick, rod, pole, or similar device, unnaturally weighted with lead.

(18) As used in this section, an "air gauge knife" means a device that appears to be an air gauge but has concealed within it a pointed, metallic shaft that is designed to be a stabbing instrument which is exposed by mechanical action or gravity which locks into place when extended.

(19) As used in this section, a "writing pen knife" means a device that appears to be a writing pen but has concealed within it a pointed, metallic shaft that is designed to be a stabbing instrument which is exposed by mechanical action or gravity which locks into place when extended or the pointed, metallic shaft is exposed by the removal of the cap or cover on the device.

(20) As used in this section, the term "rifle" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed cartridge to fire only a single projectile through a rifled bore for each single pull of the trigger.

(21) As used in this section, the term "shotgun" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed shotgun shell to fire through a smooth bore either a number or projectiles (ball shot) or a single projectile for each pull of the trigger.

(22) As used in this section, "plastic firearm" means any weapon (including a starter gun) which will or is designed to, or may readily be converted to, expel a projectile by the action of an explosive, and which meets one of the following requirements:

(A) It contains less than 3.7 ounces of electromagnetically detectable metal.

(B) One of its major components, which includes the barrel, slide, cylinder, frame, or receiver, does not generate an image that accurately depicts the shape of the component when subjected to inspection by X-ray machines commonly used at airports. The purpose of this requirement is satisfied if the required image results from the infusion into the component of barium sulfate or other compound.

All firearm detection equipment newly installed in nonfederal public buildings in this state shall be of a type identified by either the United States Attorney General, the Secretary of Transportation, or the Secretary of the Treasury, as appropriate, as available state-of-the-art equipment capable of detecting a plastic firearm, as

defined, while distinguishing innocuous metal objects likely to be carried on one's person sufficient for reasonable passage of the public.

(d) Knives carried in sheaths which are worn openly suspended from the waist of the wearer are not concealed within the meaning of this section.

SEC. 3. Section 12029 of the Penal Code is amended to read:

12029. Except as provided in Section 12020, blackjacks, slungshots, billies, nunchakus, sandclubs, sandbags, shurikens, metal knuckles, short-barreled shotguns or short-barreled rifles as defined in Section 12020, and any other item which is listed in subdivision (a) of Section 12020 and is not listed in subdivision (a) of Section 12028 are nuisances, and the Attorney General, district attorney, or city attorney may bring an action to enjoin the manufacture of, importation of, keeping for sale of, offering or exposing for sale, giving, lending, or possession of, any of the foregoing items. These weapons shall be subject to confiscation and summary destruction whenever found within the state. These weapons shall be destroyed in the same manner as other weapons described in Section 12028, except that upon the certification of a judge or of the district attorney that the ends of justice will be subserved thereby, the weapon shall be preserved until the necessity for its use ceases.

SEC. 4. Article 6 (commencing with Section 12095) of Title 2 of Part 4 of the Penal Code is repealed.

SEC. 5. Article 6 (commencing with Section 12095) is added to Title 2 of Part 4 of the Penal Code, to read:

## Article 6. Permits

12095. (a) If it finds that it does not endanger the public safety, the Department of Justice may issue permits initially valid for a period of one year, and renewable annually thereafter, for the manufacture, possession, transportation, or sale of short-barreled shotguns or short-barreled rifles upon a showing that good cause exists for the issuance thereof to the applicant for the permit. No permit shall be issued to a person who is under 18 years of age.

(b) Good cause, for the purposes of this section, shall be limited to only the following:

(1) The permit is sought for the manufacture, possession, or use with blank cartridges, of a short-barreled rifle or short-barreled shotgun, solely as props for a motion picture, television, or video production or entertainment event.

(2) The permit is sought for the manufacture of, exposing for sale, keeping for sale, sale of, importation or lending of short-barreled rifles or short-barreled shotguns to the entities listed in paragraph (1) of subdivision (b) of Section 12020 by persons who are licensed as dealers or manufacturers under the provisions of Chapter 53 (commencing with Section 5801) of Title 26 of the United States Code, as amended, and the regulations issued pursuant thereto.

12096. 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 short-barreled shotguns or short-barreled rifles are to be put.

Applications and permits shall be uniform throughout the state on forms prescribed by the Department of Justice.

Each applicant for a permit shall pay at the time of filing his or her application a fee determined by the Department of Justice 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 to reimburse the department for processing costs, fees charged shall increase at a rate not to exceed the legislatively approved annual cost-of-living adjustments for the department's budget.

12097. (a) Every person, firm, or corporation to whom a permit is issued shall keep it on his or her person or at the place where the short-barreled shotguns or short-barreled rifles are kept. The permit shall be open to inspection by any peace officer or any other person designated by the authority issuing the permit.

(b) Every short-barreled shotgun or short-barreled rifle possessed pursuant to the provisions of this article shall bear a unique identifying number. If a weapon does not bear a unique identifying number, the Department of Justice shall assign a number which shall be placed or stamped on that weapon.

12098. Permits issued in accordance with this article may be revoked by the issuing authority at any time when it appears that the need for the short-barreled shotguns or short-barreled rifles has ceased or that the holder of the permit has used the short-barreled shotguns or short-barreled rifles for purposes other than those allowed by the permit or that the holder of the permit has not exercised great care in retaining custody of any weapons possessed under the permit.

SEC. 6. Section 8104 of the Welfare and Institutions Code is amended to read:

8104. The State Department of Mental Health shall make available to the Department of Justice those records which the State Department of Mental Health has in its possession which are necessary to identify persons who come within the provisions of Section 8100 or 8103. These records shall be made available to the Department of Justice upon request. The Department of Justice shall make such requests only with respect to its duties with regard to applications for permits for explosives as defined in Section 12000 of the Health and Safety Code, devices defined in Section 12001 of the Penal Code, machineguns as defined in Section 12200 of the Penal

Code, short-barreled shotguns or short-barreled rifles, as defined in Section 12020 of the Penal Code, and destructive devices as defined in Section 12301 of the Penal Code. Such records shall not be furnished or made available to any person unless the department determines that disclosure of any information in such records is necessary to carry out its duties with respect to applications for permits for explosives, destructive devices, devices, defined in Section 12001 of the Penal Code, short-barreled shotguns, short-barreled rifles, and machineguns.

SEC. 7. (a) Section 2.5 of this bill incorporates amendments to Section 12020 of the Penal Code proposed by both this bill and AB 3074. It shall only become operative if (1) both bills are enacted and become effective January 1, 1989, (2) each bill amends Section 12020 of the Penal Code, (3) AB 4546 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 3074, in which case Sections 2, 2.6, and 2.7 of this bill shall not become operative.

(b) Section 2.6 of this bill incorporates amendments to Section 12020 of the Penal Code proposed by both this bill and AB 4546. It shall only become operative if (1) both bills are enacted and become effective January 1, 1989, (2) each bill amends Section 12020 of the Penal Code, (3) AB 3074 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 4546, in which case Sections 2, 2.5, and 2.7 of this bill shall not become operative.

(c) Section 2.7 of this bill incorporates amendments to Section 12020 of the Penal Code proposed by this bill, AB 3074, and AB 4546. It shall only become operative if (1) all three bills are enacted and become effective January 1, 1989, (2) all three bills amend Section 12020 of the Penal Code, and (3) this bill is enacted after AB 3074 and AB 4546, in which case Sections 2, 2.5, and 2.6 of this bill shall not become operative.

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## CHAPTER 1270

An act to amend Sections 69536 and 69538 of, and to add Sections 69535.1 and 69535.5 to, the Education Code, relating to student financial aid.

[Approved by Governor September 24, 1988. Filed with Secretary of State September 26, 1988 ]

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

SECTION 1. Section 69535.1 is added to the Education Code, to read:

69535.1. Cal Grant recipients who have completed a baccalaureate degree and who are enrolled in a program of professional teacher preparation at an institution approved by the

California Commission on Teacher Credentialing are eligible for renewal of a Cal Grant award for an additional year of full-time attendance, if financial need continues to exist.

Payment for this additional year is limited to only those courses required for an initial teaching authorization. Awards under this section may not be used for other courses.

This section applies to those students who complete a baccalaureate degree in or after 1989. A student's Cal Grant renewal eligibility, as defined in Sections 69536 and 69538, shall not have lapsed more than 15 months prior to the renewal of an award for purposes of this section.

SEC. 2. Section 69535.5 is added to the Education Code, to read:

69535.5. The Student Aid Commission may determine that an advanced payment is essential to assure that funds provided pursuant to this chapter to assist students to enroll in postsecondary education are available at the time students enroll. Upon making that determination, the Student Aid Commission may, based on institutional academic calendars, advance to authorized postsecondary educational institutions up to 80 percent of the funds for eligible students who have indicated they will attend those institutions. Each institution shall disburse the funds in accordance with the provisions set forth in the Institutional Agreement between the Student Aid Commission and the institution.

SEC. 3. Section 69536 of the Education Code is amended to read:

69536. (a) A Cal Grant award for tuition and student fees as provided in subdivision (a) of Section 69532 may be utilized at any California postsecondary educational institution or program that participates in two of the three federal campus-based student aid programs and whose students participate in the Pell Grant Program, provided that the award shall not be utilized by a student enrolled in an instructional program of less than two years.

(b) (1) No Cal Grant award shall exceed the cost of tuition and fees, or the amount specified in the annual Budget Act.

(2) Funding for the maximum Cal Grant award shall be subject to the availability of funds appropriated for that purpose in the annual Budget Act.

(c) The awards may not be utilized for graduate study, and may be renewed for a total of four years of full-time attendance, except as otherwise provided in Section 69535.1, provided that financial need continues to exist. Commencing with the 1989–90 academic year, the total number of years of eligibility for grant awards pursuant to this section shall be determined by the student's educational level in his or her course of study as designated by the institution of attendance when the recipient initially receives payment for a grant.

If a student is enrolled in a five-year undergraduate program, the grant may be renewed for a total of five years of full-time attendance, provided that financial need continues to exist.

SEC. 4. Section 69538 of the Education Code is amended to read:

69538. To be eligible for a Cal Grant award for tuition, student fees, and subsistence costs as provided in subdivision (b) of Section 69532, the student shall be a disadvantaged student under criteria to be established by the commission, which shall take into consideration those financial, educational, cultural, language, home, community, environmental, and other conditions which tend to make difficult the gaining access to and persisting in postsecondary programs. The awards may be utilized for tuition, student fees, living expenses, transportation, supplies, and books.

The Legislature recognizes that the role of the community colleges, as the least expensive level of California higher education, is a crucial role in increasing the higher education opportunities for disadvantaged students, and it is the intent of the Legislature that the additional opportunities for higher education provided pursuant to this chapter shall be initiated primarily on the public community college level.

Grants awarded under this chapter shall be for living expenses, transportation, supplies, and books, according to the student's financial need, and shall not be in excess of the amount specified in the annual Budget Act. The Student Aid Commission may also award these grants and an additional amount to pay tuition and fees to attend college at a public or private four-year college or university or other eligible postsecondary educational institution. No more than 2 percent of new recipients enrolling for the first time in an institution of postsecondary education shall be eligible for tuition payments in their first academic year of attendance.

In no case shall Cal Grant awards exceed the amount specified in the annual Budget Act, and the awards may not be utilized for graduate study. The awards may be utilized at any California postsecondary educational institution or program which participates in two of the three federal campus-based student aid programs and whose students participate in the Pell Grant Program, provided that the award shall not be utilized by a student enrolled in an instructional program of less than one academic year. The awards may be renewed for a total of four years of full-time attendance except as provided in Section 69535.1, provided that financial need continues to exist.

Commencing with the 1989–90 academic year, the total number of years of eligibility for grant awards pursuant to this section shall be determined by the student's education level in his or her course of study as designated by the institution of attendance when the recipient initially receives payment for a grant. Unless authorized by statute, no undergraduate student shall be entitled to more than four years of eligibility for a Cal grant award.

If a student is enrolled in a five-year undergraduate program, the grant may be renewed for a total of five years of full-time attendance, provided that financial need continues to exist.

An individual who is awarded a Cal Grant award authorized pursuant to subdivision (b) of Section 69532, who enrolls in a public

community college in his or her first year of attendance, and who is determined to be financially ineligible for renewal of the award in the second year of attendance at a public community college but would be financially eligible for renewal, if he or she had elected to attend a four-year college, may elect to have the award held in trust for a period not to exceed one academic year, except that the commission may extend the period in which the award is held in trust up to a period of three academic years, if, in the commission's judgment, the individual's rate of academic progress has been as rapid as could be expected for the personal and financial conditions which the individual has encountered. The commission shall, in this case, hold the award in trust, to be granted to the individual upon receipt of his or her request therefor within that period, provided that at the time of making the request the individual meets all the requirements of this chapter. Upon receipt of the request, the commission shall assess or reassess the financial needs of the individual. The commission may prescribe the forms and procedures to be utilized for the purposes of this section. The commission may award to another eligible individual any award being so held in trust, subject to the provisions of this section and any other conditions and restrictions that may be imposed by the commission, to the end that all authorized awards are continually being utilized. Following the first year for which any award is made, the awards shall be included in the number of the continuing awards available for any year and not the authorized new awards for the year.

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## CHAPTER 1271

An act to amend Sections 65, 75.21, 251, 254, and 255 of, to amend and repeal Section 69.5 of, and to add Section 259.11 to, the Revenue and Taxation Code, relating to taxation, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 24, 1988 Filed with Secretary of State September 26, 1988.]

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

SECTION 1. Section 65 of the Revenue and Taxation Code is amended to read:

65. (a) The creation, transfer, or termination of any joint tenancy is a change in ownership except as provided in this section, Section 62, and Section 63. Upon a change in ownership of a joint tenancy interest only the interest or portion which is thereby transferred from one owner to another owner shall be reappraised.

(b) There shall be no change in ownership upon the creation or transfer of a joint tenancy interest if the transferor or transferors, after such creation or transfer, are among the joint tenants. Upon the

creation of a joint tenancy interest described in this subdivision, the transferor or transferors shall be the "original transferor or transferors" for purposes of determining the property to be reappraised on subsequent transfers. The spouses of original transferors shall also be considered original transferors within the meaning of this section.

(c) Upon the termination of an interest in any joint tenancy described in subdivision (b), the entire portion of the property held by the original transferor or transferors prior to the creation of the joint tenancy shall be reappraised unless it vests, in whole or in part, in any remaining original transferor, in which case there shall be no reappraisal. Upon the termination of the interest of the last surviving original transferor, there shall be a reappraisal of the interest then transferred and all other interests in the properties held by all original transferors which were previously excluded from reappraisal pursuant to this section.

(d) Upon the termination of an interest held by other than the original transferor in any joint tenancy described in subdivision (b), there shall be no reappraisal if the entire interest is transferred either to an original transferor or to all remaining joint tenants, provided that one of the remaining joint tenants is an original transferor.

(e) For purposes of this section, for joint tenancies created on or before March 1, 1975, it shall be rebuttably presumed that each joint tenant holding an interest in property as of March 1, 1975, shall be an "original transferor." This presumption is not applicable to joint tenancies created after March 1, 1975.

SEC. 2. Section 69.5 of the Revenue and Taxation Code 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 who resides in property which 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 which 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.

(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) 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.

(7) The claimant has not previously been granted 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. 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 which 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 which 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 which 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 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 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 because the property qualifies as a replacement dwelling.

(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 which the assessor shall make available upon request, the following information:

(1) The name and social security number of the 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. In the absence of available proof, the claimant shall certify under penalty of perjury that the age requirement is met.

(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, which 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, which 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 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 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, 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 original property or the replacement dwelling, whether or not that spouse joined in the claim, 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 or has not been met by the spouse.

(10) "Property which 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.

(h) 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:

(1) The date the original property is sold.

(2) The date the replacement dwelling is purchased.

(3) The date the new construction of the replacement dwelling is completed.

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.

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.

(i) This section shall apply to any replacement dwelling which is

purchased or newly constructed on or after November 6, 1986.

(j) The amendments to this section made by the act adding this subdivision shall become operative on the effective date of this act unless Assembly Constitutional Amendment No. 1 of the 1987–88 Regular Session is approved by the voters. In that event, the amendments shall not become operative until January 1, 1999.

SEC. 2.5. Section 69.5 of the Revenue and Taxation Code 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 who resides in property which 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 which 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.

(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.

(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 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. 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 which 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 which 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 which 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 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 because the property qualifies as a replacement dwelling.

(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 which the assessor shall make available upon request, the following information:

(1) The name and social security number of the 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. In the absence of available proof, the claimant shall certify under penalty of perjury that the age requirement is met.

(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, which 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, which 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 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 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 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, 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 original property or the replacement dwelling, whether or not that spouse joined in the claim, the spouse shall also be deemed 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 or has not been met by the spouse.

(10) "Property which 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 which receives an annual property tax revenue allocation.

(h) 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:

(1) The date the original property is sold.

(2) The date the replacement dwelling is purchased.

(3) The date the new construction of the replacement dwelling is completed.

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.

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.

(i) (1) With respect to the transfer of base year value of original properties to replacement dwellings located in the same county, this section shall apply to any replacement dwelling which 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 shall apply to any replacement dwelling which 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.

(j) The amendments to this section made by the act adding this subdivision shall become operative only if Assembly Constitutional Amendment No. 1 of the 1987–88 Regular Session is approved by the voters. In that event, the amendments shall be operative only until January 1, 1999, and on that date are repealed.

SEC. 3. 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), 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 such 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 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, 90 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, 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.

(2) 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.

(3) With respect to property as to which any other exemption was available, but for which a timely application for exemption was not filed, 90 percent of any tax or penalty or interest thereon 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.

Where a late application for exemption has not been filed on or before the date on which the first installment of taxes on the supplemental tax bill becomes delinquent, no exemption is available. 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 previously filed by the owner of a dwelling, granted and in effect, constitutes the claim or claims for the homeowners' exemption required in this section. In the event that no claim for the homeowners' exemption is in effect, a claim for the homeowners' exemption 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 the homeowners' exemption 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 218.

SEC. 4. Section 251 of the Revenue and Taxation Code is amended to read:

251. (a) The board shall prescribe all procedures and forms required to carry into effect any property tax exemption enacted by statute or constitutional amendment.

(b) (1) The procedures prescribed pursuant to subdivision (a) shall be deemed satisfied by a qualified lessor by submission to the assessor within 120 days of the commencement date of the lease, or 120 days after the effective date of the act adding this subdivision to this section with respect to any existing lease, whichever is later, information which may be requested by the board with respect to the lease.

(2) For purposes of this subdivision, "a qualified lessor" is a lessor under a contract designated as a lease between that lessor and an entity using property which qualifies for the property tax exemption provided for by subdivision (d) or (e) of Section 3 of Article XIII of the California Constitution under which the lessee has the option at the end of the lease term of acquiring the property described in the lease for one dollar ($1), or any other nominal sum.

(3) No filing or application for exemption shall thereafter be required by a qualified lessor with respect to that lease unless the option terms of the lease change.

SEC. 5. Section 254 of the Revenue and Taxation Code is amended to read:

254. Any person claiming the church, cemetery, college,

exhibition, welfare, veterans' organization, free public libraries, free museums, aircraft of historical significance, or public schools property tax exemption and anyone claiming the classification of a vessel as a documented vessel eligible for assessment under Section 227, shall submit to the assessor annually an affidavit, giving any information required by the board.

SEC. 6. Section 255 of the Revenue and Taxation Code is amended to read:

255. (a) Affidavits required for exemptions named in this article, except the church exemption, the veterans' exemption, the homeowners' exemption, the religious exemption, and the aircraft of historical significance exemption, shall be filed with the assessor between the lien date and 5 p.m. on March 15. Affidavits for the veterans' exemption shall be filed with the assessor between the lien date and 5 p.m. on April 15.

(b) Affidavits for the homeowners' exemption except as otherwise provided in Sections 255.1, 255.2, and 275, shall be filed with the assessor any time after the claimant becomes eligible but no later than 5 p.m. on April 15.

(c) Affidavits required for the aircraft of historical significance exemption and for classification of vessels as documented vessels eligible for assessment under Section 227 shall be filed with the assessor between the lien date and 5 p.m. on April 1.

(d) Affidavits for the church exemption and religious exemption shall be filed with the assessor between the lien date and 5 p.m. on March 31.

(e) Notwithstanding the provisions of subdivision (a), any claimant who has been found ineligible for the church exemption or the religious exemption after timely filing an affidavit therefor pursuant to subdivision (d), may file an affidavit for a welfare exemption. Affidavits for the welfare exemption filed pursuant to this subdivision shall be filed within 15 days from the date of notification by the assessor of the claimants ineligibility for the church exemption or the religious exemption.

SEC. 7. Section 259.11 is added to the Revenue and Taxation Code, to read:

259.11. The affidavit for the aircraft of historical significance exemption shall show that both the property and the owner meet all the requirements entitling the property to the exemption.

SEC. 8. The State Board of Equalization shall conduct a specific topic survey pursuant to Section 15640 of the Government Code to determine the revenue impact and other effects of Proposition 60 on the November 4, 1986, general election ballot and of Proposition 90 on the November 8, 1988, general election ballot, if adopted by the voters, from the date of their adoption by the voters until December 31, 1994. The results of the survey shall be reported to the Governor and the Legislature no later than June 30, 1995.

SEC. 9. Unless specifically provided otherwise in that section, the amendments to Section 69.5 of the Revenue and Taxation Code

made by this act shall apply to purchases and transfers of real property which occur on or after November 5, 1986.

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:

In order that this act may be made applicable to the fullest extent possible to property taxes levied for the 1988–89 fiscal year, it is necessary that this act go into immediate effect.

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## CHAPTER 1272

An act to amend Sections 1136, 1163, 1190, 1191, and 1194 of the Harbors and Navigation Code, relating to pilots, and making an appropriation therefor.

[Approved by Governor September 24, 1988. Filed with Secretary of State September 26, 1988.]

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

SECTION 1. Section 1136 of the Harbors and Navigation Code is amended to read:

1136. Every pilot and inland pilot licensed pursuant to this division shall do all of the following:

(a) Take an oath of office in the manner prescribed by law.

(b) Submit monthly to the board a verified account of all moneys received by the pilot as a result of pilotage services, or by any other person for the pilot, or on the pilot's account, on the forms furnished by the board.

(c) Pay monthly to the board 5 percent of all pilotage fees, or the lesser percentage which may be established by the board, with the approval of the Department of Finance, to fully compensate the board for its official services, for the services of its secretary and treasurer, and for all its incidental expenses. The board shall quarterly review its ongoing and anticipated expenses and adjust the mill rate specified in Section 1190 to reflect any changes which have occurred since the last pilotage rate adjustment so as not to affect general revenues to the pilots.

SEC. 2. Section 1163 of the Harbors and Navigation Code is amended to read:

1163. (a) (1) Each retired or disabled pilot shall receive, as a monthly pension, that amount which is one hundred dollars ($100) multiplied by the number of full years of service he performed as a pilot licensed under this division.

(2) A pilot who retires or becomes disabled shall not begin to receive his pension until the benefit year next following the date on which he retires or becomes disabled.

(3) No retired pilot shall receive benefits pursuant to the pension plan in any benefit year unless his resignation as an active pilot specifying a proposed date of retirement was submitted, in writing, to the board, prior to December if his retirement is to be effective the first day of the following January or prior to June if his retirement is to be effective the first day of the following July. His resignation shall become effective on either January 1 or July 1 as specified in the written resignation.

(4) If a retired or disabled pilot who is receiving a pension dies without a wife surviving him, his successor in interest shall receive the proceeds of the pension for the remainder of the benefit year, after which time it shall cease.

(b) (1) The widow of a deceased pilot who would be eligible for a pension pursuant to subdivision (c) of Section 1164 shall receive, as a monthly pension, three-fourths of the amount that her deceased husband would have received as a pension pursuant to this section had he lived.

(2) If a retired or disabled pilot receiving a pension dies, his widow shall continue to receive the full pension to which her deceased husband was entitled for the balance of the benefit year, after which she shall receive the amount specified in paragraph (1) of this subdivision.

(3) When a widow receiving a pension dies, her successor in interest shall receive the proceeds of the pension for the remainder of the benefit year, after which time it shall cease.

(c) For the purposes of the computations described in paragraph (1) of subdivision (a), six months or more of service by a pilot shall be considered a full year.

SEC. 3. Section 1190 of the Harbors and Navigation Code is amended to read:

1190. (a) Every vessel spoken inward or outward bound, shall pay the following rate of bar pilotage through the Golden Gate and into or out of the Bays of San Francisco, San Pablo, and Suisun:

(1) Seven dollars and thirty-five cents ($7.35) per draft foot of the vessel's deepest draft and fractions of a foot pro rata, and an additional charge of 51.29 mills ($0.05129) per high gross registered ton.

(2) A minimum charge for bar pilotage shall be six hundred dollars ($600) for each vessel piloted.

(3) The vessel's deepest draft shall be the maximum draft attained, on a stillwater basis, at any part of the vessel during the course of such transit inward or outward.

(b) The rate specified in subdivision (a) shall apply only to a pilotage which passes through the Golden Gate to or from the high seas to or from a berth within an area bounded by the Southern Pacific Bridge to the north and Hunter's Point to the south. The rate for pilotage to or from the high seas to or from a point past the Southern Pacific Bridge or Hunter's Point shall include a movement fee in addition to the basic bar pilotage rate as specified by the board

pursuant to Section 1191.

(c) The rate established in paragraph (1) of subdivision (a) shall be for a trip from the high seas to dock or from the dock to high seas. The rate specified in Section 1191 shall not be charged by pilots for docking and undocking vessels. This subdivision does not apply to the rates charged by inland pilots for their services.

(d) The board shall determine the number of pilots to be licensed based on the 1986 manpower study adopted by the board.

SEC. 4. Section 1191 of the Harbors and Navigation Code is amended to read:

1191. (a) The board shall, pursuant to Chapter 6 (commencing with Section 1200), recommend that the Legislature, by statute, adopt a schedule of pilotage rates providing fair and reasonable return to pilots and inland pilots engaged in ship movements or special operations where rates for those movements or operations are not specified in Section 1190.

(b) Every vessel using pilots and inland pilots for ship movements or special operations which do not constitute bar pilotage shall pay the rate specified in the schedule of pilotage rates adopted by the Legislature.

(c) The minimum rates charged by pilots or inland pilots for ship movements and internal operations shall be the schedule of ship pilot fees, Pacific Maritime Region, San Francisco Bay and tributaries, increased by 20 percent over that in effect on December 30, 1988.

SEC. 5. Section 1194 of the Harbors and Navigation Code is amended to read:

1194. Notwithstanding any other provision of law, rates for inland pilotage shall be 20 percent more than were in existence as set forth in the schedule of ship pilot fees January 1, 1984, Pacific Maritime Region, San Francisco Bay and tributaries.

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## CHAPTER 1273

An act to amend Sections 13353, 23103.5, 23157, 23185, and 23190 of, and to add Section 1807.5 to, the Vehicle Code, relating to driving offenses.

[Approved by Governor September 24, 1988. Filed with Secretary of State September 26, 1988 ]

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

SECTION 1. Section 1807.5 is added to the Vehicle Code, to read:

1807.5. (a) Notwithstanding Section 1808, any record of the department of a conviction of Section 23103 as specified in Section 23103.5, 23152, or 23153 which occurred before January 1, 1987, is not a public record on and after a date which is five years after the date of conviction of that offense, and the department shall, thereafter,

make any information relating to that conviction available only to persons authorized by law to receive the information.

(b) For the purposes of this section, "persons authorized by law to receive the information" means any of the following:

(1) The courts of the state.

(2) Peace officers, as defined in Section 830.1 of the Penal Code; subdivisions (a) and (b) of Section 830.2 of the Penal Code; subdivisions (a), (b), and (j) of Section 830.3 of the Penal Code; and subdivisions (a), (b), and (c) of Section 830.5 of the Penal Code.

(3) The Attorney General.

(4) District attorneys of any county within the state.

(5) Prosecuting city attorneys of any city within the state.

(6) Probation officers of any city or county of the state.

(7) Parole officers of any city or county of the state.

SEC. 1.5. Section 13353 of the Vehicle Code is amended to read:

13353. (a) If any person refuses the officer's request to submit to, or fails to complete, a chemical test or tests pursuant to Section 23157, upon receipt of the officer's sworn statement that the officer had reasonable cause to believe the person had been driving a motor vehicle in violation of Section 23152 or 23153 and that the person had refused to submit to, or did not complete, the test or tests after being requested by the officer, the department shall (1) suspend the person's privilege to operate a motor vehicle for a period of six months, (2) revoke the person's privilege to operate a motor vehicle for a period of two years if the refusal occurred within seven years of a separate violation of Section 23103 as specified in Section 23103.5, 23152, or 23153 which resulted in a conviction, or (3) revoke the person's privilege to operate a motor vehicle for a period of three years if the refusal occurred within seven years of two or more separate violations of Section 23103 as specified in Section 23103.5, 23152, or 23153, or any combination thereof, which resulted in convictions. The officer's sworn statement shall be submitted on a form furnished or approved by the department. The suspension or revocation shall not become effective until 10 days after the giving of written notice thereof, or until the end of any stay of the suspension or revocation, as provided for in subdivision (c) or (d).

(b) The department shall immediately notify the person in writing of the action taken and, upon the person's request in writing and within 15 days from the date of receipt of that request, shall grant the person an opportunity for a hearing in the same manner and under the same conditions as provided in Article 3 (commencing with Section 14100) of Chapter 3, except as otherwise provided in this section. For purposes of this section, the scope of the hearing shall cover the issues of whether the peace officer had reasonable cause to believe the person had been driving a motor vehicle in violation of Section 23152 or 23153, whether the person was placed under arrest, whether the person refused to submit to, or did not complete, the test or tests after being requested by a peace officer, and whether, except for the persons described in subdivision (a) of

Section 23157 who are incapable of refusing, the person had been told that his or her driving privilege would be suspended or revoked if he or she refused to submit to, or did not complete, the test or tests.

(c) An application for a hearing made by the affected person within 10 days of receiving notice of the department's action shall stay the suspension or revocation by the department for a period of 15 days. The department shall, within the period of 15 days, hold a hearing in the county in which the violation occurred. If the department does not grant a hearing within 15 days, the suspension or revocation shall not take place until the person is granted a hearing and is notified of the department's action as provided in subdivision (d). If the county in which the violation occurred is also the county of the person's residence, and the person requests that the hearing be continued to a date beyond the period of 15 days, the suspension or revocation shall become effective immediately upon receipt of the department's notice that the request for continuance has been granted. If the hearing is to be held in a county other than the county of the person's residence, the department shall, upon request, grant the person a continuance of up to 15 days, and shall not suspend or revoke the license until after that time.

(d) If the department determines, upon a hearing of the matter, to suspend or revoke the affected person's privilege to operate a motor vehicle, the suspension or revocation shall not become effective until five days after receipt by the person of the department's notification of that suspension or revocation.

SEC. 2. Section 23103.5 of the Vehicle Code is amended to read:

23103.5. (a) When the prosecution agrees to a plea of guilty or nolo contendere to a charge of a violation of Section 23103 in satisfaction of, or as a substitute for, an original charge of a violation of Section 23152, the prosecution shall state for the record a factual basis for the satisfaction or substitution, including whether or not there had been consumption of any alcoholic beverage or ingestion or administration of any drug, or both, by the defendant in connection with the offense. The statement shall set forth the facts which show whether or not there was a consumption of any alcoholic beverage or the ingestion or administration of any drug by the defendant in connection with the offense.

(b) The court shall advise the defendant, prior to the acceptance of the plea offered pursuant to a factual statement pursuant to subdivision (a), of the consequences of a conviction of a violation of Section 23103 as set forth in subdivision (c).

(c) If the court accepts the defendant's plea of guilty or nolo contendere to a charge of a violation of Section 23103 and the prosecutor's statement under subdivision (a) states that there was consumption of any alcoholic beverage or the ingestion or administration of any drugs by the defendant in connection with the offense, the resulting conviction shall be a prior offense for the purposes of Section 23165, 23170, 23175, 23185, 23190, or 23200, as specified in those sections.

(d) The court shall notify the Department of Motor Vehicles of each conviction of Section 23103 which shall be a prior offense for purposes of Section 23165, 23170, 23175, 23185, 23190, or 23200, as provided in this section.

SEC. 3. Section 23157 of the Vehicle Code is amended to read:

23157. (a) (1) Any person who drives a motor vehicle is deemed to have given his or her consent to chemical testing of his or her blood, breath, or urine for the purpose of determining the alcoholic content of his or her blood, and to have given his or her consent to chemical testing of his or her blood or urine for the purpose of determining the drug content of his or her blood, if lawfully arrested for any offense allegedly committed in violation of Section 23152 or 23153. The testing shall be incidental to a lawful arrest and administered at the direction of a peace officer having reasonable cause to believe the person was driving a motor vehicle in violation of Section 23152 or 23153. The person shall be told that his or her failure to submit to, or the failure to complete, the required chemical testing will result in a fine and (A) mandatory imprisonment if the person is convicted of a violation of Section 23152 or 23153, (B) the suspension of the person's privilege to operate a motor vehicle for a period of six months, (C) the revocation of the person's privilege to operate a motor vehicle for a period of two years if the refusal occurs within seven years of a separate violation of Section 23103 as specified in Section 23103.5, 23152, or 23153, which resulted in conviction, or (D) the revocation of the person's privilege to operate a motor vehicle for a period of three years if the refusal occurs within seven years of two or more separate violations of Section 23103 as specified in Section 23103.5, 23152, or 23153, or any combination thereof, which resulted in conviction.

(2) (A) If the person is lawfully arrested for driving under the influence of an alcoholic beverage, the person has the choice of whether the test shall be of his or her blood, breath, or urine, and the officer shall advise the person that he or she has that choice. If the person arrested either is incapable, or states that he or she is incapable, of completing any chosen test, the person shall submit to the person's choice of the remaining tests or test, and the officer shall advise the person that the person has that choice.

(B) If the person is lawfully arrested for driving under the influence of any drug or the combined influence of an alcoholic beverage and any drug, the person has the choice of whether the test shall be of his or her blood, breath, or urine, and the officer shall advise the person that he or she has that choice.

(C) A person who chooses to submit to a breath test may also be requested to submit to a blood or urine test if the officer has reasonable cause to believe that the person was driving under the influence of any drug or the combined influence of an alcoholic beverage and any drug and if the officer has a clear indication that a blood or urine test will reveal evidence of the person being under the influence. The officer shall state in his or her report the facts

upon which that belief and that clear indication are based. The person has the choice of submitting to and completing a blood or urine test, and the officer shall advise the person that he or she is required to submit to an additional test and that he or she may choose a test of either blood or urine. If the person arrested either is incapable, or states that he or she is incapable, of completing either chosen test, the person shall submit to and complete the other remaining test.

(3) If the person is lawfully arrested for an offense allegedly committed in violation of Section 23152 or 23153, and, because of the need for medical treatment, the person is first transported to a medical facility where it is not feasible to administer a particular test of, or to obtain a particular sample of, the person's blood, breath, or urine, the person has the choice of those tests which are available at the facility to which that person has been transported. In such an event, the officer shall advise the person of those tests which are available at the medical facility and that the person's choice is limited to those tests which are available.

(4) The officer shall also advise the person that he or she does not have the right to have an attorney present before stating whether he or she will submit to a test or tests, before deciding which test or tests to take, or during administration of the test or tests chosen, and that, in the event of refusal to submit to a test or tests, the refusal may be used against him or her in a court of law.

(5) Any person who is unconscious or otherwise in a condition rendering him or her incapable of refusal is deemed not to have withdrawn his or her consent and a test or tests may be administered whether or not the person is told that his or her failure to submit to, or the noncompletion of, the test or tests will result in the suspension or revocation of his or her privilege to operate a motor vehicle. Any person who is dead is deemed not to have withdrawn his or her consent and a test or tests may be administered at the direction of a peace officer.

(b) Any person who is afflicted with hemophilia is exempt from the blood test required by this section.

(c) Any person who is afflicted with a heart condition and is using an anticoagulant under the direction of a licensed physician and surgeon is exempt from the blood test required by this section.

(d) A person lawfully arrested for any offense allegedly committed while the person was driving a motor vehicle in violation of Section 23152 or 23153 may request the arresting officer to have a chemical test made of the arrested person's blood, breath, or urine for the purpose of determining the alcoholic content of that person's blood, and, if so requested, the arresting officer shall have the test performed.

SEC. 4. Section 23185 of the Vehicle Code is amended to read:

23185. If any person is convicted of a violation of Section 23153 and the offense occurred within seven years of a separate violation of Section 23103 as specified in Section 23103.5, 23152, or 23153 which

resulted in a conviction, that person shall be punished by imprisonment in the state prison, or in the county jail for not less than 120 days nor more than one year, and by a fine of not less than three hundred ninety dollars ($390) nor more than five thousand dollars ($5,000). The person's privilege to operate a motor vehicle shall be revoked by the Department of Motor Vehicles pursuant to paragraph (4) of subdivision (a) of Section 13352.

SEC. 5. Section 23190 of the Vehicle Code is amended to read:

23190. If any person is convicted of a violation of Section 23153 and the offense occurred within seven years of two or more separate violations of Section 23103 as specified in Section 23103.5, 23152, or 23153, or any combination of these violations which resulted in convictions, that person shall be punished by imprisonment in the state prison for a term of two, three, or four years and by a fine of not less than one thousand fifteen dollars ($1,015) nor more than five thousand dollars ($5,000). The person's privilege to operate a motor vehicle shall be revoked by the Department of Motor Vehicles pursuant to paragraph (6) of subdivision (a) of Section 13352.

SEC. 6. This act shall become operative on July 1, 1989.

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.

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## CHAPTER 1274

An act to amend Section 7912 of the Labor Code, relating to amusement rides.

[Approved by Governor September 24, 1988. Filed with Secretary of State September 26, 1988.]

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

SECTION 1. Section 7912 of the Labor Code is amended to read:

7912. No person shall operate an amusement ride unless there is in existence and on file with the division a policy of insurance, issued by a company licensed by the Department of Insurance to do business in the state, or by a nonadmitted insurer employed by a surplus lines broker licensed by the Department of Insurance, in an amount of not less than five hundred thousand dollars ($500,000) insuring the owner or operator against liability for injury suffered by persons riding the amusement ride.

## CHAPTER 1275

An act to add Section 246.3 to the Penal Code, relating to crimes, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 24, 1988. Filed with Secretary of State September 26, 1988.]

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

SECTION 1. Section 246.3 is added to the Penal Code, to read:

246.3. Except as otherwise authorized by law, any person who willfully discharges a firearm in a grossly negligent manner which could result in injury or death to a person is guilty of a public offense and shall be punished by imprisonment in the county jail not exceeding one year, or by imprisonment in the state prison.

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.

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 that the public be protected from persons who willfully discharge a firearm in a grossly negligent manner, it is necessary that this act take effect immediately.

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## CHAPTER 1276

An act to amend Section 13143 of the Health and Safety Code, relating to fire safety.

[Approved by Governor September 24, 1988 Filed with Secretary of State September 26, 1988.]

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

SECTION 1. Section 13143 of the Health and Safety Code is amended to read:

13143. (a) Except as provided in Section 18930, the State Fire Marshal, with the advice of the State Board of Fire Services, shall prepare, adopt, and submit building standards for approval pursuant to Chapter 4 (commencing with Section 18935) of Part 2.5 of Division 13 and shall prepare and adopt other regulations establishing minimum requirements for the prevention of fire and for the

protection of life and property against fire and panic in any building or structure used or intended for use as an asylum, jail, mental hospital, hospital, sanitarium, home for the aged, children's nursery, children's home or institution not otherwise excluded from the coverage of this subdivision, school, or any similar occupancy of any capacity, and in any theater, dancehall, skating rink, auditorium, assembly hall, meeting hall, nightclub, fair building, or similar place of assemblage where 50 or more persons may gather together in a building, room, or structure for the purpose of amusement, entertainment, instruction, deliberation, worship, drinking or dining, awaiting transportation, or education, and in any building or structure which is open to the public and is used or intended to be used for the showing of motion pictures when an admission fee is charged and when the building or structure has a capacity of 10 or more persons. The State Fire Marshal shall adopt and submit building standards for approval pursuant to Chapter 4 (commencing with Section 18935) of Part 2.5 of Division 13 for the purposes described in this section. Regulations adopted pursuant to this subdivision and building standards relating to fire and panic safety published in the State Building Standards Code shall establish minimum requirements relating to the means of egress and the adequacy of exits from, the installation and maintenance of fire extinguishing and fire alarm systems in, the storage and handling of combustible or explosive materials or substances, and the installation and maintenance of appliances, equipment, decorations, security bars, grills, grates, and furnishings that present a fire, explosion or panic hazard, and the minimum requirements shall be predicated on the height and fire-resistive qualities of the building or structure and the type of occupancy for which it is to be used. The building standards and other regulations shall apply to auxiliary or accessory buildings used or intended for use with any of the occupancies mentioned in this subdivision. Violation of any building standard or other regulation shall be a violation of the provisions of this chapter.

In preparing and adopting building standards for approval pursuant to Chapter 4 (commencing with Section 18935) of Part 2.5 of Division 13, and in preparing and adopting other regulations affecting public schools, the State Fire Marshal shall also secure the advice of the State Department of Education. No regulation adopted by the State Fire Marshal shall conflict with any rule, regulation, or building standard lawfully adopted or enforced by the Department of General Services pursuant to Article 3 (commencing with Section 39140) of Chapter 2 of Part 23 or Article 7 (commencing with Section 81130) of Chapter 1 of Part 49 of the Education Code.

In addition to any other requirements for location of exit signs or devices, the State Fire Marshal shall adopt building standards pursuant to this section establishing minimum requirements for the placement of distinctive devices, signs, or other means that identify exits and can be felt or seen near the floor. These building standards shall apply to all newly constructed buildings or structures subject to

this subdivision for which a building permit is issued, (or construction commenced, where no building permit is issued) on or after January 1, 1989.

(b) Notwithstanding the provisions of subdivision (a) and Section 13143.6, facilities licensed pursuant to Chapter 3 (commencing with Section 1500) of Division 2 which provide nonmedical board, room, and care for six or fewer ambulatory children placed with the licensee for care or foster family homes and family day care homes for children, licensed pursuant to Chapter 3.6 (commencing with Section 1597.50) of Division 2, with a capacity of six or fewer and providing care and supervision for ambulatory children or children two years of age or younger, or both, shall not be subject to the provisions of Article 1 (commencing with Section 13100) or Article 2 (commencing with Section 13140) of this chapter or regulations adopted pursuant thereto. No city, county, or public district shall adopt or enforce any requirement for the prevention of fire or for the protection of life and property against fire and panic with respect to structures used as facilities specified in this subdivision, unless the requirement would be applicable to a structure regardless of the special occupancy. Nothing in this subdivision shall restrict the application of state or local housing standards to those facilities, if the standards are applicable to residential occupancies and are not based upon the use of the structure as a facility specified in this subdivision.

"Ambulatory children," as used in this subdivision, does not include nonambulatory persons, as defined in Section 13131, and relatives of the licensee or the licensee's spouse.

(c) The State Fire Marshal shall adopt building standards establishing regulations providing that all school classrooms constructed after January 1, 1990, not equipped with automatic sprinkler systems, which have metal grills or bars on all their windows and do not have at least two exit doors within three feet of each end of the classroom opening to the exterior of the building or to a common hallway used for evacuation purposes, shall have an inside release for the grills or bars on at least one window farthest from the exit doors. The window or windows with the inside release shall be clearly marked as an emergency exit, in accordance with regulations adopted by the State Fire Marshal.

SEC. 2. 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 five hundred thousand dollars ($500,000), reimbursement shall be made from the State Mandates Claims Fund.

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## CHAPTER 1277

An act to add Section 19610.6 to the Business and Professions Code, relating to horseracing.

[Approved by Governor September 24, 1988. Filed with Secretary of State September 26, 1988.]

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

SECTION 1. Section 19610.6 is added to the Business and Professions Code, to read:

19610.6. Notwithstanding Section 19596.6, and in lieu of any deduction under Section 19610.3 or 19610.4, the 22nd District Agricultural Association shall deduct an additional amount of 0.33 of 1 percent from the total parimutuel wagers placed at its satellite wagering facility.

Forty percent of the amount deducted pursuant to this section shall be distributed to the City of Del Mar and 40 percent shall be distributed to the City of Solana Beach, if the respective city has elected to receive a distribution under this section. The remaining amounts deducted pursuant to this section shall be distributed to the County of San Diego to be held in trust for the enhancement of the San Dieguito River Valley and Lagoon. The County of San Diego shall deduct its administrative costs associated with establishing and maintaining the trust fund from the trust revenues distributed to it. If the City of Del Mar or the City of Solana Beach has elected by ordinance to receive a distribution from a fair under this section, it shall not at any time thereafter assess or collect, with respect to an event conducted by that fair, any license or excise tax or fee, including, but not limited to, any admission, parking, or business tax, or any tax or fee levied solely upon the fair conducting satellite wagering or any patron thereof. Furthermore, a city electing to receive a distribution under this section shall provide ordinary and traditional municipal services, such as police services and traffic control, in connection with the satellite wagering. If an eligible city does not elect to receive a distribution under this section, the amount deducted shall be paid to the state as an additional license fee.

SEC. 2. 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.

# CHAPTER 1278

An act to add Section 2009 to the Fish and Game Code, relating to fish and game.

[Approved by Governor September 24, 1988 Filed with Secretary of State September 26, 1988.]

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

SECTION 1. Section 2009 is added to the Fish and Game Code, to read:

2009. (a) A person shall not willfully interfere with the participation of any individual in the lawful activity of shooting, hunting, fishing, falconry, or trapping at the location where that activity is taking place.

(b) A violation of this section is an infraction punishable by a fine of not less than one hundred dollars ($100) nor more than five hundred dollars ($500).

(c) If any person is convicted of a violation of this section and the offense occurred within two years of another separate violation of this section which resulted in a conviction, the violation is a misdemeanor punishable by a fine of not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000), by imprisonment in the county jail for not more than one year, or by both that fine and imprisonment.

(d) This section does not apply to the actions of any peace officer or personnel of the department in the performance of their official duties. This section does not obstruct the rights and normal activities of landowners or tenants, including, but not limited to, farming, ranching, and limiting unlawful trespass.

(e) In order to be liable for a violation of this section, the person is required to have had the specific intent to interfere with the participation of an individual who was engaged in shooting, hunting, fishing, falconry, or trapping.

(f) For purposes of this section, "interfere with" means any action which physically impedes, hinders, or obstructs the lawful pursuit of any of the above-mentioned activities, including, but not limited to, actions taken for the purpose of frightening away animals from the location where the lawful activity is taking place.

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.

## CHAPTER 1279

An act to add Article 6.9 (commencing with Section 799) to Chapter 1 of Part 2 of Division 1 of the Insurance Code, and to repeal Section 2 of Chapter 1214 of the Statutes of 1980, relating to insurance.

[Approved by Governor September 24, 1988. Filed with Secretary of State September 26, 1988.]

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

SECTION 1. Article 6.9 (commencing with Section 799) is added to Chapter 1 of Part 2 of Division 1 of the Insurance Code, to read:

### Article 6.9. Underwriting of AIDS Risks

799. The purposes of this article are to establish standards for the performance by life and disability income insurers of their duty to avoid making or permitting unfair distinctions between individuals of the same class in the underwriting of life or disability income insurance for the risks of acquired immune deficiency syndrome (AIDS) and AIDS-related conditions (ARC); to establish mandatory and uniform minimum standards for assessing AIDS and ARC risks for determining insurability which are deemed to be sufficiently reliable to be used for life and disability income insurance risk classification and underwriting purposes; to require the maintenance of strict confidentiality of personal information obtained through testing; and to require informed consent before any insurer tests for HIV.

799.01. As used in this article:

(a) "ELISA" test means an enzyme-linked immunosorbent assay serologic test which has been licensed by the federal Food and Drug Administration to detect antibodies to the human immunodeficiency virus.

(b) "Positive ELISA test" means an ELISA test performed in accordance with the manufacturer's specifications which is reactive on an initial testing and on at least one of two additional tests of the same serum or plasma specimen.

(c) "Western Blot Assay" means an assay which uses reagents consisting of HIV antigens separated by polyacrylamide-gel electrophoresis and then transferred to nitro-cellulose paper to detect antibodies to the human immunodeficiency virus.

(d) "Reactive Western Blot Assay" means a Western Blot Assay which is reactive according to the standards of performance and results specified in the manufacturer's federal Food and Drug Administration approved product circular for the Western Blot Assay reagents and laboratory apparatus.

(e) "HIV antibody test" means an ELISA test or a Western Blot

Assay, or both.

(f) "Life or disability income insurer" means an insurer licensed to transact life insurance or disability insurance in this state or a fraternal benefit society licensed in this state.

(g) "Certificate" means a certificate of group life insurance or group disability income insurance delivered in this state, regardless of the situs of the group master policy.

(h) "Policy" means an individual life insurance policy or individual disability income insurance policy delivered in this state or a certificate of life insurance benefits or disability income insurance benefits delivered in this state by a fraternal benefit society.

(i) "Disability income insurance" means insurance against loss of occupational earning capacity arising from injury, sickness, or disablement.

799.02. Notwithstanding subdivision (f) of Section 199.21 of the Health and Safety Code or any other provisions of law, a life or disability income insurer may decline a life or disability income insurance application or enrollment request on the basis of a positive ELISA test followed by a reactive Western Blot Assay performed on the same specimen of the applicant's blood.

This authorization applies only to policies and certificates issued or delivered on or after January 1, 1989, issuance of which is otherwise contingent on medical review for other diseases or medical conditions.

This article shall not be construed to prohibit an insurer from declining an application or enrollment request for insurance because the applicant has been diagnosed as having AIDS or ARC by a medical professional.

799.03. No insurer shall test for HIV or for the presence of antibodies to HIV for the purpose of determining insurability other than in accordance with the informed consent, counseling, and privacy protection provisions of this section and Article 6.6 (commencing with Section 791). Notwithstanding any other provision of law, this section shall contain the exclusive requirements for counseling, informed consent, and privacy protection for such testing, except as provided in Section 10700 if that section is enacted by Assembly Bill 2950 of the 1987–88 Regular Session of the Legislature.

(a) An insurer that requests an applicant to take an HIV-related test shall obtain the applicant's written informed consent for the test. Written informed consent shall include a description of the test to be performed, including its purpose, potential uses, and limitations, the meaning of its results, procedures for notifying the applicant of the results, and the right to confidential treatment of the results. Prior to the applicant's execution of the consent, the insurer shall:

(1) Provide the applicant printed material describing HIV, its causes and symptoms, the manner in which it is spread, the test or tests used to detect HIV or the HIV antibody, and what a person can

do whose test results are positive or negative.

(2) Provide the applicant a list of counseling resources available, where the applicant can obtain assistance in understanding the meaning of the test and its results. The list may be provided from publicly available information.

(b) The insurer shall notify an applicant of a positive test result by notifying the applicant's designated physician. If the applicant tested has not given written consent authorizing a physician to receive the test results, the applicant shall be urged, at the time the applicant is informed of the positive test results, to contact a private physician, the county department of health, the State Department of Health Services, local medical societies, or alternative test sites for appropriate counseling.

799.04. A life or disability income insurer may not require an applicant to undergo an HIV antibody test unless the cost of the test is borne by the insurer

799.05. No life or disability income insurer shall consider the marital status or known or suspected homosexuality or bisexuality of an applicant for life insurance or disability income insurance in determining whether to require an HIV antibody test of that applicant.

799.06. All underwriting activities undertaken by insurers pursuant to this article shall be subject to all applicable provisions of Article 6.6 (commencing with Section 791) and subdivisions (a) to (e), inclusive, of Section 199.21 of the Health and Safety Code.

799.07. If an applicant has had a positive ELISA test result or a reactive Western Blot Assay or both, a life or disability income insurer shall not report a code to an insurance support organization as defined in Section 791.02 or another insurer unless a nonspecific blood test result code is used which does not indicate that the individual was subject to testing related to the human immunodeficiency virus.

799.08. No policy or certificate shall limit benefits otherwise payable if loss is caused or contributed to by AIDS or ARC unless the insurer could have declined the application or enrollment request of the insured as provided in Section 799.02.

799.09. No disability insurer, nonprofit hospital service plan, or health care service plan shall require an applicant as a condition of coverage, to be tested for HIV antibodies in order to qualify for life or disability loss of income insurance as prescribed by this article.

SEC. 2. Section 2 of Chapter 1214 of the Statutes of 1980 is repealed.

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.

# CHAPTER 1280

An act to amend Sections 14124.71 and 14124.90 of the Welfare and Institutions Code, relating to Medi-Cal.

[Approved by Governor September 24, 1988 Filed with Secretary of State September 26, 1988 ]

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

SECTION 1. Section 14124.90 of the Welfare and Institutions Code is amended to read:

14124.90. It is the intent of the Legislature to comply with federal law requiring that when a beneficiary has third-party health coverage or insurance, the State Department of Health Services shall be the payer of last resort. In order to assess overlapping or duplicate health coverage, every health care service plan, self-insured employee welfare benefit plan, including those regulated pursuant to the Employee Retirement Income Security Act of 1974 (Public Law 93-406), self-funded employer plan, disability insurer, nonprofit hospital service plan, labor union trust fund, employer, and any other similar plan, insurer, or entity shall maintain a centralized file of the subscribers', policyholders', or enrollees' names, mailing addresses, and social security numbers or date of birth, and where available, for all other covered persons, the names and social security numbers or date of birth. This information shall be made available to the State Department of Health Services upon reasonable request. Notwithstanding Section 20134 of the Government Code, the Board of Administration of the California Public Employees' Retirement System and affiliated systems or contract agencies shall permit data matches with the state department to identify Medi-Cal beneficiaries with third-party health coverage or insurance. A recipient's Medi-Cal identification card shall, where information is available, contain information advising providers of health care services of any third-party health coverage for the recipient. Providers shall seek reimbursement from available third-party health coverage before billing the Medi-Cal program.

SEC. 2. Section 14124.71 of the Welfare and Institutions Code is amended to read:

14124.71. (a) When benefits are provided or will be provided to a beneficiary under this chapter because of an injury for which another person is liable, or for which a carrier is liable in accordance with the provisions of any policy of insurance issued pursuant to Insurance Code Section 11580.2, the director shall have a right to recover from such person or carrier the reasonable value of benefits so provided. The Attorney General, or counsel for the fiscal intermediary under the Medi-Cal program with the permission of the Attorney General, or a contractor pursuant to Section 14124.80, or a county through its civil legal adviser, may, to enforce such right,

institute and prosecute legal proceedings against the third person or carrier who may be liable for the injury in an appropriate court, either in the name of the director or in the name of the injured person, his guardian, conservator, personal representative, estate, or survivors.

(b) The director may:

(1) Compromise, or settle and release any such claim, or

(2) Waive any such claim, in whole or in part, for the convenience of the director, or if the director determines that collection would result in undue hardship upon the person who suffered the injury, or in a wrongful death action upon the heirs of the deceased.

(c) No action taken in behalf of the director pursuant to this section or any judgment rendered in such action shall be a bar to any action upon the claim or cause of action of the beneficiary, his guardian, conservator, personal representative, estate, dependents, or survivors against the third person who may be liable for the injury, or shall operate to deny to the beneficiary the recovery for that portion of any damages not covered hereunder.

(d) The cost of a service provided to an eligible developmentally disabled Medi-Cal beneficiary under Section 14132.44 may be recovered by the director from a liable third person or an insurance carrier.

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## CHAPTER 1281

An act to amend Section 84200.5 of the Government Code, relating to the Political Reform Act of 1974, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 24, 1988. Filed with Secretary of State September 26, 1988.]

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

SECTION 1. Section 84200.5 of the Government Code is amended to read:

84200.5. In addition to the campaign statements required by Section 84200, elected officers, candidates, and committees must file preelection statements as follows:

(a) During an even-numbered year, all elected state officers, all state candidates being voted upon on the first Tuesday after the first Monday in June or November, their controlled committees, and committees primarily formed to support or oppose an elected state officer or a state candidate being voted upon on the first Tuesday after the first Monday in June or November shall file the preelection statements specified in Section 84200.7. However, a candidate who is not being voted upon in the November election, his or her controlled committee, and any committee primarily formed to

support or oppose that candidate is not required to file statements in connection with the November election pursuant to subdivision (b) of Section 84200.7.

(b) During an even-numbered year, all candidates not specified in subdivision (a) who are being voted upon on the first Tuesday after the first Monday in June or November, their controlled committees, and committees primarily formed to support or oppose those candidates or a measure being voted upon on the first Tuesday after the first Monday in June or November of an even-numbered year shall file the preelection statements specified in subdivision (a) of Section 84200.7 in the case of a June election, or subdivision (b) of Section 84200.7 in the case of a November election.

(c) All candidates being voted upon on a date other than the first Tuesday after the first Monday in June or November of an even-numbered year, their controlled committees, and committees primarily formed to support or oppose a candidate or a measure being voted upon on a date other than the first Tuesday after the first Monday in June or November of an even-numbered year shall file the preelection statements specified in Section 84200.8.

(d) During an even-numbered year, state and county general purpose committees formed pursuant to subdivision (a) of Section 82013 shall file the statements specified in Section 84200.7 if they make contributions or independent expenditures totaling five hundred dollars ($500) or more during the period covered by the preelection statement. State and county general purpose committees formed pursuant to subdivision (b) or (c) of Section 82013 are not required to file the statements specified in Section 84200.7.

(e) City general purpose committees shall file statements as follows:

(1) City general purpose committees in a city which has an election on the first Tuesday after the first Monday in June or November of an even-numbered year shall file the statements specified in subdivision (a) or (b) of Section 84200.7 for the six-month period in which the city election is held, if they make contributions or independent expenditures totaling five hundred dollars ($500) or more during the period covered by the preelection statement.

(2) City general purpose committees in a city which has an election on a date other than the first Tuesday after the first Monday in June or November of an even-numbered year shall file the preelection statements specified in Section 84200.8 if they make contributions or independent expenditures totaling five hundred dollars ($500) or more during the period covered by the preelection statement.

(f) Committees formed or existing primarily to support or oppose the qualification of a ballot measure and proponents of a state ballot measure, as defined in Section 3502 of the Elections Code, who control a committee formed or existing primarily to support the

qualification of a measure shall file a campaign statement 21 days after any petitions are filed, or 21 days after the deadline for filing petitions, whichever is earlier. The closing date for the period covered by this statement shall be seven days prior to the deadline for filing the statement.

SEC. 1.5. Section 84200.5 of the Government Code is amended to read:

84200.5. In addition to the campaign statements required by Section 84200, elected officers, candidates, and committees must file preelection statements as follows:

(a) During an even-numbered year, all elected state officers, all state candidates being voted upon on the first Tuesday after the first Monday in June or November, their controlled committees, and committees primarily formed to support or oppose an elected state officer or a state candidate being voted upon on the first Tuesday after the first Monday in June or November shall file the preelection statements specified in Section 84200.7. However, a candidate who is not being voted upon in the November election, his or her controlled committee, and any committee primarily formed to support or oppose that candidate is not required to file statements in connection with the November election pursuant to subdivision (b) of Section 84200.7.

(b) During an even-numbered year, all candidates not specified in subdivision (a) who are being voted upon on the first Tuesday after the first Monday in June or November, their controlled committees, and committees primarily formed to support or oppose those candidates or a measure being voted upon on the first Tuesday after the first Monday in June or November of an even-numbered year shall file the preelection statements specified in subdivision (a) of Section 84200.7 in the case of a June election, or subdivision (b) of Section 84200.7 in the case of a November election.

(c) All candidates being voted upon on a date other than the first Tuesday after the first Monday in June or November of an even-numbered year, their controlled committees, and committees primarily formed to support or oppose a candidate or a measure being voted upon on a date other than the first Tuesday after the first Monday in June or November of an even-numbered year shall file the preelection statements specified in Section 84200.8.

(d) During an even-numbered year, state and county general purpose committees formed pursuant to subdivision (a) of Section 82013 shall file the statements specified in Section 84200.7 if they make contributions or independent expenditures totaling five hundred dollars ($500) or more during the period covered by the preelection statement. State and county general purpose committees formed pursuant to subdivision (b) or (c) of Section 82013 are not required to file the statements specified in Section 84200.7.

(e) City general purpose committees shall file statements as follows:

(1) City general purpose committees in a city which has an election on the first Tuesday after the first Monday in June or November of an even-numbered year shall file the statements specified in subdivision (a) or (b) of Section 84200.7 for the six-month period in which the city election is held, if they make contributions or independent expenditures totaling five hundred dollars ($500) or more during the period covered by the preelection statement.

(2) City general purpose committees in a city which has an election on a date other than the first Tuesday after the first Monday in June or November of an even-numbered year shall file the preelection statements specified in Section 84200.8 if they make contributions or independent expenditures totaling five hundred dollars ($500) or more during the period covered by the preelection statement.

(f) Committees formed or existing primarily to support or oppose the qualification of a ballot measure and proponents of a state ballot measure who control a committee formed or existing primarily to support the qualification of a measure shall file a campaign statement 21 days after any petitions are filed, or 21 days after the deadline for filing petitions, whichever is earlier. The closing date for the period covered by this statement shall be seven days prior to the deadline for filing the statement.

SEC. 2. Section 1.5 of this bill incorporates amendments to Section 84200.5 of the Government Code proposed by both this bill and SB 2027. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1989, but this bill becomes operative first, (2) each bill amends Section 84200.5 of the Government Code, and (3) this bill is enacted after SB 2027, in which case Section 84200.5 of the Government Code, as amended by Section 1 of this bill, shall remain operative only until the operative date of SB 2027, at which time Section 1.5 of this bill shall become operative.

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.

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:

It is necessary that this bill take effect immediately in order to protect the electoral process by ensuring that campaign reports of ballot measure committees are filed before arguments for and against the measures are written.

# CHAPTER 1282

An act to amend Section 2080.6 of the Civil Code, to add Section 14613.06 to the Government Code, and to amend Section 5010 of the Public Resources Code, relating to unclaimed personal property.

[Approved by Governor September 24, 1988. Filed with Secretary of State September 26, 1988.]

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

SECTION 1. Section 2080.6 of the Civil Code is amended to read:

2080.6. (a) Any public agency may elect to be governed by the provisions of this article with respect to disposition of personal property found or saved on property subject to its jurisdiction, or may adopt reasonable regulations for the care, restitution, sale or destruction of unclaimed property in its possession. Any public agency adopting such regulations shall provide therein (1) that such unclaimed property shall be held by such agency for a period of at least three months, (2) that thereafter such property will be sold at public auction to the highest bidder, and (3) that notice of such sale shall be given by the chief administrative officer of such agency at least five days before the time fixed therefor by publication once in a newspaper of general circulation published in the county in which such property was found. Any property remaining unsold after being offered at such public auction may be destroyed or otherwise disposed of by the public agency. In a county having a purchasing agent, the purchasing agent may conduct such sale, in which case the provisions of subdivisions (2) and (3) of this section shall not be applicable. Such sale shall be made by the county purchasing agent in the manner provided by Article 7 (commencing with Section 25500) of Chapter 5 of Part 2 of Division 2 of Title 3 of the Government Code for the sale of surplus personal property. If the public agency determines that any such property transferred to it for sale is needed for a public use, such property may be retained by the agency and need not be sold.

(b) "Public agency" as used in this section means any state agency, including the Department of General Services and the Department of Parks and Recreation, any city, county, city and county, special district, or other political subdivision.

SEC. 2. Section 14613.06 is added to the Government Code, to read:

14613.06. The proceeds from all auction sales conducted pursuant to Section 2080.6 of the Civil Code by the California State Police Division shall be paid into the California State Police Fund and shall be available, upon appropriation therefor, for training mandated or approved by the Commission on Peace Office Standards and Training and other public safety training, including first aid, protective services, cardiopulmonary resuscitation, and other

emergency medical technician training, for peace officers of the California State Police Division.

SEC. 3. Section 5010 of the Public Resources Code is amended to read:

5010. (a) The department may collect fees, rents, and other returns for the use of any state park system area, the amounts to be determined by the department. The department may accept a credit card as a method of payment for fees collected through the department's reservation system. Any contract executed by the department with credit card issuers or draft purchasers shall be consistent with Section 6159 of the Government Code. Notwithstanding Title 1.3 (commencing with Section 1747) of Part 4 of Division 3 of the Civil Code, the department may impose a surcharge in an amount to cover the cost of providing the reservation service, including reimbursement for any fee or discount charged by the credit card issuer.

(b) All revenues received by the department during each fiscal year shall be paid into the State Treasury to the credit of the State Parks and Recreation Fund, which is hereby created.

(c) Notwithstanding subdivision (b), all revenues received by the department from the state vehicular recreation area and trail system shall be paid into the State Treasury to the credit of the Off-Highway Vehicle Fund, as required by Section 38225 of the Vehicle Code.

(d) All revenues received by the department for the entry or launching of boats shall be paid into the State Treasury to the credit of the State Parks and Recreation Fund and shall be used for boating safety, enforcement, operation, and maintenance programs of the department.

(e) On July 1, 1980, all existing balances, including unappropriated balances and encumbered and unencumbered balances, of the following funds and accounts shall be transferred to the State Parks and Recreation Fund:

(1) Park and Recreation Revolving Account (Section 5098, Public Resources Code, as added by Chapter 1222, Statutes of 1972).

(2) The Resources Protection Account (Section 8600, Public Resources Code, as added by Chapter 1052, Statutes of 1969).

(3) Collier Park Preservation Fund (Section 5010, Public Resources Code, as added by Chapter 1502, Statutes of 1974).

(4) San Francisco Maritime State Historic Park Account (Section 2, Chapter 1764, Statutes of 1971).

(5) State Park Highway Account, Bagley Conservation Fund (Section 2107.7, Streets and Highways Code, as added by Chapter 1032, Statutes of 1973).

(6) All funds received by the department pursuant to Division 21 (commencing with Section 31000).

(7) Hostel Facilities Use Fees Account (Section 2, Chapter 265, Statutes of 1974).

(8) All funds, other than expended funds, previously appropriated to the department from the Bagley Conservation Fund.

(f) On and after July 1, 1980, all funds, other than those specified in subdivisions (g) and (h), in the State Parks and Recreation Fund shall be available for expenditure for state park planning, acquisition, and development projects, operation of the state park system, and resource and property management and protection, when appropriated by the Legislature.

(g) All funds in the State Parks and Recreation Fund which had previously been appropriated and have become encumbered, may be used, without further appropriation, for liquidation of those encumbrances, upon the same terms and conditions as made by those previous appropriations.

(h) The balance of any unencumbered funds in the State Park Highway Account in the Bagley Conservation Fund shall be transferred to the State Parks and Recreation Fund and shall be available for expenditure as provided in subdivisions (b) and (c) of Section 2107.7 of the Streets and Highways Code.

(i) All funds received by the Department of Parks and Recreation from the auction sales conducted pursuant to Section 2080.6 of the Civil Code shall be paid into the State Treasury to the credit of the State Parks and Recreation Fund and shall be used for training department employees in the Ranger/Lifeguard classification, including, but not limited to, resource management and protection, law enforcement, interpretation, first aid, cardiopulmonary resuscitation, and medical technical training.

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## CHAPTER 1283

An act to add and repeal Section 1157.2 of the Health and Safety Code, relating to health.

[Approved by Governor September 24, 1988. Filed with Secretary of State September 26, 1988 ]

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

SECTION 1. Section 1157.2 is added to the Health and Safety Code, to read:

1157.2. Any counties which were eligible for organization and operation of local public health services by the State Department of Health Services pursuant to Section 1157 as of January 1, 1988, shall thereafter continue to be eligible therefor, notwithstanding a subsequent increase in total population beyond the 40,000 population limit of that section.

This section shall remain in effect until January 1, 1991, and on that date is repealed, unless a later enacted statute, which becomes effective on or before January 1, 1991, deletes or extends that date.

# CHAPTER 1284

An act to add Section 48900.1 to the Education Code, relating to education.

[Approved by Governor September 24, 1988. Filed with Secretary of State September 26, 1988.]

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

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

(a) Parents and guardians can and must play an active role in the behavior of their children while in school.

(b) Classroom discipline presents a significant problem in many schools today and detracts from the amount of time for actual teaching.

(c) It is the intent of the Legislature that implementation of procedures authorized under Section 48900.1 of the Education Code should promote positive parent-child interaction, as well as improved classroom behavior. Schools that involve parents and guardians in the classroom behavior problems of their children or wards are expected, where appropriate, to inform parents and guardians of available resources and counseling in the school and community to assist parents and guardians in developing more effective parental skills.

SEC. 2. Section 48900.1 is added to the Education Code, to read:

48900.1. (a) The governing board of each school district shall adopt a policy authorizing teachers to provide that the parent or guardian of a pupil who has been suspended by a teacher pursuant to Section 48910 for reasons specified in subdivision (i) or (k) of Section 48900, attend a portion of a schoolday in his or her child's or ward's classroom. The policy shall take into account reasonable factors that may prevent compliance with a notice to attend. The attendance of the parent or guardian shall be limited to the class from which the pupil was suspended.

(b) The policy shall be adopted pursuant to the procedures set forth in Sections 35291 and 35291.5. Parents and guardians shall be notified of this policy prior to its implementation. A teacher shall apply any policy adopted pursuant to this section uniformly to all pupils within the classroom.

The adopted policy shall include the procedures that the district will follow to accomplish the following:

(1) Ensure that parents or guardians who attend school for the purposes of this section meet with the school administrator or his or her designee after completing the classroom visitation and before leaving the schoolsite.

(2) Contact parents or guardians who do not respond to the request to attend school pursuant to this section.

(c) If a teacher imposes the procedure pursuant to subdivision (a), the principal shall send a written notice to the parent or guardian stating that attendance by the parent or guardian is pursuant to law. This section shall apply only to a parent or guardian who is actually living with the pupil.

(d) A parent or guardian who has received a written notice pursuant to subdivision (c) shall attend class as specified in the written notice. The notice may specify that the parent's or guardian's attendance be on the day in which the pupil is scheduled to return to class, or within a reasonable period of time thereafter, as established by the policy of the board adopted pursuant to subdivision (a).

(e) Notwithstanding any provision of law to the contrary, the employer of a parent or guardian required to attend class pursuant to this section shall not discharge, threaten with discharge, demote, suspend, or in any other manner treat unfairly in any term or condition of employment the parent or guardian in retaliation for being absent from work pursuant to this section. Compensation for the time of an employee's absence from work pursuant to this section shall be governed by the contract of employment or practice of the employer, as applicable.

Any employee who believes that he or she has been discharged, threatened with discharge, demoted, suspended, or in any other manner treated unfairly in any term or condition of employment in retaliation for being absent from work pursuant to this section may file a complaint pursuant to Section 98.7 of the Labor Code. In addition to the sanctions contained in Section 98.7 of the Labor Code, if the Labor Commissioner determines that a violation of this section has occurred, he or she may require the employer to pay the employee a sum equal to triple the amount of lost wages and work benefits due to the violation.

The protections afforded to employees by this subdivision are applicable to the attendance of a parent or guardian in his or her child's or ward's classroom no more than four times per school year. Thereafter, an employee's rights shall be governed by the contract of employment and other provisions of existing law.

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 five hundred thousand dollars ($500,000), reimbursement shall be made from the State Mandates Claims Fund.

# CHAPTER 1285

An act to amend Sections 18021.5, 18070.3, and 18070.5 of, and to add Section 18070.6 to, the Health and Safety Code, relating to mobilehomes, and making an appropriation therefor.

[Approved by Governor September 24, 1988. Filed with Secretary of State September 26, 1988.]

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

SECTION 1. Section 18021.5 of the Health and Safety Code is amended to read:

18021.5. (a) Any person who knowingly violates any of the provisions of this part relating to licensing or titling and registration, or any rules or regulations promulgated therefor, is guilty of a misdemeanor, punishable by a fine not exceeding two thousand dollars ($2,000) or by imprisonment not exceeding 30 days, or by both.

(b) The department, after notice and hearing, may suspend or revoke the license issued to a licensee, as provided for by this part, who knowingly violates any of the provisions of this part. In any hearing before a judge or in any administrative action before an administrative law judge, the department may seek and may recover its investigative and enforcement costs from the licensee unless the licensee prevails on the charges. The department may also seek fines, and may seek restitution as provided in subdivision (d).

(c) Any person who knowingly violates any provision of this part relating to licensing or titling and registration, or any rules or regulations promulgated therefor, shall be liable for a civil penalty not exceeding two thousand dollars ($2,000) for each violation or for each day of a continuing violation. The department shall institute or maintain an action in a court of appropriate jurisdiction to collect any civil penalty arising under this section.

(d) In addition to the other remedies provided in this section, the department may pursue any other remedies provided for in this part and may seek restitution for any monetary loss to a purchaser, seller, licensee, financing agency, governmental agency, or other person or entity suffering a monetary loss as a result of a violation of this part.

(e) In any disciplinary hearing before an administrative law judge concerning licensing, upon request of the department and pursuant to appropriate proof, the administrative law judge shall make the following findings:

(1) The amount of the actual and direct monetary loss to any person or entity as a result of fraud, willful misrepresentation, or breach of warranty or guarantee by the respondent.

(2) The amount of the department's investigative and enforcement costs up to and including the date of the hearing, including, but not limited to, charges imposed by the Office of

Administrative Hearings pursuant to hearing the case and issuing a proposed decision.

SEC. 1.5. Section 18070.3 of the Health and Safety Code is amended to read:

18070.3. (a) When any person (1) who has purchased a manufactured home or mobilehome for a personal, family, or household residential purpose, or (2) who, as the registered owner thereof, has sold a manufactured home or mobilehome, obtains either (A) a final judgment in any court of competent jurisdiction against any manufactured home or mobilehome dealer, salesperson, or other seller or purchaser involved in the sale transaction, or (B) an administrative determination against a licensee who is or has been the subject of bankruptcy proceedings, on the grounds of failure to honor warranties or guarantees, or for fraud, or for willful misrepresentation, or for conversion, arising directly out of any transaction which occurs on or after January 1, 1985, the person, upon termination of all proceedings including appeals, may file a claim with the department for an order directing payment out of the fund of the amount of actual and direct loss in the transaction.

(b) "Administrative determination," for the purpose of this chapter, means either an order of restitution or a finding of actual and direct loss rendered pursuant to Section 18021.5 which is adopted by the department as part of its final decision in the underlying case. Nothing in this chapter shall be construed as requiring the department to pursue an administrative determination.

(c) "Actual and direct loss," for the purposes of this chapter, shall include court costs and reasonable attorney fees not to exceed 15 percent of the judgment or administrative determination.

(d) The total amount of the claim shall not exceed the amount of actual and direct loss that remains unreimbursed from any source.

The maximum payment ordered under this section, with respect to any one sales transaction on a manufactured home or mobilehome, shall be the amount of the judgment plus attorney fees, or the amount of the administrative determination plus attorney fees, whichever is less, but in no event more than forty thousand dollars ($40,000).

(e) "Conversion," for the purpose of this chapter, means the unlawful appropriation of the property of another. No person applying for recovery from the fund shall apply for judgment on any bond issued prior to January 1, 1985.

(f) Prior to payment of any claim against the fund, the claimant or claimants shall have first: (1) if the claim is based on a final judgment, executed judgment against all the assets of the judgment debtor or present evidence satisfactory to the department that the debtor is judgment proof; or (2) if the claim is based on an administrative determination, present evidence satisfactory to the department that the licensee is or has been the subject of bankruptcy proceedings and, for purposes of any civil litigation or claims in bankruptcy proceedings, has assigned to the department any interest

in the actual and direct loss described in subdivision (a) in the amount that the claimant or claimants recover from the fund.

(g) A claim against the fund shall be filed with the department (1) within one year from the date of the judgment or (2) in the event that a claim is based on an administrative determination, within one year from the termination of bankruptcy proceedings or the effective date of the department's decision adopting the administrative determination, whichever is later in time.

(h) When any person files a claim for an order directing payment from the fund, the department shall conduct a review of the application, and it may issue an order directing payment out of the fund as provided in subdivisions (a) to (g), inclusive, subject to the limitations of subdivisions (a) to (g), inclusive, if the claimant or claimants show all of the following:

(1) That he or she is not a spouse of the judgment debtor or a person against whom an administrative determination was rendered, whichever is applicable, or a person representing the spouse.

(2) That he or she is making an application within the time specified in subdivision (c).

(3) That the claimant has satisfied the applicable requirements of subdivision (f).

(i) Upon an order of the department directing that payment be made out of the fund, the Controller is authorized to draw a warrant for the payment of the amount of the claim approved by the department pursuant to this section.

SEC. 2. Section 18070.5 of the Health and Safety Code is amended to read:

18070.5. When the department has caused payment to be made from the fund to a judgment creditor who has complied with Section 18070.6, the department shall be subrogated to the rights of the judgment creditor.

SEC. 3. Section 18070.6 is added to the Health and Safety Code, to read:

18070.6. The department may be reimbursed from the fund for its investigative and enforcement costs incurred pursuant to this chapter. In the case of any claim ordered to be paid on the basis of an "administrative determination," as defined in Section 18070.3, those costs shall include the costs incurred by the department in its investigation and enforcement of the claim, including adjudication, for which the determination was rendered, including, but not limited to, any appeals.

## CHAPTER 1286

An act to add Section 25402.8 to the Public Resources Code, relating to energy conservation.

[Approved by Governor September 24, 1988. Filed with Secretary of State September 26, 1988.]

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

SECTION 1. Section 25402.8 is added to the Public Resources Code, to read:

25402.8. (a) 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 these standards would have on indoor air pollution problems.

(b) The commission shall undertake a review of existing building standards for residential and nonresidential buildings relating to energy conservation to determine whether modifications are needed to reduce the potential for indoor air pollution. The review shall be conducted in consultation with the State Department of Health Services and the State Air Resources Board, and with due consideration to the findings of reports as they are submitted to the Legislature pursuant to subdivision (d) of Section 25402.1, and shall be completed not later than December 31, 1991.

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## CHAPTER 1287

An act to add and repeal Section 25208.18 of the Health and Safety Code, relating to water facilities, and making an appropriation therefor.

[Approved by Governor September 24, 1988. Filed with Secretary of State September 26, 1988.]

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

SECTION 1. Section 25208.18 is added to the Health and Safety Code, to read:

25208.18. (a) Notwithstanding any other provision of this article, a regional board may grant a person an exemption from this article for a surface impoundment if the applicant demonstrates and the regional board determines that the surface impoundment contains only agricultural surface or subsurface drainage waters, that the surface impoundment meets all of the criteria in subdivision (b), and that the person complies with the requirements of subdivision (c). A surface impoundment located in a federal or state wildlife refuge or area is not eligible for an exemption under this section.

(b) A regional board may grant an exemption pursuant to subdivision (a) only if the surface impoundment, at the time an extension is granted, meets all of the following criteria:

(1) The surface impoundment is a drainage water management unit, as defined in subparagraph (A) of paragraph (1) of subdivision (d) of Section 13452 of the Water Code.

(2) The regional board has issued waste discharge requirements for the operation of the surface impoundment.

(3) The surface impoundment is operated in a manner acceptable to the regional board, it is in compliance with waste discharge requirements, and it is not adversely affecting a potential source of drinking water.

(4) The person who owns the surface impoundment demonstrates to the satisfaction of the regional board that measures to prevent adverse impacts to wildlife have been implemented or will be implemented pursuant to a schedule adopted by the regional board. The regional board, in consultation with the Department of Fish and Game, shall determine appropriate design, construction, and operation criteria for surface impoundments in consideration of measures to prevent adverse impacts to wildlife.

(5) The person who owns the surface impoundment demonstrates to the satisfaction of the regional board that a groundwater quality monitoring program designed to detect lateral seepage has been implemented or will be implemented pursuant to a schedule adopted by the regional board.

(6) The person who owns the surface impoundment demonstrates to the satisfaction of the regional board that measures are being taken to reduce the volume of drainage water being discharged to the surface impoundment.

(c) To qualify for an exemption under this section, the person shall file an application for an exemption with the regional board within 180 days after the surface impoundment becomes subject to this article, or by July 1, 1989, whichever is later, together with an initial filing fee of three thousand dollars ($3,000). The fee revenues shall be deposited in the Surface Impoundment Assessment Account in the General Fund. The application shall contain the names of persons who own or operate each surface impoundment for which the exemption is sought and the location of each surface impoundment for which the exemption is sought. The application shall be accompanied by a technical report containing all of the following information:

(1) Information fully characterizing the waste constituents in the drainage water.

(2) A description of the installed features of the surface impoundment, including a description of engineering design.

(3) A description of the precipitation and drainage controls for the surface impoundment.

(4) Operation plans for waste containment.

(5) Estimates of the rate of wastewater percolation.

(6) Information on groundwater quality immediately underlying and adjacent to the surface impoundment.

(d) The regional board shall act on an exemption application within 180 days of receipt of a complete application and technical report. The regional board shall notify an applicant not later than 30 days after receipt of an application and technical report if either the application or technical report do not fully comply with the requirements of this section. If an application or technical report is determined by the regional board to be in noncompliance, the applicant shall provide additional information to the regional board within 60 days of notification of the regional board's determination of noncompliance. A regional board shall not take action on the application if the additional information required by the regional board is received after this 60-day period.

If the exemption is granted, the regional board shall conduct annual inspections of the surface impoundment. Except as provided in subdivision (e), an exemption granted pursuant to this section shall be effective for four years from the date it is granted, or until January 1, 1993, whichever is earlier.

(e) If a regional board finds that a surface impoundment granted an exemption pursuant to this section does not comply with the criteria specified in subdivision (b) or with the report filed pursuant to subdivision (c), the regional board shall revoke the exemption. If an exemption is revoked, all of the provisions of this article, as applicable, apply to the surface impoundment.

(f) The state board shall provide guidance to the regional boards to ensure the uniform administration of this section.

(g) On or before January 1, 1992, the state board shall submit a report to the Legislature on the status of compliance with this section, including, but not limited to, all of the following information:

(1) The number of surface impoundments for which applications have been filed pursuant to this section.

(2) The number of surface impoundments which were exempted from this article under this section.

(3) The status of completed or ongoing studies of technologies and methods for the management of agricultural drainage water.

(4) Using existing studies and reports, a description of options for the management of agricultural drainage water and any relevant findings.

(h) This section does not alter or diminish the authority of the state board, or a regional board, under Division 7 (commencing with Section 13000) of the Water Code, including any regulations adopted pursuant thereto.

(i) Notwithstanding Section 25208.3, each person granted an exemption pursuant to subdivision (c) shall pay only the application fee provided in subdivision (c) and any additional fees assessed by the state board to recover actual costs incurred by the state board and regional boards to administer this section. If the exemption is revoked pursuant to subdivision (c) or the application is denied, the

person shall pay the fees assessed pursuant to Section 25208.3.

(j) This section shall remain in effect only until January 1, 1993, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1993, extends or deletes that date.

SEC. 2. (a) Pursuant to Section 13466 of the Water Code, the State Water Resources Control Board is hereby authorized to make loans in the amount of six million one hundred seventy-three thousand dollars ($6,173,000) from the Agricultural Drainage Water Account in the 1986 Water Conservation and Water Quality Bond Fund, in accordance with the Water Conservation and Water Quality Bond Law of 1986 (Chapter 6.1 (commencing with Section 13450) of Division 7 of the Water Code), to the following local agencies to aid in the construction of drainage water management units for the treatment, storage, or disposal of agricultural drainage water and any feasibility studies therefor, in accordance with the following schedule:

| | Agency | Project | Amount |
|---|---|---|---|
| (1) | United Water Conservation District | Groundwater nitrate study | $ 75,000 |
| (2) | Gustine Drainage District | Groundwater study | 100,000 |
| (3) | Tulare Lake Drainage District | Construct evaporation ponds | 1,000,000 |
| (4) | Imperial Irrigation District | Pilot program for evaporation pond construction | 250,000 |
| (5) | City of Redlands | Construct treatment facilities for DBCP removal | 2,750,000 |
| (6) | Reclamation District No. 999 | Improvement of existing water facilities | 500,000 |
| (7) | Westlands Water District | Phase 1-construction deep-well injection plant | 1,498,000 |

(b) The board, at a regularly-scheduled hearing held at least 30 days prior to making any loans pursuant to subdivision (a), shall review and consider the recommendations or findings of any federal- or state-funded studies, reports, or research pertaining to drainage water management units which have been submitted to, and which have been determined to be relevant by, the board.

## CHAPTER 1288

An act to amend Section 2115 of, and to add Section 710 to the Corporations Code, relating to corporations.

[Approved by Governor September 24, 1988. Filed with Secretary of State September 26, 1988.]

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

SECTION 1. Section 710 is added to the Corporations Code, to read:

710. (a) This section applies to a corporation with outstanding shares held of record by 100 or more persons (determined as provided in Section 605) which files an amendment of articles or certificate of determination containing a "supermajority vote" provision on or after January 1, 1989.

(b) A "supermajority vote" is a requirement set forth in the articles or in a certificate of determination that specified corporate action or actions be approved by a larger proportion of the outstanding shares than a majority, or by a larger proportion of the outstanding shares of a class or series than a majority, but no supermajority vote which is subject to this section shall require a vote in excess of 66⅔ percent of the outstanding shares or 66⅔ percent of the outstanding shares of any class or series of such shares.

(c) An amendment of the articles or a certificate of determination that includes a supermajority vote requirement shall be approved by at least as large a proportion of the outstanding shares (Section 152) as is required pursuant to that amendment or certificate of determination for the approval of the specified corporate action or actions. The supermajority vote requirement shall cease to be effective two years after the filing of the amendment or certificate of determination. At any time within one year before the applicable expiration date, a supermajority vote requirement may be renewed, and at any time after the expiration date, a supermajority vote requirement may again be made effective, by readopting the provision and filing a certificate of amendment pursuant to, and subject to the limitations of, this subdivision.

SEC. 2. Section 2115 of the Corporations Code is amended to read:

2115. (a) A foreign corporation (other than a foreign association or foreign nonprofit corporation but including a foreign parent corporation even though it does not itself transact intrastate business) is subject to this section if the average of the property factor, the payroll factor and the sales factor (as defined in Sections 25129, 25132 and 25134 of the Revenue and Taxation Code) with respect to it is more than 50 percent during its latest full income year and if more than one-half of its outstanding voting securities are held of record by persons having addresses in this state. The property

factor, payroll factor and sales factor shall be those used in computing the portion of its income allocable to this state in its franchise tax return or, with respect to corporations the allocation of whose income is governed by special formulas or which are not required to file separate or any tax returns, which would have been so used if they were governed by such three-factor formula. The determination of these factors with respect to any parent corporation shall be made on a consolidated basis, including in a unitary computation (after elimination of intercompany transactions) the property, payroll and sales of the parent and all of its subsidiaries in which it owns directly or indirectly more than 50 percent of the outstanding shares entitled to vote for the election of directors, but deducting a percentage of such property, payroll and sales of any subsidiary equal to the percentage minority ownership, if any, in such subsidiary. For the purpose of this subdivision, any securities held to the knowledge of the issuer in the names of broker-dealers or nominees for broker-dealers, including clearing corporations, shall not be considered outstanding. However, if the foreign corporation requests all broker-dealers in whose name or for whom securities are held to certify, with respect to all beneficial owners for whom securities are held, the number of shares held for those beneficial owners having addresses (as shown on the records of the broker-dealer) in this state and outside of this state, then all shares so certified shall be considered outstanding and held of record by persons having addresses either in this state or outside of this state as so certified, provided that the certification so provided shall be retained with the record of shareholders and made available for inspection and copying in the same manner as is provided in Section 1600 with respect to that record.

(b) The following chapters and sections of this division shall apply to a foreign corporation subject to this section (to the exclusion of the law of the jurisdiction in which it is incorporated):

Chapter 1 (general provisions and definitions), to the extent applicable to the following provisions;

Section 301 (annual election of directors);

Section 303 (removal of directors without cause);

Section 304 (removal of directors by court proceedings);

Section 305, subdivision (c) (filing of director vacancies where less than a majority in office elected by shareholders);

Section 309 (directors' standard of care);

Section 316 (excluding paragraph (3) of subdivision (a) and paragraph (3) of subdivision (f)) (liability of directors for unlawful distributions);

Section 317 (indemnification of directors, officers and others);

Sections 500 to 505, inclusive (limitations on corporate distributions in cash or property);

Section 506 (liability of shareholder who receives unlawful distribution);

Section 600, subdivisions (b) and (c) (requirement for annual

shareholders' meeting and remedy if same not timely held);

Section 708, subdivisions (a), (b) and (c) (shareholder's right to cumulate votes at any election of directors);

Section 710 (supermajority vote requirement);

Section 1001, subdivision (d) (limitations on sale of assets);

Section 1101 (provisions following subdivision (e)) (limitations on mergers);

Chapter 12 (commencing with Section 1200) (reorganizations);

Chapter 13 (commencing with Section 1300) (dissenters' rights);

Sections 1500 and 1501 (records and reports);

Section 1508 (action by Attorney General);

Chapter 16 (commencing with Section 1600) (rights of inspection).

(c) Subdivision (a) shall become applicable to any foreign corporation only upon the first day of the first income year of the corporation commencing on or after the 30th day after the filing by it of the report pursuant to Section 2108 showing that the tests referred to in subdivision (a) have been met or on or after the entry of a final order by a court of competent jurisdiction declaring that such tests have been met.

(d) Subdivision (a) shall cease to be applicable at the end of any income year during which a report pursuant to Section 2108 shall have been filed showing that at least one of the tests referred to in subdivision (a) is not met or a final order shall have been entered by a court of competent jurisdiction declaring that one of such tests is not met, provided that such filing or order shall be ineffective if a contrary report or order shall be made or entered before the end of such income year.

(e) This section does not apply to any corporation (1) with outstanding securities listed on the New York Stock Exchange or the American Stock Exchange, or (2) with outstanding securities designated as qualified for trading as a national market security on the National Association of Securities Dealers Automatic Quotation System (or any successor national market system) if such corporation has at least 800 holders of its equity securities as of the record date of its most recent annual meeting of shareholders, or (3) if all of its voting shares (other than directors' qualifying shares) are owned directly or indirectly by a corporation or corporations not subject to this section. For purposes of determining the number of holders of a corporation's equity securities under clause (2) of this subdivision, there shall be included, in addition to the number of recordholders reflected on the corporation's stock records, the number of holders of such equity securities held in the name of any broker-dealer or nominee for a broker-dealer, including a clearing corporation, which furnishes the corporation with a certification as to the number of holders for whom such equity securities are held by the broker-dealer (or nominee), provided that the corporation retains any such certification with the record of shareholders and makes it available for inspection and copying in the same manner as is

provided in Section 1600 with respect to that record.

SEC. 3. Section 2115 of the Corporations Code is amended to read:

2115. (a) A foreign corporation (other than a foreign association or foreign nonprofit corporation but including a foreign parent corporation even though it does not itself transact intrastate business) is subject to this section if the average of the property factor, the payroll factor and the sales factor (as defined in Sections 25129, 25132 and 25134 of the Revenue and Taxation Code) with respect to it is more than 50 percent during its latest full income year and if more than one-half of its outstanding voting securities are held of record by persons having addresses in this state. The property factor, payroll factor and sales factor shall be those used in computing the portion of its income allocable to this state in its franchise tax return or, with respect to corporations the allocation of whose income is governed by special formulas or which are not required to file separate or any tax returns, which would have been so used if they were governed by such three-factor formula. The determination of these factors with respect to any parent corporation shall be made on a consolidated basis, including in a unitary computation (after elimination of intercompany transactions) the property, payroll and sales of the parent and all of its subsidiaries in which it owns directly or indirectly more than 50 percent of the outstanding shares entitled to vote for the election of directors, but deducting a percentage of the property, payroll, and sales of any subsidiary equal to the percentage minority ownership, if any, in the subsidiary. For the purpose of this subdivision, any securities held to the knowledge of the issuer in the names of broker-dealers, nominees for broker-dealers, (including clearing corporations) or banks, associations, or other entities holding securities in a nominee name or otherwise on behalf of a beneficial owner (collectively "Nominee Holders"), shall not be considered outstanding. However, if the foreign corporation requests all Nominee Holders to certify, with respect to all beneficial owners for whom securities are held, the number of shares held for those beneficial owners having addresses (as shown on the records of the Nominee Holder) in this state and outside of this state, then all shares so certified shall be considered outstanding and held of record by persons having addresses either in this state or outside of this state as so certified, provided that the certification so provided shall be retained with the record of shareholders and made available for inspection and copying in the same manner as is provided in Section 1600 with respect to that record. A current list of beneficial owners of a foreign corporation's securities provided to the corporation by one or more Nominee Holders or their agent pursuant to the requirements of Rule 14b-1(c) or 14b-2(e) as adopted on December 9, 1986, promulgated under the Securities Exchange Act of 1934 shall constitute an acceptable certification with respect to beneficial owners for the purposes of this subdivision.

(b) The following chapters and sections of this division shall apply to a foreign corporation subject to this section (to the exclusion of the law of the jurisdiction in which it is incorporated):

Chapter 1 (general provisions and definitions), to the extent applicable to the following provisions;

Section 301 (annual election of directors);

Section 303 (removal of directors without cause);

Section 304 (removal of directors by court proceedings);

Section 305, subdivision (c) (filing of director vacancies where less than a majority in office elected by shareholders);

Section 309 (directors' standard of care);

Section 316 (excluding paragraph (3) of subdivision (a) and paragraph (3) of subdivision (f)) (liability of directors for unlawful distributions);

Section 317 (indemnification of directors, officers and others);

Sections 500 to 505, inclusive (limitations on corporate distributions in cash or property);

Section 506 (liability of shareholder who receives unlawful distribution);

Section 600, subdivisions (b) and (c) (requirement for annual shareholders' meeting and remedy if same not timely held);

Section 708, subdivisions (a), (b) and (c) (shareholder's right to cumulate votes at any election of directors);

Section 710 (supermajority vote requirement);

Section 1001, subdivision (d) (limitations on sale of assets);

Section 1101 (provisions following subdivision (e)) (limitations on mergers);

Chapter 12 (commencing with Section 1200) (reorganizations);

Chapter 13 (commencing with Section 1300) (dissenters' rights);

Sections 1500 and 1501 (records and reports);

Section 1508 (action by Attorney General);

Chapter 16 (commencing with Section 1600) (rights of inspection).

(c) Subdivision (a) shall become applicable to any foreign corporation only upon the first day of the first income year of the corporation commencing on or after the 30th day after the filing by it of the report pursuant to Section 2108 showing that the tests referred to in subdivision (a) have been met or on or after the entry of a final order by a court of competent jurisdiction declaring that such tests have been met.

(d) Subdivision (a) shall cease to be applicable at the end of any income year during which a report pursuant to Section 2108 shall have been filed showing that at least one of the tests referred to in subdivision (a) is not met or a final order shall have been entered by a court of competent jurisdiction declaring that one of such tests is not met, provided that such filing or order shall be ineffective if a contrary report or order shall be made or entered before the end of such income year.

(e) This section does not apply to any corporation (1) with

outstanding securities listed on the New York Stock Exchange or the American Stock Exchange, or (2) with outstanding securities designated as qualified for trading as a national market security on the National Association of Securities Dealers Automatic Quotation System (or any successor national market system) if such corporation has at least 800 holders of its equity securities as of the record date of its most recent annual meeting of shareholders, or (3) if all of its voting shares (other than directors' qualifying shares) are owned directly or indirectly by a corporation or corporations not subject to this section. For purposes of determining the number of holders of a corporation's equity securities under clause (2) of this subdivision, there shall be included, in addition to the number of recordholders reflected on the corporation's stock records, the number of holders of the equity securities held in the name of any Nominee Holder which furnishes the corporation with a certification pursuant to subdivision (a) provided that the corporation retains the certification with the record of shareholders and makes it available for inspection and copying in the same manner as is provided in Section 1600 with respect to that record.

SEC. 4. Section 3 of this bill incorporates amendments to Section 2115 of the Corporations Code proposed by both this bill and AB 4659. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1989, (2) each bill amends Section 2115 of the Corporations Code, and (3) this bill is enacted after AB 4659, in which case Section 2 of this bill shall not become operative.

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## CHAPTER 1289

An act to amend Sections 18021.5, 18070.2, and 18070.3 of, and to add Section 18070.6 to, the Health and Safety Code, relating to the Mobilehome Recovery Fund, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 24, 1988. Filed with Secretary of State September 26, 1988.]

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

SECTION 1. Section 18021.5 of the Health and Safety Code is amended to read:

18021.5. (a) Any person who knowingly violates any of the provisions of this part relating to licensing or titling and registration, or any rules or regulations promulgated therefor, is guilty of a misdemeanor, punishable by a fine not exceeding two thousand dollars ($2,000) or by imprisonment not exceeding 30 days, or by both.

(b) The department, after notice and hearing, may suspend or revoke the license issued to a licensee, as provided for by this part,

who knowingly violates any of the provisions of this part. In any hearing before a judge or in any administrative action before an administrative law judge, the department may seek and may recover its investigative and enforcement costs from the licensee unless the licensee prevails on the charges. The department may also seek fines and may seek restitution as provided in subdivision (d).

(c) Any person who knowingly violates any provision of this part relating to licensing or titling and registration, or any rules or regulations promulgated therefor, shall be liable for a civil penalty not exceeding two thousand dollars ($2,000) for each violation or for each day of a continuing violation. The department shall institute or maintain an action in a court of appropriate jurisdiction to collect any civil penalty arising under this section.

(d) In addition to the other remedies provided in this section, the department may pursue any other remedies provided for in this part and may seek restitution for any monetary loss to a purchaser, seller, licensee, financing agency, governmental agency, or other person or entity suffering a monetary loss as a result of a violation of this part.

(e) In any disciplinary hearing before an administrative law judge concerning licensing, upon request of the department and pursuant to appropriate proof, the administrative law judge shall make the following findings:

(1) The amount of the actual and direct monetary loss to any person or entity as a result of fraud, willful misrepresentation, or breach of warranty or guarantee by the respondent.

(2) The amount of the department's investigative and enforcement costs up to and including the date of the hearing, including, but not limited to, charges imposed by the Office of Administrative Hearings for hearing the case and issuing a proposed decision.

SEC. 1.5. Section 18070.2 of the Health and Safety Code is amended to read:

18070.2. (a) Fees for the establishment and operation of the Mobilehome Recovery Fund shall be collected on or after January 1, 1985. Claims against the fund arising from sales which occur after January 1, 1985, may not be submitted to the department before January 1, 1986. For purposes of this section, the date of sale shall be either of the following:

(1) The date escrow closes for sales by dealers which are subject to Section 18035 or 18035.2.

(2) For all other sales, the date when the purchaser has paid the purchase price or, in lieu thereof, has signed a security agreement or purchase contract and has taken physical possession or delivery of the manufactured home or mobilehome.

(b) Notwithstanding any other provision of law, whenever the balance in the Mobilehome Recovery Fund exceeds one million dollars ($1,000,000) on January 1 of any year, the department may reduce the fee provided for in subdivision (c) of Section 18070.1. The department may again increase the fee up to a maximum of ten

dollars ($10) whenever the balance in the fund falls below one million dollars ($1,000,000).

SEC. 2. Section 18070.3 of the Health and Safety Code is amended to read:

18070.3. (a) When any person (1) who has purchased a mobilehome for a personal, family, or household residential purpose or (2) who has sold a mobilehome used by the seller for a personal, family, or household residential purpose, obtains either (A) a final judgment in any court of competent jurisdiction against any mobilehome dealer, salesperson, or other seller or purchaser, or (B) an administrative determination against a licensee who is or has been the subject of bankruptcy proceedings, on the grounds of failure to honor warranties or guarantees, or for fraud, or for willful misrepresentation of the kind or quality of the product sold or purchased, arising directly out of any transaction which occurs on or after January 1, 1985, the person, upon termination of all proceedings including appeals, may file a claim with the department for an order directing payment out of the fund of the amount of actual and direct loss in the transaction. No person applying for recovery from the fund shall apply for judgment on any bond issued prior to January 1, 1985.

(b) "Administrative determination," for the purposes of this chapter, means either an order of restitution or a finding of actual and direct loss rendered pursuant to Section 18021.5 which is adopted by the department as part of its final decision in the underlying case.

(c) "Actual and direct loss," for the purposes of this chapter, includes court costs and reasonable attorney fees not to exceed 15 percent of the judgment or administrative determination.

(d) The total amount of the claim shall not exceed the amount of actual and direct loss that remains unreimbursed from any source.

The maximum payment ordered under this section, with respect to any one sales transaction on a new or used mobilehome, shall be the amount of the judgment plus attorney fees, or the amount of the administrative determination plus attorney fees, whichever is less, but in no event more than forty thousand dollars ($40,000).

(e) "Conversion," for the purpose of this chapter, means the unlawful appropriation of the property of another.

(f) Prior to payment of any claim against the fund, the claimant or claimants shall have first:

(1) If the claim is based on a final judgment, executed judgment against all the assets of the judgment debtor or presented evidence satisfactory to the department that the debtor is judgment proof.

(2) If the claim is based on an administrative determination, presented evidence satisfactory to the department that the licensee is or has been the subject of bankruptcy proceedings and, for purposes of any civil litigation or claims in bankruptcy proceedings, has assigned to the department any interest in the actual and direct loss described in subdivision (a) in the amount that the claimant or claimants recover from the fund.

(g) A claim against the fund shall be filed with the department (1) within one year from the date of the judgment or (2) in the event that a claim is based on an administrative determination, within one year from the termination of bankruptcy proceedings or the effective date of the department's decision adopting the administrative determination, whichever is later in time.

(h) When any person files a claim for an order directing payment from the fund, the department shall conduct a review of the application, and it may issue an order directing payment out of the fund as provided in subdivisions (a) to (g), inclusive, subject to the limitations of subdivisions (a) to (g), inclusive, if the claimant or claimants show all of the following:

(1) That he or she is not a spouse of the judgment debtor or a person against whom an administrative determination was rendered, whichever is applicable, or a person representing the spouse.

(2) That he or she is making an application within the time specified in subdivision (g).

(3) That the claimant has satisfied the applicable requirements of subdivision (f).

(4) That, if the claimant is a seller of a mobilehome used by the seller for personal, family, or household purposes, the claimant made a good faith effort to adequately secure the debt resulting from the sale of the mobilehome and with respect to which the claim is made. For purposes of this paragraph, a good faith effort to secure the debt may be demonstrated by, but shall not be limited to, providing the department with a promissory note signed by the debtor and which, pursuant to the terms thereof, is secured by collateral with a reasonable value at least equal to the debt evidenced by the promissory note.

(i) Upon an order of the department directing that payment be made out of the fund, the Controller is authorized to draw a warrant for the payment of the amount of the claim approved by the department pursuant to this section.

SEC. 3. Section 18070.6 is added to the Health and Safety Code, to read:

18070.6. The department may be reimbursed from the fund for its investigative and enforcement costs incurred pursuant to this chapter. In the case of any claim ordered to be paid on the basis of an "administrative determination," as defined in Section 18070.3, those costs shall include the costs incurred by the department in its investigation and enforcement of the claim, including adjudication, for which the determination was rendered, including, but not limited to, any appeals.

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 assist victims of fraudulent mobilehome purchasers, and to prevent bankruptcies from preventing proper operation of

the Mobilehome Recovery Fund, without delay, it is necessary that this act take effect immediately.

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## CHAPTER 1290

An act to add Chapter 10.25 (commencing with Section 671) to Part 1 of Division 1 of the Insurance Code, relating to insurance.

[Approved by Governor September 24, 1988. Filed with Secretary of State September 26, 1988.]

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

SECTION 1. Chapter 10.25 (commencing with Section 671) is added to Part 1 of Division 1 of the Insurance Code, to read:

### CHAPTER 10.25. AUTOMOBILE COLLISION AND COMPREHENSIVE COVERAGE

671. No insurer issuing an automobile collision policy, as defined in Section 660, or a policy for comprehensive coverage for an automobile, as defined in Section 11580.07, shall refuse to issue the policy of insurance, or the policy in combination with other coverages, when the refusal is based solely on the age of the automobile to be insured, if the market value of the automobile exceeds two thousand five hundred dollars ($2,500).

This section does not apply to any policy which includes coverage for losses resulting from wear and tear or from normal deterioration of an automobile or its component parts, nor to any policy which provides coverage for an antique or classic automobile.

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## CHAPTER 1291

An act to amend Sections 50661 and 50671 of the Health and Safety Code, and to amend Section 7 of Chapter 4 of the Statutes of 1987–88 First Extraordinary Session, relating to disaster relief, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 24, 1988. Filed with Secretary of State September 26, 1988.]

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

SECTION 1. Section 50661 of the Health and Safety Code is amended to read:

50661. (a) There is hereby created in the State Treasury the

Housing Rehabilitation Loan Fund. All interest or other increments resulting from the investment of moneys in the Housing Rehabilitation Loan Fund shall be deposited in the fund, notwithstanding Section 16305.7 of the Government Code. Notwithstanding Section 13340 of the Government Code, all money in the fund is continuously appropriated to the department for the following purposes:

(1) For making deferred-payment rehabilitation loans for financing all or a portion of the cost of rehabilitating existing housing to meet rehabilitation standards as provided in this chapter.

(2) For making deferred-payment loans as provided in Sections 50669 and 50670.

(3) For making deferred-payment loans pursuant to Sections 50662.5 and 50671.

(4) For related administrative expenses of the department.

(5) For related administrative costs of nonprofit corporations and local public entities contracting with the department pursuant to Section 50663 in an amount, if any, as determined by the department, to enable the entities and corporations to implement a program pursuant to this chapter. The department shall ensure that not less than 20 percent of the funds loaned pursuant to this chapter shall be allocated to rural areas.

(b) There shall be paid into the fund the following:

(1) Any moneys appropriated and made available by the Legislature for purposes of the fund.

(2) Any moneys which the department receives in repayment of loans made from the fund, including any interest thereon.

(3) Any other moneys which may be made available to the department for the purposes of this chapter from any other source or sources.

(c) Notwithstanding any other provision of law, any interest or other increment earned by the investment or deposit of moneys appropriated by subdivision (b) of Section 3 of Chapter 2 of the Statutes of the 1987–88 First Extraordinary Session, or Section 7 of Chapter 4 of the Statutes of the 1987–88 First Extraordinary Session, shall be deposited in a special account in the Housing Rehabilitation Loan Fund and shall be used exclusively for purposes of Sections 50662.5 and 50671.

SEC. 2. Section 50671 of the Health and Safety Code is amended to read:

50671. For the purpose of providing disaster relief to owners of rental housing and the tenants residing in rental housing that was damaged or destroyed as a result of the Los Angeles-Whittier Narrows Earthquake on October 1, 1987, or subsequent aftershocks, resulting in a state of emergency proclaimed by the Governor pursuant to Section 8625 of the Government Code, financial assistance may be provided to disaster victims as prescribed in this chapter under the following special conditions, which shall prevail over conflicting provisions of this chapter and administrative

regulations:

(a) Funds may be used for the purpose of rehabilitating, including reconstruction of, rental housing developments, including residential hotels, which were damaged or destroyed as a result of the earthquake.

(b) Rental housing developments, as otherwise defined in subdivision (b) of Section 50669, need not contain a minimum of five rental dwelling units. One rental dwelling unit shall be sufficient.

(c) The loans need not be made in support of the programs specified in Section 50663.

(d) As a condition of assistance to sponsors of rental housing developments, the department may establish those rent levels for units assisted pursuant to this section as it may determine (1) are necessary to alleviate hardship in the disaster area, (2) provide for affordable rents or rents not exceeding those charged prior to the earthquakes, and (3) are consistent with the economic feasibility of the assisted rental housing development. In addition to the other requirements of this chapter, the department may require terms and conditions as it determines necessary to meet the needs of the disaster area and its victims, to ensure the fiscal integrity of the rental housing development and to protect the interests of the state. The department shall require that priority in occupancy in any unit assisted pursuant to this section shall be given first to occupants of rental units assisted pursuant to this section who were displaced by the earthquakes or resulting rehabilitation of the assisted rental units. After no additional displaced persons qualify for, or remain in, any assisted units, these units shall be available to on a priority basis, or occupied by, very low income households and lower income households.

(e) In allocating funds to local public entities and nonprofit corporations, the department shall consider the availability of other resources to assist rental housing and the occupants of that rental housing and shall give priority to those applicants in jurisdictions with the greatest housing need resulting from the disaster and the fewest resources to address those needs.

(f) The department may waive the maximum loan amounts and per-unit loan amounts established by regulation as it determines necessary to serve the disaster victims.

(g) A loan to a nonprofit corporation or a limited partnership in which a nonprofit corporation is a general partner which owns or will acquire a rental housing development shall not exceed 100 percent of the combined costs of rehabilitation and refinancing existing indebtedness or rehabilitation and acquisition costs.

(h) A loan may be made to a local housing authority or community development commission to rehabilitate vacant rental housing that it owns and operates.

(i) When a loan will be used in conjunction with federal or other state housing assistance or tax credits and a conflict exists between the other state or federal program requirements and this chapter

with regard to determining maximum allowable rents, the requirements of this chapter may be waived only to the extent necessary to permit the federal or other state financial participation or eligibility for tax credits.

(j) Eligible rehabilitation or reconstruction costs may include the costs of temporary relocation where damage caused by the earthquake or rehabilitation or reconstruction of the rental housing development necessitates temporarily displacement of the tenants. The amount of monthly relocation assistance provided to eligible households temporarily displaced shall not exceed the difference between monthly rent paid by the tenant prior to the earthquake and rent in the replacement housing located by the local public entity or nonprofit corporation until rehabilitation is completed, but in no case shall, the total amount exceed one thousand dollars ($1,000). Prior to providing relocation assistance payments, the local public entity or nonprofit corporation shall ensure that displaced tenants have applied for any and all other financial assistance for which the tenants are eligible that is provided by any other federal, state, or local programs.

(k) The department may provide funds to local public entities and nonprofit corporations for related administrative expenses in an amount not to exceed 5 percent of the total loan commitments subject to this section from the Housing Rehabilitation Loan Fund.

(*l*) No funds shall be committed pursuant to this section on or after January 1, 1990.

SEC. 3. Section 7 of Chapter 4 of the Statutes of 1987–88 First Extraordinary Session is amended to read:

Sec. 7. In addition to any other funds made available, the sum of seven million five hundred thousand dollars ($7,500,000) is hereby appropriated from the Special Fund for Economic Uncertainties to the 1987 Southern California Earthquake Account in the Natural Disaster Assistance Fund for allocation in accordance with the following schedule:

(a) Seven million two hundred fifty thousand dollars ($7,250,000) to the Housing Rehabilitation Loan Fund established pursuant to Section 50661 of the Health and Safety Code to be expended for purposes authorized by Sections 50662.5 and 50671 of the Health and Safety Code.

(b) Two hundred fifty thousand dollars ($250,000) for administrative costs by the Department of Housing and Community Development.

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 necessary disaster relief assistance to the victims of the Los Angeles-Whittier Narrows Earthquake of October 1987, and subsequent aftershocks, it is imperative that this act take effect immediately.

# CHAPTER 1292

An act to amend Section 1464 of the Penal Code, and to amend Section 27315 of the Vehicle Code, and to add and repeal Chapter 6.6 (commencing with Section 5564) to Part 1 of Division 5 of the Welfare and Institutions Code, relating to health, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 24, 1988. Filed with Secretary of State September 26, 1988 ]

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

SECTION 1. Section 1464 of the Penal Code is amended to read:

1464. (a) Subject to the provisions of Section 76000 of the Government Code, there shall be levied an assessment in an amount equal to seven dollars ($7) for every ten dollars ($10) or fraction thereof, upon every fine, penalty, or forfeiture imposed and collected by the courts for criminal offenses, including all offenses involving a violation of a section of the Vehicle Code or any local ordinance adopted pursuant to the Vehicle Code, except offenses relating to parking or registration or offenses by pedestrians or bicyclists, or where an order is made to pay a sum to the general fund of the county pursuant to subparagraph (iii) of paragraph (3) of subdivision (a) of Section 258 of the Welfare and Institutions Code. Any bail schedule adopted pursuant to Section 1269b may include the necessary amount to pay the assessments established by this section and Section 76000 of the Government Code for all matters where a personal appearance is not mandatory and the bail is posted primarily to guarantee payment of the fine.

(b) Where multiple offenses are involved, the assessment shall be based upon the total fine or bail for each case. When a fine is suspended, in whole or in part, the assessment shall be reduced in proportion to the suspension.

(c) When any deposited bail is made for an offense to which this section applies, and for which a court appearance is not mandatory, the person making the deposit shall also deposit a sufficient amount to include the assessment prescribed by this section for forfeited bail. If bail is returned, the assessment made thereon pursuant to this section shall also be returned.

(d) In any case where a person convicted of any offense, to which this section applies, is in prison until the fine is satisfied, the judge may waive all or any part of the assessment, the payment of which would work a hardship on the person convicted or his or her immediate family.

(e) After a determination by the court of the amount due, the clerk of the court shall collect the same and transmit it to the county treasury. The portion thereof attributable to Section 76000 of the Government Code shall be deposited in the appropriate county fund

and the balance shall then be transmitted to the State Treasury to be deposited in the Assessment Fund, which is hereby created. The transmission to the State Treasury shall be carried out in the same manner as fines collected for the state by a county.

(f) Of moneys so deposited, the revenues attributable to the increase in the assessment from five dollars ($5) to seven dollars ($7), as determined by the Department of Finance, shall be transmitted to the State Treasury to be deposited directly into the Restitution Fund. The remainder shall be distributed as follows:

(1) Once a month there shall be transferred into the Fish and Game Preservation Fund an amount equal to 0.38 percent of the funds deposited in the Assessment Fund during the preceding month, but in no event shall the amount be less than the assessment levied on fines or forfeitures for violation of state laws relating to the protection or propagation of fish and game. These moneys are to be used for the education or training of department employees which fulfills a need consistent with the objectives of the Department of Fish and Game.

(2) Once a month there shall be transferred into the Restitution Fund an amount equal to 22.12 percent of the funds deposited in the Assessment Fund during the preceding month. Those funds shall be made available in accordance with subdivision (b) of Section 13967 of the Government Code.

(3) Once a month there shall be transferred into the Peace Officers' Training Fund an amount equal to 27.75 percent of the funds deposited in the Assessment Fund during the preceding month.

(4) Once a month there shall be transferred into the Driver Training Penalty Assessment Fund an amount equal to 29.73 percent of the funds deposited in the Assessment Fund during the preceding month.

(5) Once a month there shall be transferred into the Corrections Training Fund an amount equal to 9.12 percent of the funds deposited in the Assessment Fund during the preceding month. Money in the Corrections Training Fund is not continuously appropriated and shall be appropriated in the Budget Act.

(6) Once a month there shall be transferred into the Local Public Prosecutors and Public Defenders Training Fund established pursuant to Section 11503 an amount equal to 0.90 percent of the funds deposited in the Assessment Fund during the preceding month. The amount so transferred shall not exceed the sum of eight hundred fifty thousand dollars ($850,000) in any fiscal year. The remainder in excess of eight hundred fifty thousand dollars ($850,000) shall be transferred to the Restitution Fund.

(7) Once a month there shall be transferred into the Victim-Witness Assistance Fund an amount equal to 10.00 percent of the funds deposited in the Assessment Fund during the preceding month.

(g) (1) Notwithstanding subdivision (f), of moneys so deposited,

the revenues attributable to the assessment provided for in subdivision (i) of Section 27315 of the Vehicle Code shall, on a monthly basis, be transferred to the Traumatic Brain Injury Fund, created pursuant to Section 5564.6 of the Welfare and Institutions Code, until the amount deposited in the Traumatic Brain Injury Fund, as determined by the Department of Finance, for any fiscal year equals five hundred thousand dollars ($500,000). All moneys in excess of that amount shall be utilized in accordance with subdivision (f).

(2) Any moneys deposited in the Assessment Fund attributable to the assessments made pursuant to subdivision (i) of Section 27315 of the Vehicle Code on or after the date that Chapter 6.6 (commencing with Section 5564) of Part 1 of Division 5 of the Welfare and Institutions Code is repealed shall be utilized in accordance with subdivision (f).

SEC. 1.5. Section 1464 of the Penal Code, as amended by Section 1 of this act, is amended to read:

1464. (a) Subject to the provisions of Section 76000 of the Government Code, there shall be levied an assessment in an amount equal to seven dollars ($7) for every ten dollars ($10) or fraction thereof, upon every fine, penalty, or forfeiture imposed and collected by the courts for criminal offenses, including all offenses involving a violation of a section of the Vehicle Code or any local ordinance adopted pursuant to the Vehicle Code, except offenses relating to parking or registration or offenses by pedestrians or bicyclists, or where an order is made to pay a sum to the general fund of the county pursuant to subparagraph (iii) of paragraph (3) of subdivision (a) of Section 258 of the Welfare and Institutions Code. Any bail schedule adopted pursuant to Section 1269b may include the necessary amount to pay the assessments established by this section and Section 76000 of the Government Code for all matters where a personal appearance is not mandatory and the bail is posted primarily to guarantee payment of the fine.

(b) Where multiple offenses are involved, the assessment shall be based upon the total fine or bail for each case. When a fine is suspended, in whole or in part, the assessment shall be reduced in proportion to the suspension.

(c) When any deposited bail is made for an offense to which this section applies, and for which a court appearance is not mandatory, the person making the deposit shall also deposit a sufficient amount to include the assessment prescribed by this section for forfeited bail. If bail is returned, the assessment made thereon pursuant to this section shall also be returned.

(d) In any case where a person convicted of any offense, to which this section applies, is in prison until the fine is satisfied, the judge may waive all or any part of the assessment, the payment of which would work a hardship on the person convicted or his or her immediate family.

(e) After a determination by the court of the amount due, the

clerk of the court shall collect the same and transmit it to the county treasury. The portion thereof attributable to Section 76000 of the Government Code shall be deposited in the appropriate county fund and the balance shall then be transmitted to the State Treasury to be deposited in the Assessment Fund, which is hereby created. The transmission to the State Treasury shall be carried out in the same manner as fines collected for the state by a county.

(f) Of moneys so deposited, the revenues attributable to the increase in the assessment from five dollars ($5) to seven dollars ($7), as determined by the Department of Finance, shall be transmitted to the State Treasury to be deposited directly into the Restitution Fund. The remainder shall be distributed as follows:

(1) Once a month there shall be transferred into the Fish and Game Preservation Fund an amount equal to 0.38 percent of the funds deposited in the Assessment Fund during the preceding month, but in no event shall the amount be less than the assessment levied on fines or forfeitures for violation of state laws relating to the protection or propagation of fish and game. These moneys are to be used for the education or training of department employees which fulfills a need consistent with the objectives of the Department of Fish and Game.

(2) Once a month there shall be transferred into the Restitution Fund an amount equal to 22.39 percent of the funds deposited in the Assessment Fund during the preceding month. Those funds shall be made available in accordance with subdivision (b) of Section 13967 of the Government Code.

(3) Once a month there shall be transferred into the Peace Officers' Training Fund an amount equal to 31.49 percent of the funds deposited in the Assessment Fund during the preceding month.

(4) Once a month there shall be transferred into the Driver Training Penalty Assessment Fund an amount equal to 23.0 percent of the funds deposited in the Assessment Fund during the preceding month.

(5) Once a month there shall be transferred into the Corrections Training Fund an amount equal to 10.35 percent of the funds deposited in the Assessment Fund during the preceding month. Money in the Corrections Training Fund is not continuously appropriated and shall be appropriated in the Budget Act.

(6) Once a month there shall be transferred into the Local Public Prosecutors and Public Defenders Training Fund established pursuant to Section 11503 an amount equal to 1.03 percent of the funds deposited in the Assessment Fund during the preceding month.

(7) Once a month there shall be transferred into the Victim-Witness Assistance Fund an amount equal to 11.36 percent of the funds deposited in the Assessment Fund during the preceding month.

(g) (1) Notwithstanding subdivision (f), of moneys so deposited,

the revenues attributable to the assessment provided for in subdivision (i) of Section 27315 of the Vehicle Code shall, on a monthly basis, be transferred to the Traumatic Brain Injury Fund, created pursuant to Section 5564.6 of the Welfare and Institutions Code, until the amount deposited in the Traumatic Brain Injury Fund, as determined by the Department of Finance, for any fiscal year equals five hundred thousand dollars ($500,000). All moneys in excess of that amount shall be utilized in accordance with subdivision (f).

(2) Any moneys deposited in the Assessment Fund attributable to the assessments made pursuant to subdivision (i) of Section 27315 of the Vehicle Code on or after the date that Chapter 6.6 (commencing with Section 5564) of Part 1 of Division 5 of the Welfare and Institutions Code is repealed shall be utilized in accordance with subdivision (f).

SEC. 2. Section 27315 of the Vehicle Code 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 as defined in Section 465 and any motortruck as defined in Section 410 of less than 6,001 pounds unladen weight, but "private passenger motor vehicle" does not include a motorcycle as defined in Section 400.

(d) No person shall operate a private passenger motor vehicle on a highway unless that person and all passengers four years of age or over are restrained by a safety belt, except that the operator of a taxicab, as defined in Section 27908, or 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 taxicab, limousine for hire, or authorized emergency vehicle unless the operator and any passengers four years of age or over in the front seat are 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 restrained by a safety belt.

(f) Every owner of a private passenger motor vehicle 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 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 subdivsions 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 promulgate 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 promulgated by the Secretary of Transportation pursuant to Federal Motor Vehicle Safety Standard No. 208 (49 C.F.R. Sec. 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. Sec. 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 who 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 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 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 Secretary of the United States Department 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. Sec. 571.208) which requires the installation of automatic restraints in new private passenger motor vehicles; provided, however, that those subdivisions shall not become inoperative if the secretary's decision to rescind Standard No. 208 is not based, in any respect, on the enactment or continued operation of those subdivisions.

SEC. 3. Chapter 6.6 (commencing with Section 5564) is added to Part 1 of Division 5 of the Welfare and Institutions Code, to read:

## CHAPTER 6.6. DEMONSTRATION PROJECT FOR PERSONS WITH ACQUIRED TRAUMATIC BRAIN INJURY

5564. The Legislature finds and declares all of the following:

(a) There is a large population of persons who have suffered traumatic head injuries resulting in significant functional impairment.

(b) Approximately 80 percent of these injuries have occurred as a direct result of motor vehicle accidents.

(c) There is a lack of awareness of the problems associated with head injury resulting in a significant lack of services for persons with head injuries, including, but not limited to, in-home and out-of-home services, respite care, placement programs, counseling, cognitive rehabilitation, transitional living and vocational rehabilitation services.

(d) Although there are currently a number of different programs attempting to meet the needs of the persons with head injuries, there is no clearly defined ultimate responsibility vested in any single state agency.

(e) There is no programmatic coordination among agencies to facilitate the provision of a continuing range of services appropriate for persons with traumatic head injuries.

(f) There is a serious gap in post-acute care services resulting in incomplete recovery of functional potential.

(g) Due to the problems referred to in this section, the state is not adequately meeting the needs of persons with head injuries enabling them to return to work and to lead productive lives.

5564.1. For purposes of this chapter, the following definitions shall apply:

(a) "Acquired traumatic brain injury" is an injury that is sustained after birth from an external force to the brain or any of its parts, resulting in psychological, neurological, or anatomical changes in brain functions.

(b) "Department" means the State Department of Mental Health.

(c) "Director" means the Director of Mental Health.

(d) "Supported employment" means an alternative method of providing services which may include prevocational and educational services to individuals who may not qualify for vocational rehabilitation. The following four characteristics distinguish "supported employment" from both vocational rehabilitation services and traditional methods of providing day activity services:

(1) Service recipients appear to lack the potential for unassisted competitive employment.

(2) Ongoing training, supervision, and support services must be provided.

(3) The opportunity is designed to provide the same benefits that other persons receive from work, including an adequate income level, quality of working life, security, and mobility.

(4) There is flexibility in the provision of support which is necessary to enable the person to function effectively at the worksite.

(e) "Day treatment services" means a goal oriented program of developmental and therapeutic services designed to develop,

maintain, increase, or maximize an individual's independent functioning in self care, physical, cognitive, behavioral, or emotional growth, socialization, communication, education, and prevocational skills.

(f) "Fund" means the Traumatic Brain Injury Fund.

(g) "Structured living arrangement" means a residential setting where there is supervision, support, and training designed to maximize independence.

(h) "Functional assessment" means measuring the level or degree of independence, amount of assistance required, and speed and safety considerations for a variety of categories, including activities of daily living, mobility, communication skills, psychosocial adjustment, and cognitive function.

5564.2. The department shall establish demonstration projects for a post-acute continuum-of-care model for adults 18 years of age or older with an acquired traumatic brain injury. The projects shall coordinate supported employment services, day treatment services, and a structured living arrangement. The purpose of the projects is to demonstrate the effectiveness of a coordinated service approach which furthers the goal of assisting those persons to attain productive, independent lives which may include paid employment.

5564.4. (a) The department shall award and administer a maximum of four three-year demonstration projects. Priority shall be given to applicants which have proven experience in providing services to persons with an acquired traumatic brain injury or providing supported employment services to persons with special needs. There shall be at least one demonstration project located in the north half of the state and one in the south half of the state. The department shall award project grants no later than six months after funds for this purpose have been appropriated, using a competitive bidding process. No application shall be considered by the department unless the applicant sets forth in the application the means by which data will be collected for purposes of evaluation pursuant to subdivision (b). All projects shall be operational within two months following the grant award.

(b) The department shall also develop an evaluation and data collection system prior to the initial operative date of the project pursuant to subdivision (a), to assess the effectiveness of these coordinated service models. The department shall report to the Legislature on the progress of the demonstration projects by November 30 of each year in which the projects are operational.

The evaluation shall assess the effectiveness of the pilot projects by:

(1) Comparing the number of persons who achieved supported employment placement, as described in subdivision (d) of Section 5564.1, with the number who would have achieved placement without the assistance of a pilot project. The program shall have as a goal an increase of 30 percent in numbers of persons employed as a result of the program.

(2) Comparing the number of persons who achieved employment

compared with the number who would have achieved employment without the assistance of a pilot project. The program shall have as a goal an increase of 30 percent in numbers of persons employed as a result of the program.

(3) Conducting any other evaluative investigation which interested parties, as described in subdivision (c), determine to be appropriate. The program shall have as a goal an increase of 30 percent in the numbers of persons with significant improvement as measured by standard and objective functional assessment independence measures.

(4) The comparisons shall be analyzed to determine if provision of services had a statistically significant impact on rates of employment or supported employment, or on any other objective which interested parties, as described in subdivision (c), direct the department to measure.

(c) The department shall consult with interested parties to assist with the implementation of this chapter, and specifically with the development of criteria for selection of the projects and development of an evaluation and data collection system. Interested parties shall include, but not be limited to, all of the following:

(1) The California Association of Rehabilitation Facilities.

(2) The California Association for Adult Day Services.

(3) The Southern California Head Injury Foundation.

(4) The Northern California Head Injury Association.

(5) The Coalition of Independent Living Centers.

5564.5. (a) The projects shall be able to identify the special care needs and behavioral problems of clients and the services shall be designed to meet those needs.

(b) The projects shall match not less than 20 percent of the amount granted. The required match may be cash or in-kind contributions, or a combination of both. In-kind contributions may include, but shall not be limited to, staff and volunteer services.

(c) The projects shall provide at least 51 percent of their services under the grant to individuals who are Medi-Cal eligible or who have no other identified third-party funding source.

(d) The projects shall provide, directly, or by arrangement, a coordinated service model to include all of the following:

(1) Structured living arrangement.

(2) Day treatment services.

(3) Supported employment services.

(e) The projects shall develop and utilize a model which will allow clients to move from intensive day treatment programming or highly structured living arrangements to increased levels of independence or supported employment placement.

(f) The projects shall seek all third-party reimbursements for which clients are eligible. However, grantees may utilize grant dollars for the purchase of nonreimbursed services.

5564.6. There is hereby created in the State Treasury the Traumatic Brain Injury Fund, the moneys in which may, upon

appropriation by the Legislature, be expended for the purposes of this chapter.

5564.7. This chapter shall remain in effect until January 1, 1993, and as of that date is repealed, unless a later enacted statute enacted prior to that date extends or deletes that date.

SEC. 4. The State Department of Mental Health shall submit a final evaluation report to the Legislature within six months after the completion of the projects.

SEC. 5. Section 1.5 of this bill incorporates amendments to Section 1464 of the Penal Code proposed by both this bill and AB 3246. It shall become operative only if (1) both bills are enacted and become effective on or before January 1, 1989, (2) each bill amends Section 1464 of the Penal Code and (3) this bill is enacted after AB 3246, in which case, Section 1464 of the Penal Code as amended by Section 1 of this bill shall be operative only until the date Section 1 of AB 3246 would otherwise become operative, at which time Section 1464 of the Penal Code as amended by Section 1.5 of this bill shall become operative.

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 that Californians with acquired traumatic brain injuries receive programs and services in appropriate community-based settings and avoid inappropriate institutionalization in hospitals or health settings, it is necessary that this act take effect immediately as an urgency statute.

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## CHAPTER 1293

An act to add and repeal Section 11018.8 of the Business and Professions Code, relating to real estate.

[Approved by Governor September 24, 1988 Filed with Secretary of State September 26, 1988.]

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

SECTION 1. Section 11018.8 is added to the Business and Professions Code, to read:

11018.8. (a) This section applies, in any city or county so electing by ordinance, to transfers of lots or parcels pursuant to Section 11018.1 with respect to which the owner, subdivider, or agent is required to furnish to a prospective purchaser a copy of a public report, and to transfers of property described in Section 11004.5.

(b) The owner, subdivider, or agent shall supply a map, which shall be prepared and provided by the planning agency of the county or city and drawn to scale, of the area covering two statute miles

surrounding the subdivision, showing the location of all freeways which are existing or have been adopted in the general plan of the jurisdiction in which the property is located.

(c) The map shall be posted in a conspicuous place at any office where sales or leases or offers to sell or lease lots within the subdivision are regularly made. A copy of the map shall be made available for examination by a prospective purchaser or lessee before execution of an offer to purchase or lease, and shall be given to each purchaser and lessee at the request of the purchaser or lessee.

(d) This section shall remain in effect only until January 1, 1994, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1994, deletes or extends that date.

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## CHAPTER 1294

An act to add Section 1305.2 to the Penal Code, relating to criminal proceedings.

[Approved by Governor September 24, 1988. Filed with Secretary of State September 26, 1988 ]

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

SECTION 1. Section 1305.2 is added to the Penal Code, to read:

1305.2. If an assessment is made a condition of the order to set aside the forfeiture of an undertaking, deposit, or bail under Section 1305, the clerk of the court shall within 30 days mail notice thereof to the surety or depositor at the address of its principal office and shall execute a certificate of mailing and place it in the court's file in the case. The time limit for payment shall in no event be less than 30 days after the date of mailing of the notice.

If the assessment has not been paid by the date specified, the court shall determine if a certificate of mailing has been executed, and if none has, the court shall cause a notice to be mailed to the surety or depositor, and the surety or depositor shall be allowed an additional 30 days to pay the assessment.

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 five hundred thousand dollars ($500,000), reimbursement shall be made from the State Mandates Claims Fund.

# CHAPTER 1295

An act to amend Section 4725 of the Civil Code, and to amend Section 1679 of the Code of Civil Procedure, relating to child support.

[Approved by Governor September 24, 1988. Filed with Secretary of State September 26, 1988.]

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

SECTION 1. Section 4725 of the Civil Code is amended to read:

4725. In the event that a parent is experiencing extreme financial hardship due to justifiable expenses resulting from the circumstances enumerated in this section, upon the request of a party, the court may allow such income deductions as may be necessary to accommodate those circumstances, in addition to the deductions specified in subdivision (c) of Section 4721.

(a) Circumstances evidencing hardship include the extraordinary health expenses for which the parent is financially responsible, and uninsured catastrophic losses.

(b) Circumstances evidencing hardship also include the minimum basic living expenses of either parent's natural or adopted children for whom the parent has the obligation to support from other marriages or relationships who reside with the parent. The court, upon its own motion or upon the request of a party, may allow such income deductions as are necessary to accommodate these expenses after making the deductions allowable under subdivision (a) of this section. Unless there are exceptional circumstances as provided under subdivision (e) of Section 4720 or as otherwise provided in this subdivision, when the court makes a child support award in accordance with the mandatory minimum amount of child support provided under this act, the maximum hardship deduction for each child who resides with the parent may equal, but shall not exceed, the support awarded each child subject to the order and shall be calculated as follows:

$N_o$ = Obligated parent's net income prior to the deduction for hardship.

F = The factor as defined in subdivision (g) of Section 4722 as applied to the child or children for whom support is being awarded.

$H_c$ = Number of children for whom a hardship deduction is being given.

$S_c$ = Number of children for whom support is being awarded.

D = Maximum deduction per child.

$$D = \frac{(F)\ (N_o)}{S_c + (F)\ (H_c)}$$

The Judicial Council shall develop tables in accordance with the above formula to reflect the maximum hardship deduction taking into consideration the obligated parent's net income before the

hardship deduction, the number of children for whom the hardship deduction is being given, and the number of children for whom the support award is being made. The Judicial Council shall provide these tables to the counties by January 1, 1989.

Counties may, but are not required to, adopt a formula for use by the court in establishing the maximum hardship deduction for each child who resides with the parent and which provides a deduction that may equal, but shall not exceed, the support awarded each child subject to the order when the court makes a child support award in accordance with local support guidelines.

(c) If deductions for hardship expenses are allowed, the court shall state on the record the reasons supporting the deductions, cite the documentation of the underlying facts and circumstances, and specify the amount of deductions allowed. Whenever possible, the court shall specify the duration that any deduction shall be in effect.

(d) Upon considering whether to allow a deduction under this section, and in determining the amount of any such deduction, the court shall be guided by the goals set forth in the expression of legislative intent set forth in this chapter.

(e) The court shall not order a child support award that would reduce a parent's net income to an amount less than that established for the needs of one person by Section 11452 of the Welfare and Institutions Code, as annually adjusted by Section 11453 of that code.

SEC. 2. Section 1679 of the Code of Civil Procedure is amended to read:

1679. (a) The Attorney General is hereby designated as the state information agency under this title. He shall:

(1) Compile a list of the courts and their addresses in this state having jurisdiction under this title and transmit the same to the state information agency of every other state which has adopted this or a substantially similar law. Upon the adjournment of each session of the Legislature, the Attorney General shall distribute copies of any amendments to this title and a statement of their effective dates to all other state information agencies.

(2) Maintain a register of such lists of courts received from other states and to transmit copies thereof promptly to every court in this state having jurisdiction under this title.

(3) Forward to the court in this state which has jurisdiction over the obligor or his property petitions, certificates, and copies of the act it receives from courts or information agencies of other states.

(b) If the state information agency does not know the location of the obligor or his property in the state and no state location service is available, it shall use all means at its disposal to obtain this information, including the examination of official records in the state and other sources such as telephone directories, real property records, vital statistics records, police records, requests for the name and address from employers who are able or willing to cooperate, records of motor vehicle license offices, requests made to the tax offices both state and federal where such offices are able to

cooperate, and requests made to the Social Security Administration as permitted by the Social Security Act as amended.

(c) Notwithstanding any other provision of law, copies of all documents used to initiate enforcement of any interstate child support obligation shall be sent directly to the state information agency.

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 five hundred thousand dollars ($500,000), reimbursement shall be made from the State Mandates Claims Fund.

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## CHAPTER 1296

An act to add Section 236 to the Revenue and Taxation Code, relating to taxation.

[Approved by Governor September 24, 1988 Filed with Secretary of State September 26, 1988 ]

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

SECTION 1. Section 236 is added to the Revenue and Taxation Code, to read:

236. Property leased for a term of 35 years or more or any transfer of property leased with a remaining term of 35 years or more where the lessor is not otherwise qualified for a tax exemption pursuant to Section 214, which is used exclusively and solely for rental housing and related facilities for tenants who are persons of low income (as defined in Section 50093 of the Health and Safety Code), and is leased and operated by religious, hospital, scientific, or charitable funds, foundations or corporations, public housing authorities, public agencies, or limited partnerships in which the managing general partner has received a determination that it is a charitable organization under Section 501 (c) (3) of the Internal Revenue Code and is operating the property in accordance with its exempt purpose is exempt from taxation on the possessory interest and the fee interest in the property throughout the term of the lease.

Low- and moderate-income has the same meaning as the term "persons and families of low- and moderate-income" as defined by Section 50093 of the Health and Safety Code.

SEC. 2. Notwithstanding Section 2229 of the Revenue and Taxation Code, the requirements of that section relating to any exemption of property for more than five years or for more than 75

percent of the value thereof shall not apply to the exemption made by this act.

SEC. 3. This act shall be applicable to property taxes levied for the 1989–90 fiscal year and fiscal years thereafter.

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## CHAPTER 1297

An act to amend Sections 888, 914.1, 915, 916, 926, 933, and 939 of the Penal Code, relating to grand juries.

[Approved by Governor September 24, 1988. Filed with Secretary of State September 26, 1988.]

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

SECTION 1. Section 888 of the Penal Code is amended to read:

888. A grand jury is a body of the required number of persons returned from the citizens of the county before a court of competent jurisdiction, and sworn to inquire of public offenses committed or triable within the county.

Each grand jury or, if more than one has been duly impaneled pursuant to Sections 904.5 to 904.9, inclusive, one grand jury in each county, shall be charged and sworn to investigate or inquire into county matters of civil concern, such as the needs of county officers, including the abolition or creation of offices for, the purchase, lease, or sale of equipment for, or changes in the method or system of, performing the duties of the agencies subject to investigation pursuant to Section 914.1.

SEC. 2. Section 914.1 of the Penal Code is amended to read:

914.1. When a grand jury is impaneled, for purposes which include the investigation of, or inquiry into, county matters of civil concern, the judge of the superior court of the county, in addition to other matters requiring action, shall call its attention to the provisions of Chapter 1 (commencing with Section 23000) of Division 1 of Title 3, and Sections 24054 and 26525 of the Government Code, and instruct it to ascertain by a careful and diligent investigation whether such provisions have been complied with, and to note the result of such investigation in its report. At such time the judge shall also inform and charge the grand jury especially as to its powers, duties, and responsibilities under Article 1 (commencing with Section 888) of Chapter 2, and Article 2 (commencing with Section 925), Article 3 (commencing with Section 934) of this chapter, Article 3 (commencing with Section 3060) of Chapter 7 of Division 4 of Title 1 of the Government Code, and Section 17006 of the Welfare and Institutions Code.

SEC. 3. Section 915 of the Penal Code is amended to read:

915. When the grand jury has been impaneled, sworn, and charged, it shall retire to a private room, except when operating

under a finding pursuant to Section 939.1, and inquire into the offenses and matters of civil concern cognizable by it. On the completion of the business before the grand jury or expiration of the term of prescribed service of one or more grand jurors, the court shall discharge it or the affected individual jurors.

SEC. 4. Section 916 of the Penal Code is amended to read:

916. Each grand jury shall choose its officers, except the foreman, and shall determine its rules of proceeding. Adoption of its rules of procedure and all public actions of the grand jury, whether concerning criminal or civil matters unless otherwise prescribed in law, including adoption of final reports, shall be only with the concurrence of that number of grand jurors necessary to find an indictment pursuant to Section 940. Rules of procedure shall include guidelines for that grand jury to ensure that all findings included in its final reports are supported by documented evidence, including reports of contract auditors or consultants, official records, or interviews attended by no fewer than two grand jurors and that all problems identified in a final report are accompanied by suggested means for their resolution, including financial, when applicable.

SEC. 4.5. Section 926 of the Penal Code is amended to read:

926. (a) If, in the judgment of the grand jury, the services of one or more experts are necessary for the purposes of Sections 925, 925a, 928, 933.1, and 933.5 or any of them, the grand jury may employ one or more experts, at an agreed compensation, to be first approved by the court. If, in the judgment of the grand jury, the services of assistants to such experts are required, the grand jury may employ such assistants, at a compensation to be agreed upon and approved by the court. Expenditures for the services of experts and assistants for the purposes of Section 933.5 shall not exceed the sum of thirty thousand dollars ($30,000) annually, unless such expenditures shall also be approved by the board of supervisors.

(b) When making an examination of the books, records, accounts, and documents maintained and processed by the county assessor, the grand jury, with the consent of the board of supervisors, may employ expert auditors or appraisers to assist in the examination. Auditors and appraisers, while performing pursuant to the directive of the grand jury, shall have access to all records and documents that may be inspected by the grand jury subject to the same limitations on public disclosure as apply to the grand jury.

(c) Any contract entered into by a grand jury pursuant to this section may include services to be performed after the discharge of the jury, but in no event may a jury contract for services to be performed later than six months after the end of the fiscal year during which the jury was impaneled.

(d) Any contract entered into by a grand jury pursuant to this section shall stipulate that the product of that contract shall be delivered on or before a time certain to the then-current grand jury of that county for such use as that jury finds appropriate to its adopted objectives.

SEC. 5. Section 933 of the Penal Code is amended to read:

933. (a) No later than the end of each fiscal or calendar year of a county, each grand jury impaneled during that fiscal or calendar year shall submit to the presiding judge of the superior court a final report of its findings and recommendations that pertain to county government matters other than fiscal matters during the fiscal or calendar year. Final reports on any appropriate subject may be submitted to the presiding judge of the superior court at any time during the term of service of a grand jury. A final report may be submitted for comment to responsible officers, agencies, or departments, including the county board of supervisors, when applicable, upon finding of the presiding judge that the report is in compliance with this title. One copy of each report found to be in compliance with this title shall be placed on file with the county clerk and remain on file in the office of the county clerk.

(b) No later than the end of each fiscal or calendar year, each grand jury impaneled during that fiscal or calendar year shall submit to the presiding judge of the superior court a final report of its findings and recommendations that pertain to fiscal matters of county government during the fiscal or calendar year of the county.

(c) No later than 90 days after the grand jury submits a final report on the operations of any public agency subject to its reviewing authority, the governing body of the public agency shall comment to the presiding judge of the superior court on the findings and recommendations pertaining to matters under the control of the governing body, and every elective county officer or agency head for which the grand jury has responsibility pursuant to Section 914.1 shall comment within 60 days to the presiding judge of the superior court, with an information copy sent to the board of supervisors, on the findings and recommendations pertaining to matters under the control of that county officer or agency head and any agency or agencies which that officer or agency head supervises or controls. In any city and county, the mayor shall also comment on the findings and recommendations. All such comments and reports shall forthwith be submitted to the presiding judge of the superior court who impaneled the grand jury. A copy of all responses to grand jury reports shall be placed on file with the clerk of the public agency and the office of the county clerk, or the mayor when applicable, and shall remain on file in those offices. One copy shall be placed on file with the applicable grand jury final report by, and in the control of the currently impaneled grand jury, where it shall be maintained for a minimum of five years.

SEC. 6. Section 939 of the Penal Code is amended to read:

939. No person other than those specified in Article 3 (commencing with Section 934), and in Sections 939.1 and 939.11 is permitted to be present during the criminal sessions of the grand jury except the members and witnesses actually under examination. Members of the grand jury who have been excused pursuant to Section 939.5 shall not be present during any part of these

proceedings. No persons other than grand jurors shall be permitted to be present during the expression of the opinions of the grand jurors, or the giving of their votes, on any criminal or civil matter before them.

SEC. 7. Section 939 of the Penal Code is amended to read:

939. No person other than those specified in Article 3 (commencing with Section 934), and in Sections 939.1 and 939.11, and the officer having custody of a prisoner witness while the prisoner is testifying, is permitted to be present during the criminal sessions of the grand jury except the members and witnesses actually under examination. Members of the grand jury who have been excused pursuant to Section 939.5 shall not be present during any part of these proceedings. No persons other than grand jurors shall be permitted to be present during the expression of the opinions of the grand jurors, or the giving of their votes, on any criminal or civil matter before them.

SEC. 8. Section 7 of this bill incorporates amendments to Section 939 of the Penal Code proposed by both this bill and AB 3141. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1989, (2) each bill amends Section 939 of the Penal Code, and (3) this bill is enacted after AB 3141, in which case Section 6 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 five hundred thousand dollars ($500,000), reimbursement shall be made from the State Mandates Claims Fund.

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## CHAPTER 1298

An act to amend Section 8257 of the Government Code, and to amend Section 6 of Chapter 1385 of the Statutes of 1985, relating to displaced homemakers, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 24, 1988. Filed with Secretary of State September 26, 1988.]

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

SECTION 1. Section 8257 of the Government Code is amended to read:

8257. The Legislature hereby creates the Displaced Homemaker Emergency Loan Act which shall be administered by the California

Commission on the Status of Women as a pilot project in the Counties of Marin, San Francisco, and Alameda.

(a) The commission is authorized to make any regulations, guidelines, and agreements deemed necessary by the commission to carry out the purposes and provisions of this act.

(b) An advisory committee shall be formed including a representative each from the California Commission on the Status of Women; the Treasurer's Office; the Business, Transportation and Housing Agency; the County of Marin Commission on the Status of Women; the Student Aid Commission; and a displaced homemaker service provider and a displaced homemaker selected by the California Commission on the Status of Women. The commission shall consult with the advisory committee and other appropriate officials in developing and administering this act.

(c) Loans may be made to displaced homemakers in amounts not to exceed two thousand five hundred dollars ($2,500) per displaced homemaker.

(d) Applications for loan guarantees shall be filed with the commission within 12 months from the displacement date.

(e) Loans shall not be made for purposes for which other public assistance is available.

(f) Priority shall be given to applicants who are participating in job search or educational programs designed to improve the employability of the individual or who meet the requirements of paragraph (4) of subdivision (a) of Section 8257.2. Loans shall not be made for this purpose if other assistance is available.

(g) Repayment of a loan shall commence no later than nine months after receipt of the loan, with an option to postpone the commencement of payments another six months in cases of need which are verified by the commission.

(h) Full payment shall be made within 48 months after commencing loan repayment.

(i) The minimum monthly payment on each loan shall be twenty-five dollars ($25).

SEC. 2. Section 6 of Chapter 1385 of the Statutes of 1985 is amended to read:

Sec. 6. There is hereby appropriated the sum of one million one hundred fifty thousand dollars ($1,150,000) from the General Fund to be allocated as follows:

(a) One million dollars ($1,000,000) to the Displaced Homemaker Emergency Loan Fund for the purposes of this act. The commission is authorized to transfer unused portions of the Displaced Homemaker Emergency Loan Fund to the Surplus Money Investment Fund. Interest earned on the Displaced Homemaker Emergency Loan Fund in an amount not to exceed two hundred thousand dollars ($200,000) shall be continuously appropriated to the fund and shall be available to offset the annual administrative costs to the commission for the loan guaranty program. Interest earned on the Displaced Homemakers Emergency Loan Fund may also be used

by the commission to reduce the interest rates on each loan by an amount of not more than 2 percent.

(b) One hundred fifty thousand dollars ($150,000) to the California Commission on the Status of Women for administrative costs for the 1985-86 fiscal year.

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 accelerating incidence of economic hardship experienced by women, often the sole support of their children, and the increasing number of homeless women and children in California are causing grave hardships and in order to provide essential services as soon as possible, it is necessary that this act take effect immediately.

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## CHAPTER 1299

An act to amend Section 2454 of the Streets and Highways Code, relating to grade separations.

[Approved by Governor September 24, 1988. Filed with Secretary of State September 26, 1988.]

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

SECTION 1. Section 2454 of the Streets and Highways Code is amended to read:

2454. Allocations made pursuant to Section 2453 shall be made on the basis of the following:

(a) An allocation of 80 percent of the estimated cost of the project shall be made; except that whenever contributions from other sources exceed 20 percent of the estimated cost, the allocation shall be reduced by the amount in excess of 20 percent of the estimated cost.

(b) An allocation of 50 percent of the estimated cost of the project shall be made for a proposed crossing.

(c) No allocation shall be made in excess of 50 percent of the estimated cost of the project unless the grade crossing to be eliminated has been in existence for at least 10 years prior to the date of allocation.

(d) On projects which eliminate an existing crossing, or alter or reconstruct an existing grade separation, no allocation shall be made unless the railroad agrees to contribute 10 percent of the cost of the project.

(e) Where a project does not include a grade separation, but eliminates existing grade crossing or crossings, the allocation shall not exceed the estimated allocation that would have been made for the grade separation which is no longer needed because of the

elimination of the grade crossing by the project and which is indicated on the priority list to be urgently in need of grade separation.

(f) Where the project includes the separation of a highway and a railroad passenger service operated by a city or county, the operating agency shall contribute 20 percent of the cost of the project. The priority listing for such projects shall be in accordance with criteria established for such railroad passenger service by the Public Utilities Commission.

(g) Notwithstanding subdivisions (a) to (f), inclusive, the total of such allocations for a single project shall not exceed five million dollars ($5,000,000) without specific legislative authorization, except that the amount for a single project may be increased to either (1) an amount that includes the federal construction cost index increase each year since 1976, or (2) an amount which does not exceed one-third of the total funds appropriated for grade separation projects for the year of allocation, whichever amount is less, as determined each year by the Public Utilities Commission.

(h) Notwithstanding subdivisions (a) to (g), inclusive, a single project in excess of five million dollars ($5,000,000), but not exceeding twenty million dollars ($20,000,000), shall be considered without specific legislative authority, if the project (1) is included in the Public Utilities Commission's priority list of projects scheduled to be funded, (2) eliminates the need for future related grade separation projects, (3) provides projected cost savings of at least 50 percent to the state or local jurisdiction, or both of them, by eliminating the need for future projects, and (4) alleviates traffic and safety problems or provides improved rail service not otherwise possible. Projects approved pursuant to this subdivision shall be funded over a multiyear period, not to exceed five years, and the allocation for any one of those years shall not exceed the amount prescribed by subdivision (g) for a single project. An agency which has received an allocation for a project approved pursuant to this subdivision shall not be eligible for an allocation for another project under this subdivision for a period of 10 years from the date of approval of that project. Not more than one-half of the total allocation available in any one fiscal year for grade separation projects may be used for the purposes of this subdivision.

(i) Notwithstanding any of the above provisions of this section or any other provision of law, when the state or local agency uses funds derived from federal sources in financing its share of project costs, the railroad contribution, where required by federal law or regulation, shall be computed pursuant to federal law. However, the allocation made pursuant to this chapter shall be computed as though such matching contribution was derived from nonfederal sources and shall be computed as though the railroad had made its contribution pursuant to state law rather than pursuant to federal law. Where the contribution of the railroad is computed according to federal law or regulation because of the use of federal funds in the

allocation for a project, the allocation shall be increased by the amount the share of the railroad is reduced below 10 percent of the estimated cost of the project.

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## CHAPTER 1300

An act to amend Section 17207 of, and to add Section 17702 to, the Financial Code, relating to escrow.

[Approved by Governor September 24, 1988 Filed with Secretary of State September 26, 1988 ]

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

SECTION 1. Section 17207 of the Financial Code is amended to read:

17207. The commissioner shall charge and collect the following fees and assessments:

(a) For filing an application for an escrow agent's license, six hundred twenty-five dollars ($625) for the first office or location and four hundred twenty-five dollars ($425) for each additional office or location.

(b) For filing an application for a duplicate of an escrow agent's license lost, stolen, or destroyed, or for replacement, upon a satisfactory showing of such loss, theft, destruction, or surrender of certificate for replacement, two dollars ($2).

(c) For investigation services in connection with each application, one hundred dollars ($100), and for investigation services in connection with each additional office application, one hundred dollars ($100).

(d) For holding a hearing in connection with the application, as set forth under Section 17209.2, the actual costs experienced in each particular instance.

(e) (1) Each escrow agent 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 of any deficit actually incurred or anticipated in the administration of this division in the year in which the assessment is made. Except as provided in paragraph (5) of subdivision (e), the total assessment for each year shall not exceed the amount of the first assessment following the effective date of this subdivision adjusted for changes in the cost of living. As used in this subdivision "cost of living" means the Consumer Price Index for the United States as reported by the United States Department of Labor or a successor agency of the United States government. The pro rata share shall be the proportion which a licensee's gross income from escrow operations bears to the aggregate gross income from escrow operations of all licensees as compiled by the commissioner. The pro

rata share shall not include the costs of any examinations provided for in Section 17405.1, unless they cannot be collected from the company examined.

(2) On or before May 30 in each year, the commissioner shall notify each escrow agent 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 10 percent of the assessment for each month or part of a month that the payment is delayed or withheld.

(3) In the levying and collection of the assessment, an escrow agent shall not be assessed for, nor be permitted to pay less than, two hundred fifty dollars ($250) per year, per location.

(4) If an escrow agent fails to pay the assessment on or before the June 30 following the day upon which payment is due, the commissioner may by order summarily suspend or revoke the certificate issued to the company. If, after such an order is made, a request for a hearing is filed in writing 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 company 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.

(5) On and after January 1, 1989, the commissioner may impose a one-time only supplemental assessment of up to one hundred fifty dollars ($150) per licensed location to defray any deficit in the administration of this division incurred or anticipated to be incurred prior to July 1, 1989. The commissioner or the commissioner's designee shall meet and confer with licensees or their representatives regarding the administration and enforcement of this division, including all resulting costs and expenses.

(f) Fifty dollars ($50) for investigation services in connection with each application for qualification of any person under Section 17200.8, other than investigation services under subdivision (c) of this section.

(g) A fee not to exceed twenty-five dollars ($25) for the filing of a notice or report required by rules adopted pursuant to subdivision (a) or Section 17203.1.

SEC. 2. Section 17702 is added to the Financial Code, to read:

17702. It is unlawful for any person to willfully make any untrue statement of a material fact in any application, notice, or report filed with the commissioner under this division or the regulations issued thereunder, or to willfully omit any material fact which is required to be stated in any application, notice, or report.

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.

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## CHAPTER 1301

An act to add Sections 4018.1 and 5008.1 to the Penal Code, and to add Section 1123 to the Welfare and Institutions Code, relating to acquired immune deficiency syndrome.

[Approved by Governor September 24, 1988. Filed with Secretary of State September 26, 1988.]

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

SECTION 1. Section 4018.1 is added to the Penal Code, to read:

4018.1. Subject to the availability of adequate state funding for these purposes, the sheriff of each county shall provide inmates who have been sentenced for drug-related offenses with information about behavior that places a person at high risk for contracting the human immunodeficiency virus (HIV), and about the prevention of the transmission of acquired immune deficiency syndrome (AIDS). Each county sheriff or the chief county probation officer shall provide all inmates who have been sentenced for drug-related offenses, who are within one month of release, or who have been placed on probation, with information about behavior that places a person at high risk for contracting HIV, about the prevention of the transmission of AIDS, and about agencies and facilities that provide testing, counseling, medical, and support services for AIDS victims. Information about AIDS prevention shall be solicited by each county sheriff or chief county probation officer from the State Department of Health Services, the county health officer, or local agencies providing services to persons with AIDS. The Director of Health Services, or his or her designee, shall approve protocols pertaining to the information to be disseminated under this section.

SEC. 2. Section 5008.1 is added to the Penal Code, to read:

5008.1. Subject to the availability of adequate state funding for these purposes, the Director of Corrections shall provide all inmates at each penal institution and prison facility under the jurisdiction of the department with information about behavior that places a person at high risk for contracting the human immunodeficiency virus (HIV), and about the prevention of transmission of acquired immune deficiency syndrome (AIDS). The director shall provide all inmates, who are within one month of release or being placed on parole, with information about agencies and facilities that provide testing, counseling, medical, and support services for AIDS victims. Information about AIDS prevention shall be solicited by the director from the State Department of Health Services, the county health

officer, or local agencies providing services to persons with AIDS. The Director of Health Services, or his or her designee, shall approve protocols pertaining to the information to be disseminated under this section.

SEC. 3. Section 1123 is added to the Welfare and Institutions Code, to read:

1123. Subject to the availability of adequate state funding for these purposes, the Director of the Youth Authority shall provide all wards at each penal institution within the jurisdiction of the department, including camps, with information about behavior that places a person at high risk for contracting the human immunodeficiency virus (HIV), and about the prevention of transmission of acquired immune deficiency syndrome (AIDS). The director shall provide all wards, who are within one month of release or being placed on parole, with information about agencies and facilities that provide testing, counseling, medical, and support services for AIDS victims. Information about AIDS prevention shall be solicited by the director from the State Department of Health Services, the county health officer, or local agencies providing services to persons with AIDS. The Director of Health Services, or his or her designee, shall approve protocols pertaining to the information to be disseminated, and the training to be provided, under this section.

SEC. 4. It is the intent of the Legislature that the implementation of AIDS education programs for inmates in county jails and state prisons and state penal institutions pursuant to Sections 4018.1 and 5008.1 of the Penal Code, as added by Sections 1 and 2 of this act, and wards of the California Youth Authority pursuant to Section 1123 of the Welfare and Institutions Code, as added by Section 3 of this act, shall be contingent upon Budget Act appropriations for these programs in each fiscal year.

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## CHAPTER 1302

An act to amend Section 18941.5 of the Health and Safety Code, relating to building standards.

[Approved by Governor September 24, 1988. Filed with Secretary of State September 26, 1988 ]

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

SECTION 1. Section 18941.5 of the Health and Safety Code is amended to read:

18941.5. (a) The building standards contained in The Uniform Housing Code of the International Conference of Building Officials, except its definition of "substandard building"; the Uniform Building Code of the International Conference of Building Officials, the

Uniform Plumbing Code of the International Association of Plumbing and Mechanical Officials, the National Electrical Code of the National Fire Protection Association, the Uniform Mechanical Code of the International Conference of Building Officials and the International Association of Plumbing and Mechanical Officials as referenced in the State Building Standards Code shall apply to all occupancies throughout the state and shall become effective 180 days after publication in the State Building Standards Code by the State Building Standards Commission.

(b) Amendments, additions, and deletions to the State Building Standards Code adopted by a city, county, or city and county pursuant to subdivision (c) or pursuant to Section 17958.7, together with all applicable portions of the State Building Standards Code, shall become effective 180 days after publication of the State Building Standards Code by the State Building Standards Commission.

(c) Neither the State Building Standards Law contained in this part, nor the application of building standards contained in this section, shall limit the authority of a city, county or city and county to establish more restrictive building standards reasonably necessary because of local climatic, geological, or topographical conditions. The governing body shall make the finding required by Section 17958.7 and the other requirements imposed by Section 17958.7 shall apply to that finding.

(d) No model code made applicable to any additional occupancy pursuant to the amendment of this section at the 1988 session of the Legislature shall apply to any project which has been submitted for a building permit prior to approval of the model code.

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.

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## CHAPTER 1303

An act, relating to the payment of claims against the State of California, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 24, 1988. Filed with Secretary of State September 26, 1988.]

I am reducing the appropriation contained in Section 1 of Senate Bill No. 294 from $542,116.78 to $520,819.78 by removing funding for the County of Contra Costa's claim related to the parole of Lawrence Singleton.

The claim for recovery of costs associated with the placement of a parolee is a tort issue and should be settled by the courts.

With this reduction, I approve Senate Bill No. 294

GEORGE DEUKMEJIAN, Governor

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

SECTION 1. The sum of five hundred forty-two thousand one hundred sixteen dollars and seventy-eight cents ($542,116.78) is hereby appropriated. Of this amount, twenty-one thousand two hundred ninety-seven dollars ($21,297) is appropriated from the General Fund to the Secretary of the State Board of Control for allocation to the County of Contra Costa for reimbursement of costs incurred by that county related to the parole of Lawrence Singleton. The remaining five hundred twenty thousand eight hundred nineteen dollars and seventy-eight cents ($520,819.78) is hereby appropriated to the Secretary of the State Board of Control to pay claims accepted by the State Board of Control, in accordance with the following schedule:

(a) Three hundred ninety-six dollars ($396) from the Disability Insurance Fund.

(b) One hundred five dollars ($105) from the Fish and Game Preservation Fund.

(c) Two hundred sixty-three thousand six hundred thirty-four dollars and eighty-two cents ($263,634.82) from the General Fund.

(d) Two hundred fifty-five dollars and ninety-seven cents ($255.97) from the Personal Income Tax Fund.

(e) Ten thousand two hundred seventy-one dollars and five cents ($10,271.05) from the Retail Sales Tax Fund.

(f) Seven hundred twenty-four dollars ($724) from the State Lottery Fund for the purpose of prize payments.

(g) Seven thousand nine hundred forty-three dollars and twenty-one cents ($7,943.21) from the Tax Relief and Refund Account.

(h) Eighty-eight dollars ($88) from the Transportation Fund, State Highway Account.

(i) Five hundred twenty dollars ($520) from the Unemployment Fund.

(j) Six thousand five hundred eighty-nine dollars and forty cents ($6,589.40) from the Water Resources Revolving Fund.

(k) Four thousand fourteen dollars and sixty-one cents ($4,014.61) from the unencumbered balance of funds appropriated in the Budget Act of 1986, as follows:

(1) One hundred fifteen dollars and forty-four cents ($115.44) from category (a) of Item 3540-001-001.

(2) Three thousand eight hundred ninety-nine dollars and seventeen cents ($3,899.17) from Item 6100-006-001.

(*l*) Two hundred twenty-six thousand two hundred seventy-seven dollars and seventy-two cents ($226,277.72) from the unencumbered balance of funds appropriated in the Budget Act of 1987, as follows:

(1) Forty-two dollars and fifty-two cents ($42.52) from category (c) of Item 0250-001-001.

(2) Three thousand seven hundred two dollars and thirty-nine

cents ($3,702.39) from category (a) of Item 0820-001-001.

(3) Two hundred ninety-one dollars and thirty-seven cents ($291.37) from Item 0860-001-001.

(4) One thousand three hundred six dollars ($1,306) from Item 0890-001-001.

(5) One hundred thirty-nine dollars and seventy-nine cents ($139.79) from category (b) of Item 1655-090-702.

(7) Twelve thousand seven hundred ninety-seven dollars and thirty-two cents ($12,797.32) from Item 1760-503-666.

(8) Eight hundred ninety-six dollars and ten cents ($896.10) from category (b) of Item 1960-001-001.

(9) Sixteen dollars and sixty-two cents ($16.62) from Item 2240-001-001.

(10) Three hundred thirty dollars ($330) from Item 2320-001-317, including both of the following:

(A) One hundred sixty-five dollars ($165) from category (a).

(B) One hundred sixty-five dollars ($165) from category (d).

(11) Three thousand one hundred four dollars and seventy-six cents ($3,104.76) from category (a) of Item 2660-001-042.

(12) One thousand nine hundred forty-two dollars and fifty-one cents ($1,942.51) from Item 2720-001-044, including one thousand two hundred forty-two dollars and fifty-one cents ($1,242.51) from category (d).

(13) Two thousand eight dollars and forty-six cents ($2,008.46) from category (b) of Item 2740-001-044.

(14) Two thousand two hundred seventy-eight dollars and forty cents ($2,278.40) from category (g) of Item 3340-001-001.

(15) Three thousand six hundred fifty-eight dollars and sixty-five cents ($3,658.65) from category (d) of Item 3480-001-001.

(16) Two hundred four dollars and twenty-six cents ($204.26) from Item 3790-001-001, including both of the following:

(A) One hundred seventy-seven dollars and fifty-one cents ($177.51) from category (a).

(B) Twenty-six dollars and seventy-five cents ($26.75) from category (c).

(17) Five hundred eighteen dollars and sixty-one cents ($518.61) from category (a) of Item 4260-001-001.

(18) Thirty-four thousand one hundred eighty-one dollars and thirty cents ($34,181.30) from category (b) of Item 4260-101-001.

(19) Ten dollars ($10) from category (c) of Item 4300-011-001.

(20) Twenty-three thousand three hundred eighty-nine dollars and ninety-seven cents ($23,389.97) from category (a) of Item 4300-111-001.

(21) One hundred eight thousand three hundred twenty dollars and forty-five cents ($108,320.45) from category (c) of Item 4440-011-001.

(22) One thousand two hundred thirty-two dollars and eighty-one cents ($1,232.81) from Item 5100-001-870, including both of the following:

(A) One thousand two hundred fifteen dollars and thirty-three cents ($1,215.33) from category (a).

(B) Seventeen dollars and forty-eight cents ($17.48) from category (c).

(23) One thousand eight hundred sixty-five dollars and eighty-five cents ($1,865.85) from category (f) of Item 5180-001-001.

(24) Seven thousand six hundred fifty-five dollars and forty-one cents ($7,655.41) from Item 5240-001-001, including both of the following:

(A) Six thousand forty dollars and seventy-seven cents ($6,040.77) from category (a).

(B) One thousand six hundred fourteen dollars and sixty-four cents ($1,614.64) from category (c).

(25) Twelve thousand dollars ($12,000) from Item 5440-001-001.

(26) One thousand three hundred thirty-five dollars and eighty-three cents ($1,335.83) from Item 5460-001-001, including both of the following:

(A) Thirty-three dollars and fifty-eight cents ($33.58) from category (a).

(B) One thousand three hundred two dollars and twenty-five cents ($1,302.25) from category (b).

(27) Seven hundred thirty dollars and sixty-three cents ($730.63) from Item 6100-006-001, including forty-nine dollars ($49) from category (a).

(28) One thousand four hundred thirty-three dollars and sixty-five cents ($1,433.65) from Item 6610-001-001, including one thousand three hundred thirty-three dollars and sixty-five cents ($1,333.65) from category (c).

(29) Five hundred ninety-six dollars and fifty-one cents ($596.51) from category (j) of Item 8350-001-001.

(30) Two hundred fifteen dollars and fifty cents ($215.50) from category (h) of Item 8570-001-001.

(31) Seventy-two dollars and five cents ($72.05) from category (a) of Item 8915-001-890.

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 pay judgments and settlement claims against the state and end hardship to claimants as quickly as possible, it is necessary for this act to take effect immediately.

# CHAPTER 1304

An act to amend Sections 66799.11 and 66799.30 of the Government Code, relating to solid waste.

[Approved by Governor September 24, 1988. Filed with Secretary of State September 26, 1988 ]

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

SECTION 1. Section 66799.11 of the Government Code is amended to read:

66799.11. (a) The committee is composed of seven members as follows:

(1) The State Director of Health Services, or a designee of the director.

(2) The Chairperson of the State Water Resources Control Board, or a designee of the chairperson.

(3) The Chairperson of the State Air Resources Board, or a designee of the chairperson.

(4) The Chairperson of the California Waste Management Board, or a designee of the chairperson.

(5) A member appointed by the Senate Committee on Rules.

(6) A member appointed by the Speaker of the Assembly.

(7) A member, who shall be a county health officer, appointed by the Governor.

(b) The Secretary of Environmental Affairs shall serve as chairperson of the committee.

(c) The committee shall submit an annual report to the Legislature in 1990, 1991, and 1992 on all of the following:

(1) The status of regulatory activities by state agencies relating to closure and postclosure maintenance of solid waste facilities.

(2) The progress on coordinating these activities among the state agencies with regulatory authority over closure and postclosure maintenance of solid waste facilities.

SEC. 2. Section 66799.30 of the Government Code is amended to read:

66799.30. The board may make loan guarantees to the owner and operator of a solid waste landfill to implement a corrective action. The board may also make loan guarantees to the operator of a solid waste landfill for corrective action taken pursuant to Section 41805.5 of the Health and Safety Code or Section 13273 of the Water Code, if the operator has paid an annual fee to the state board pursuant to Section 66799.49. Loan guarantees approved by the board may apply to loans made by banks, savings and loan institutions, or state or federal agencies authorized to make loans or provide other forms of financial assistance for these purposes, including, but not limited to, the California Pollution Control Financing Authority.

## CHAPTER 1305

An act to amend Section 5705 of, to amend, repeal, and add Section 5600 of, to add Section 5705.3 to, and to repeal and add Section 5705.4 of, the Welfare and Institutions Code, relating to mental health, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 24, 1988 Filed with Secretary of State September 26, 1988 ]

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

SECTION 1. Section 5600 of the Welfare and Institutions Code, as amended by Chapter 1081 of the Statutes of 1985, is amended to read:

5600. This part shall be known and may be cited as the Short-Doyle Act. This part is intended to organize and finance community mental health services for the mentally disordered in every county through locally administered and locally controlled community mental health programs. It is furthermore intended to better utilize existing resources at both the state and local levels in order to improve the effectiveness of necessary mental health services; to integrate state-operated and community mental health programs into a unified mental health system; to ensure that all mental health professions be appropriately represented and utilized in such mental health programs; to provide a means for participation by local governments in the determination of the need for and the allocation of mental health resources; to establish a uniform ratio of local and state government responsibility for financing mental health services; and to provide a means of allocating state mental health funds equitably among counties according to community needs.

Available funding for local programs, beyond the current base plus any cost-of-living adjustment granted by the Legislature, shall be allocated to counties based upon relative need, defined and appropriately revised by the department on an annual basis as the percentage of total state population and total state poverty population residing in that county. By January 1, 1987, the department shall submit to the Legislature data on the actual numbers of persons served and applicants awaiting service in each county to be considered as a part of the formula in the future. However, until equity of funding between counties is achieved, the allocation of funds shall also take into account the difference between relative needs, as defined above, and current relative resources, defined as the percentage of total state mental health funding currently allocated thereto, in such a manner that progress toward equity is reasonably assured provided, however, that no county allocation may be decreased for this purpose.

If state financing problems require a decrease in the department's

total allocation and the amount available for local programs, the director shall distribute funds to each county based upon a method which takes into primary account the issue of equity of funding among the counties.

By December 31 of each year, the department shall make available information on the progress which has been made in achieving equity between counties as defined in this section.

The goals of the community mental health programs provided under this part are:

(a) To assist persons who are institutionalized, or who have a high risk of becoming institutionalized, because of a mental disorder, to lead lives which are as normal and independent as possible, consistent with their individual capacities and desires.

(b) To assist persons who experience temporary psychological problems, which disrupt normal living, to return as quickly as possible to a functioning level which enables them to cope with the problems of everyday life.

(c) To prevent serious mental disorders and psychological problems.

(d) This section shall remain in effect only until January 1, 1992, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1992, deletes or extends that date.

SEC. 2. Section 5600 is added to the Welfare and Institutions Code, to read:

5600. This part shall be known and may be cited as the Short-Doyle Act. This part is intended to organize and finance community mental health services for the mentally disordered in every county through locally administered and locally controlled community mental health programs. It is furthermore intended to better utilize existing resources at both the state and local levels in order to improve the effectiveness of necessary mental health services; to integrate state-operated and community mental health programs into a unified mental health system; to ensure that all mental health professions be appropriately represented and utilized in such mental health programs; to provide a means for participation by local governments in the determination of the need for and the allocation of mental health resources; to establish a uniform ratio of local and state government responsibility for financing mental health services; and to provide a means of allocating state mental health funds according to community needs.

The goals of the community mental health programs provided under this part are:

(a) To assist persons who are institutionalized, or who have a high risk of becoming institutionalized, because of a mental disorder, to lead lives which are as normal and independent as possible, consistent with their individual capacities and desires.

(b) To assist persons who experience temporary psychological problems, which disrupt normal living, to return as quickly as possible to a functioning level which enables them to cope with the

problems of everyday life.

(c) To prevent serious mental disorders and psychological problems.

(d) This section shall become operative January 1, 1992.

SEC. 3. Section 5705 of the Welfare and Institutions Code is amended to read:

5705. (a) The net cost of all services specified in the approved county Short-Doyle plans shall be financed on a basis of 90 percent state funds and 10 percent county funds, except for local hospital inpatient costs, which shall be financed on a basis of 85 percent state funds and 15 percent county funds, irrespective of where or by whom the services are provided, except for services to be financed from other public or private sources as indicated in the county Short-Doyle plan, and except as provided in Section 5705.4. The cost of the services shall be the actual cost, except for 24-hour hospital services, or a negotiated net amount or rate approved by the Director of Mental Health as provided in Section 5705.2. The cost of 24-hour hospital services shall be the lower of the provider's actual costs or 125 percent of the statewide average for the cost of 24-hour hospital services established pursuant to Section 5705.1.

(b) The cost of state hospital services shall be financed on the basis of 85 percent state funds and 15 percent county funds. With the exception of any costs associated with a county's utilization of state hospital days in excess of their annual allocation, counties may, at their option, resolve any additional state hospital county match requirement in the fiscal year budget process following the year in which the final state hospital billing is received from the department. The state hospital county match requirement for days in excess of a county's annual allocation shall be resolved in accordance with the established policy of the department.

The State Department of Mental Health is hereby permitted to reallocate any funds which are not matched by counties with the approval of the Joint Legislative Budget Committee using a letter as prescribed in Section 28 of the Budget Act, provided such reallocated funds shall not be counted into the base allocation.

SEC. 4. Section 5705.3 is added to the Welfare and Institutions Code, to read:

5707.3. Counties with a population of less than 1 percent of the statewide population based on the most currently available estimates of population data as determined by the Population Research Unit of the Department of Finance, that as of the effective date of this section operate county hospitals which, in whole or in part, provide mental health psychiatric inpatient services as part of the local mental health program, may elect to withdraw the county hospital from participation in the Short-Doyle/Medi-Cal program and instead participate in the fee-for-service Medi-Cal program to obtain reimbursement for mental health services, provided that the fee-for-service Medi-Cal rate of reimbursement is established pursuant to contract with the California Medical Assistance

Commission. When a county makes the election described in this section, the county shall notify the State Department of Mental Health, the State Department of Health Services, and the California Medical Assistance Commission. The Short-Doyle allocation for the county shall be reduced by the amount of county Short-Doyle funds used at the time that the election is made to match the federal Medi-Cal reimbursement for the county hospital's inpatient services.

SEC. 5. Section 5705.4 of the Welfare and Institutions Code is repealed.

SEC. 6. Section 5705.4 is added to the Welfare and Institutions Code, to read:

5705.4. Commencing with the 1988–89 fiscal year, the cost requirement for local financial participation pursuant to Section 5705 shall be waived for all counties with a population of 125,000 or less based on the most currently available estimates of population data as determined by the Population Research Unit of the Department of Finance. This waiver of financial participation shall apply to all programs except state hospital services, which shall be financed on the basis of 90 percent state funds and 10 percent county funds, and local hospital patient services, which shall be financed on the basis of 85 percent state funds and 15 percent county funds.

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 take effect for the 1988–89 fiscal year and thus alleviate immediate fiscal constraints for county mental health programs, it is necessary that this act take effect immediately as an urgency statute.

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## CHAPTER 1306

An act to add Section 2395.5 to the Business and Professions Code, relating to health care.

[Approved by Governor September 24, 1988 Filed with Secretary of State September 26, 1988.]

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

SECTION 1. Section 2395.5 is added to the Business and Professions Code, to read:

2395.5. (a) A licensee who serves on an on-call basis to a hospital emergency room, who in good faith renders emergency obstetrical services to a person while serving on-call, shall not be liable for any civil damages as a result of any negligent act or omission by the licensee in rendering the emergency obstetrical services. The immunity granted by this section shall not apply to acts or omissions constituting gross negligence, recklessness, or willful misconduct.

(b) The protections of subdivision (a) shall not apply to the licensee in any of the following cases:

(1) Consideration in any form was provided to the licensee for serving, or the licensee was required to serve, on an on-call basis to the hospital emergency room. In either event, the protections of subdivision (a) shall not apply unless the hospital expressly, in writing, accepts liability for the licensee's negligent acts or omissions.

(2) The licensee had provided prior medical diagnosis or treatment to the same patient for a condition having a bearing on or relevance to the treatment of the obstetrical condition which required emergency services.

(3) Before rendering emergency obstetrical services, the licensee had a contractual obligation or agreement with the patient, another licensee, or a third-party payer on the patient's behalf to provide obstetrical care for the patient, or the licensee had a reasonable expectation of payment for the emergency services provided to the patient.

(c) Except as provided in subdivision (b), nothing in this section shall be construed to affect or modify the liability of the hospital for ordinary or gross negligence.

SEC. 2. The Legislature finds and declares that there is a crucial need for the people of this state to receive knowledgeable and experienced emergency medical care. The Legislature further finds that physicians who serve on an "on-call" basis to hospital emergency rooms are regularly required to provide obstetrical care to persons with whom they have no preexisting physician-patient relationship. It is the public policy of this state to provide incentive and protection for physicians who, despite these hardships, respond to calls to provide emergency medical care.

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## CHAPTER 1307

An act to amend Section 13826.5 of the Penal Code, and to add and repeal Article 23.5 (commencing with Section 875) of Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code, relating to juveniles.

[Approved by Governor September 24, 1988. Filed with Secretary of State September 26, 1988.]

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

SECTION 1. Section 13826.5 of the Penal Code is amended to read:

13826.5. County probation departments receiving funding under this chapter shall strictly enforce court-ordered conditions of probation for gang members.

(a) County probation departments supported under the Gang

Violence Suppression Program shall implement the following activities:

(1) A Gang Violence Intensive Supervision Unit dealing with gang members shall be established.

(2) Criteria used to determine which probationer shall be assigned to the Gang Violence Intensive Supervision Unit shall be approved by the district attorney having a Gang Violence Prosecution Unit described in Section 13826.2.

(3) Probationers whose cases are assigned to the intensive supervision unit must be informed of what types of behavior are prescribed or forbidden. Such notice shall be provided in both oral and written form.

(4) Probationers whose cases are assigned to the intensive supervision unit must be informed, in writing, that all court-ordered conditions of probation will be strictly enforced.

(5) Deputy probation officers in the intensive supervision unit shall have reduced probationer caseloads and shall coordinate their supervision efforts with law enforcement and prosecution personnel. Such coordination shall include informing law enforcement and prosecution personnel of the conditions set for probationers and of the strict enforcement procedures to be implemented.

(6) Deputy probation officers in the intensive supervision unit shall coordinate with the district attorney in ensuring that court-ordered conditions of probation are consistently enforced.

(7) Intensive supervision unit deputy probation officers shall coordinate, whenever feasible, with community-based organizations in seeking to ensure that probationers adhere to their court-ordered conditions.

(b) County probation departments may implement the following activities:

(1) The California TEAM (Together Each Achieves More) Sports Camp Program, as described in Article 23.5 (commencing with Section 875) of Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code.

SEC. 2. Article 23.5 (commencing with Section 875) is added to Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code, to read:

## Article 23.5. Wards—TEAM Camps

875. In order to combat the growing influence of youth gangs and youth gang-related activity, it is the intent of the Legislature to enact a program which incorporates the individual and social values and mutual support system developed through team sports, provides meaningful educational opportunities for juvenile wards, including counseling on drugs and drug rehabilitation, and serves to provide an effective peer group alternative for members of youth gangs. In enacting this program, the Legislature finds and declares all of the following:

(a) The majority of wards placed in juvenile facilities are or have been members of youth gangs. In Los Angeles County alone, it is estimated that at least 75 percent of the wards confined to probation camps have been gang members. In many cases, these juveniles have been involved in the sale or use of controlled substances.

(b) The abatement of the use of controlled substances and the reduction of juvenile gang-related crimes are of paramount importance to the people of the State of California.

(c) Many of these wards have both academic potential and good athletic ability.

(d) Through participation in team sports in a camp atmosphere, juvenile wards will learn the concept of individual accomplishment as a contribution to a team goal, and cooperation with others to gain a positive self-image as well as gain the ability to resist peer group pressure. These concepts are crucial to the development of individual self-esteem, so necessary to these individuals to effect the desired changes in their behavior, to realize their potential, academically and athletically, and to reduce the influence of youth gang and youth gang-related activity.

(e) There are several model programs for juveniles in Los Angeles County, including Camp Kilpatrick and Lynwood, which provide good examples of the positive role that sports and individual counseling can have in providing meaningful opportunities and mutual support systems for young people.

875.1. There is hereby established a pilot project which shall be known as the California TEAM (Together Each Achieves More) Sports Camp Program. The project shall be administered by the office of Criminal Justice Planning or its designee.

875.2. Pursuant to this article, the chief probation officer of a county, with the approval of the board of supervisors, may apply to the office of Criminal Justice Planning for funding to implement a program in the form of a sports camp. Applications shall be made in accordance with guidelines established by the Office of Criminal Justice Planning in accordance with this article.

875.3. The office of Criminal Justice Planning shall select at least three counties. At least one county from the northern region, one county from the southern San Joaquin Valley region, and one county from the southern region shall be selected from those applying and eligible for funding pursuant to guidelines established pursuant to this article. Eligibility shall be established on the basis of need, but counties having the highest juvenile felony statistics and the highest average juvenile probation caseloads shall be given priority for funding.

875.4. Each county selected for participation in this project shall implement a residential sports camp program for delinquent wards of the juvenile court pursuant to Section 602 which shall contain the following components:

(a) Emphasis on academics, physical fitness, and the development of specific sports skills.

(b) A special academic program geared to high school graduation and college preparation, and including a tutorial program for each ward.

(c) An athletic program to be administered by camp staff and instructed by certified and qualified coaching staff, to emphasize physical fitness, discipline, and the development of skills pertinent to a specific sport, as well as a counseling program regarding the detrimental effects of drugs on athletes.

(d) The teams from each camp program may compete, to the maximum extent possible, in regularly organized high school sports.

(e) Any other components prescribed by office of Criminal Justice Planning guidelines.

For purposes of this article, the office of Criminal Justice Planning shall coordinate activities with the sheriff's department in each of the counties selected for TEAM camps. In addition to selecting at least three TEAM camps, and in cooperation with the sheriff and the chief probation officer, the office of Criminal Justice Planning also shall establish one early intervention TEAM facility in one of the counties selected for juveniles who are first time offenders, but who have not been sentenced to probation camp or to the California Youth Authority. This facility shall otherwise meet the component requirement set forth in this section.

875.5. The probation officers assigned to the camp shall also do all of the following:

(a) Assist in enrolling wards from the camps into the appropriate community school.

(b) Assist in securing further educational opportunities for wards, including, but not limited to, securing college scholarships or other financial aid.

(c) Provide such support, counseling, and supervision after graduation from the camp as is necessary to help ensure that the ward will not return to drug-related or gang activity.

875.6. Three years after TEAM camps have been funded pursuant to this article, the office of Criminal Justice Planning shall submit an evaluation report, together with recommendations, to the Governor and the Legislature. The report shall evaluate the progress of the program. The report shall compare recidivism rates between delinquent wards of the juvenile court pursuant to Section 602 who have participated in the TEAM camp program and those who have participated in regular probation camps, since the objective of the TEAM camp program is to reduce recidivism of the participants by 50 percent compared to other wards who are placed in Youth Authority facilities. The report shall also cite examples of academic or athletic achievements of county wards who participate in the TEAM camp program. If the program fails to reduce recidivism by 30 percent, it shall be deemed to be a failure. The report shall also discuss ways and means to achieve further educational opportunities for Youth Authority and county wards, the effectiveness of the TEAM sports camp concept in helping reduce recidivism into gang

and drug-related activity, and the feasibility of implementing TEAM sports camps or similar programs statewide.

875.7. This article shall remain operative only until January 1, 1994, and as of that date is repealed unless a later enacted statute, which is enacted before January 1, 1994, deletes or extends that date.

SEC. 3. Programs established pursuant to Article 23.5 (commencing with Section 875) of Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code shall be eligible for funding under Chapter 3.5 (commencing with Section 13826) of Title 6 of Part 4 of the Penal Code or under any other relevant provision of law.

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## CHAPTER 1308

An act to amend Sections 66499, 66499.1, 66499.3, and 66499.7 of the Government Code, relating to housing.

[Approved by Governor September 24, 1988 Filed with Secretary of State September 26, 1988 ]

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

SECTION 1. The Legislature finds and declares that nonprofit housing organizations have played a key role in the development of new low- and moderate-income housing. The Legislature further finds and declares that these nonprofit organizations are unable to meet certain Subdivision Map Act requirements relating to security commonly imposed on for-profit developers because of the lack of collateral. The Legislature further finds that these nonprofit corporations generally fulfill all requirements because of concurrent supervision or assurances provided by public financing from government agencies. The Legislature finds that current flexibility provided by the Subdivision Map Act is inadequate to allow nonprofit corporations with public financing to develop housing without unreasonable bonding requirements, and that additional flexibility is required.

SEC. 2. Section 66499 of the Government Code is amended to read:

66499. (a) Whenever this division or a local ordinance authorizes or requires the furnishing of security in connection with the performance of any act or agreement, if the developer is not a nonprofit corporation described in subdivision (c) of Section 66499.3, the security shall be one of the following at the option of and subject to the approval of the local agency and if the developer is a nonprofit corporation described in subdivision (c) of Section 66499.3, the security shall be one of the following, subject to the approval of the local agency:

(1) Bond or bonds by one or more duly authorized corporate sureties.

(2) A deposit, either with the local agency or a responsible escrow agent or trust company, at the option of the local agency, of money or negotiable bonds of the kind approved for securing deposits of public moneys.

(3) An instrument of credit from an agency of the state, federal, or local government when any agency of the state, federal, or local government provides at least 20 percent of the financing for the portion of the act or agreement requiring security, or from one or more financial institutions subject to regulation by the state or federal government and pledging that the funds necessary to carry out the act or agreement are on deposit and guaranteed for payment, or a letter of credit issued by such a financial institution.

(4) A lien upon the property to be divided, created by contract between the owner and the local agency, if the local agency finds that it would not be in the public interest to require the installation of the required improvement sooner than two years after the recordation of the map.

(5) Any form of security, including security interests in real property, which is acceptable to the local agency and specified by ordinance thereof.

(b) Any contract or security interest in real property entered into as security for performance pursuant to paragraph (4) or paragraph (5) of subdivision (a) shall be recorded with the county recorder of the county in which the subject real property is located. From the time of recordation of the written contract or document creating a security interest, a lien shall attach to the real property particularly described therein and shall have the priority of a judgment lien in an amount necessary to complete the agreed to improvements. The recorded contract or security document shall be indexed in the Grantor Index to the names of all record owners of the real property as specified on the map and in the Grantee Index to the local agency approving the map.

The local agency may at any time release all or any portion of the property subject to any lien or security interest created by this subdivision or subordinate the lien or security interest to other liens or encumbrances if it determines that security for performance is sufficiently secured by a lien on other property or that the release or subordination of the lien will not jeopardize the completion of agreed upon improvements.

SEC. 3. Section 66499.1 of the Government Code is amended to read:

66499.1. Except as provided in Section 66499.3, a bond or bonds by one or more duly authorized corporate sureties to secure the faithful performance of any agreement shall be in substantially the following form:

Whereas, The Board of Supervisors of the County of _____ (or the City Council of the City of _____), State of California, and _____ (hereinafter designated as "principal") have entered into

an agreement whereby principal agrees to install and complete certain designated public improvements, which said agreement, dated _____, 19__, and identified as project _____, is hereby referred to and made a part hereof; and

Whereas, Said principal is required under the terms of said agreement to furnish a bond for the faithful performance of said agreement.

Now, therefore, we, the principal and _____, as surety, are held and firmly bound unto the County of _____, (or City of _____) hereinafter called ("_____"), in the penal sum of _____ dollars ($_____) lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, successors, executors and administrators, jointly and severally, firmly by these presents.

The condition of this obligation is such that if the above bounded principal, his or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and provisions in the said agreement and any alteration thereof made as therein provided, on his or their part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify and save harmless _____, its officers, agents and employees, as therein stipulated, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

As a part of the obligation secured hereby and in addition to the face amount specified therefor, there shall be included costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by county (or city) in successfully enforcing such obligation, all to be taxed as costs and included in any judgment rendered.

The surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the agreement or to the work to be performed thereunder or the specifications accompanying the same shall in anywise affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the agreement or to the work or to the specifications.

In witness whereof, this instrument has been duly executed by the principal and surety above named, on _____, 19__.

Appropriate modifications shall be made in such form if the bond is being furnished for the performance of an act not provided for by agreement.

SEC. 4. Section 66499.3 of the Government Code is amended to read:

66499.3. Security to guarantee the performance of any act or agreement shall be in the following amounts:

(a) An amount determined by the legislative body, not less than

50 percent nor more than 100 percent of the total estimated cost of the improvement or of the act to be performed, conditioned upon the faithful performance of the act or agreement; and

(b) An additional amount determined by the legislative body, not less than 50 percent nor more than 100 percent of the total estimated cost of the improvement or the performance of the required act, securing payment to the contractor, to the subcontractors, and to persons furnishing labor, materials, or equipment to them for the improvement or the performance of the required act.

(c) Whenever an entity required to furnish security in accordance with subdivisions (a) and (b) is a California nonprofit corporation, funded by the United States of America or one of its agencies, or funded by this state or one of its agencies, the entity shall not be required to comply with subdivisions (a) and (b), if the following conditions are met:

(1) A letter or letters of credit are provided pursuant to paragraph (3) of subdivision (a) of Section 66499 for 100 percent of the contract of improvements or the contractor installing the improvements has bonded to the nonprofit corporation and the local agency as coobligee the amount of 100 percent of the contract for the faithful performance of the work, and has further bonded to the nonprofit corporation and the local agency as coobligee an amount of not less than 50 percent of the contract for the payment of labor and materials, and those bonds comply with the provisions of this chapter.

(2) All moneys under the control of the nonprofit corporation and payable to the contractor by the nonprofit corporation are deposited in a depository complying with the provisions of this chapter, and out of which moneys progress payments are conditioned upon:

(A) The contractor's certification to the nonprofit corporation that all labor performed in the work, and all materials furnished to and installed in the work, have been paid for in full to the date of the certification.

(B) The written approval of the nonprofit corporation.

(C) Review and approval of progress payment billings by local government.

(D) Final payment to the contractor not being made until 30 days shall have expired after the filing and recording of the notice of completion of the work and acceptance of the work by, and a waiver of lien rights provided by the contractor to, the local agency in writing.

(3) All certifications as to progress payments shall be delivered through the United States mail to the nonprofit corporation. The term "progress payments" means payments made in compliance with the schedule of partial payments agreed upon in the contract for the work. No less than 10 percent of the total contract price shall be retained for the 60 days following the filing of the notice of completion.

(d) Subject to the limitations of Section 66499.9, an amount

determined by the legislative body necessary for the guarantee and warranty of the work for a period of one year following the completion and acceptance thereof against any defective work or labor done, or defective materials furnished.

SEC. 5. Section 66499.7 of the Government Code is amended to read:

66499.7. The security furnished by the subdivider shall be released in whole or in part in the following manner:

(a) Security given for faithful performance of any act or agreement shall be released upon the performance of the act or final completion and acceptance of the required work, or the legislative body may provide for the partial release of the security upon the partial performance of the act or the acceptance of the work as it progresses, under rules established by the legislative body.

(b) Security securing the payment to the contractor, his or her subcontractors and to persons furnishing labor, materials or equipment shall, after passage of the time within which claims of lien are required to be recorded pursuant to Article 3 (commencing with Section 3114) of Chapter 2 of Title 15 of Part 4 of Division 3 of the Civil Code and after acceptance of the work, be reduced to an amount equal to the total claimed by all claimants for whom claims of lien have been recorded and notice thereof given in writing to the legislative body, and if no such claims have been recorded, the security shall be released in full.

The release shall not apply to any required guarantee and warranty period required by Section 66499.9 for the guarantee or warranty nor to the amount of the security deemed necessary by the local agency for such guarantee and warranty period nor to costs and reasonable expenses and fees, including reasonable attorneys' fees.

The legislative body may authorize any of its public officers or employees to authorize release or reduction of the security in accordance with the conditions hereinabove set forth and in accordance with such rules as it may prescribe.

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## CHAPTER 1309

An act to add Section 65913.8 to the Government Code, relating to developer fees.

[Approved by Governor September 24, 1988 Filed with Secretary of State September 26, 1988 ]

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

SECTION 1. Section 65913.8 is added to the Government Code, to read:

65913.8. A fee, charge, or other form of payment imposed by a governing body of a local agency for a public capital facility

improvement related to a development project may not include an amount for the maintenance or operation of an improvement when the fee, charge, or other form of payment is required as a condition of the approval of a development project, or required to fulfill a condition of the approval. However, a fee, charge, or other form of payment may be required for the maintenance and operation of an improvement meeting the criteria of either subdivision (a) or (b), as follows:

(a) The improvement is (1) designed and installed to serve only the specific development project on which the fee, charge, or other form of payment is imposed, (2) the improvement serves 19 or fewer lots or units, and (3) the local agency makes a finding, based upon substantial evidence, that it is infeasible or impractical to form a public entity for maintenance of the improvement or to annex the property served by the improvement to an entity as described in subdivision (b).

(b) The improvement is within a water district, sewer maintenance district, street lighting district, or drainage district. In these circumstances, a payment for maintenance or operation may be required for a period not to exceed 24 months when, subsequent to the construction of the improvement, either the local agency forms a public entity or assessment district to finance the maintenance or operation, or the area containing the improvement is annexed to a public entity that will finance the maintenance or operation, whichever is earlier. The local agency may extend a fee, charge, or other form of payment pursuant to this section once for whatever duration it deems reasonable beyond the 24-month period upon making a finding, based upon substantial evidence, that this time period is insufficient for creation of, or annexation to, a public entity or an assessment district that would finance the maintenance or operation.

As used in this section, "development project" and "local agency" have the same meaning as provided in subdivisions (a) and (c) of Section 66000.

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## CHAPTER 1310

An act to amend Sections 68543.5, 68701.5, 75028, 75028.1, and 75028.3 of the Government Code, relating to judges.

[Approved by Governor September 24, 1988. Filed with Secretary of State September 26, 1988.]

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

SECTION 1. Section 68543.5 of the Government Code is amended to read:

68543.5. Whenever a judge retired as such under the Judges'

Retirement Law is assigned to sit in a court, he or she shall be compensated while so sitting at a rate equal to 92 percent of the full compensation of a judge of the court to which he or she is assigned. A retired judge of a justice court assigned to sit in a court shall be compensated while so sitting at the full compensation of a judge of the court to which he or she is assigned, or the compensation specified in Section 68541, whichever is greater. Such compensation shall be chargeable for the period specified in Section 68547 the same as provided by law with respect to the compensation of a judge of the court to which he or she is assigned except that when chargeable to the state, such compensation is payable out of any appropriation for extra compensation of judges assigned by the Chairperson of the Judicial Council.

If such compensation is greater than his or her retirement allowance, his or her retirement allowance shall be suspended so long as he or she receives such compensation. If such compensation is less than his or her retirement allowance, his or her retirement allowance shall continue to be paid while he or she receives such compensation but only in an amount equal to the difference between such compensation and the retirement allowance to which he or she would otherwise be entitled.

If a judge retired under the Judges' Retirement Law is assigned to sit in a court, the 8-percent difference between the compensation of the retired judge while so assigned and the compensation of a judge of the court to which assigned shall be paid to the Judges' Retirement Fund.

When assigned to sit in a county other than that in which he or she resides, he or she shall also be allowed his or her necessary expenses for travel, board, and lodging incurred in the discharge of the assignment. Such expenses, if any, shall be chargeable as follows:

(a) When the assignment is to the Supreme Court or a court of appeal, to the state.

(b) When the assignment is to a superior, municipal, or justice court, to the county.

When assigned to sit in the county in which he or she resides, he or she shall be allowed his or her necessary and reasonable expenses for travel, parking, and board incurred in the discharge of the assignment for and during any period that he or she waives salary or other compensation except his or her retirement allowance.

Notwithstanding the above provisions pertaining to compensation, a retired judge on senior judge status shall receive compensation from the state as provided in Sections 75028 and 75028.2, and shall be allowed necessary expenses for travel, board, and lodging incurred in the discharge of the assignment as provided in this section.

SEC. 2. Section 68701.5 of the Government Code is amended to read:

68701.5. Notwithstanding Section 68701, the Commission on Judicial Performance may investigate the conduct or performance of any retired judge serving on senior judge status pursuant to rules

adopted by the Judicial Council. The commission also shall have the power to order a retired judge's senior judge status terminated for incapacity or any failure to carry out the duties of the office, but in no instance shall the salary together with any Judges' Retirement Law allowance paid for service or disability in any year exceed 100 percent of the current salary of the judge's office from which he or she retired.

SEC. 3. Section 75028 of the Government Code is amended to read:

75028. (a) Except as provided in Sections 75060.6, 75080, and 68543.5, any designation as a judge pro tempore or any assignment by the Chairperson of the Judicial Council shall be disregarded for purposes of this chapter. For the purposes of this chapter no person shall acquire status as a judge, nor shall any person's status as a judge be affected, by any such designation or assignment.

(b) A judge who elects to be available for full-time service on senior judge status after the effective date of retirement, shall be compensated by the state for that time at a rate equal to the full compensation of a judge of the court from which he or she retired or, at the judge's election, at a rate equal to the full compensation of a judge of the court to which he or she is assigned. A judge serving on senior judge status also shall be eligible for travel, board, and lodging expenses, as provided in Section 68543.5.

SEC. 4. Section 75028.1 of the Government Code is amended to read:

75028.1. (a) At the time of the filing of a notice of retirement under the Judges' Retirement Law to be effective after age 69½ but before age 70, a judge may elect senior judge status.

(b) A retired judge who retired under the Judges' Retirement Law before July 1, 1985, and who has attained age 60, may apply to the Chairperson of the Judicial Council for senior judge status.

(c) A judge who has left office at age 60 or older on or after July 1, 1985, and who has 20 years or more of retirement service credit under the Judges' Retirement Law, may apply to the Chairperson of the Judicial Council for senior judge status.

(d) A judge serving on senior judge status shall serve full time as assigned for up to three consecutive years and by accepting that status waives the right to refuse any assignment as otherwise provided by law. A judge who elects to retire under this section is deemed retired, and the judicial office from which the judge retired shall become vacant and a successor shall then be appointed to fill the vacancy.

SEC. 5. Section 75028.3 of the Government Code is amended to read:

75028.3. Notwithstanding any other provision of law, senior judge status shall terminate at the end of three years, except that the status shall terminate earlier when any of the following occurs:

(a) The judge on senior judge status requests termination.

(b) The judge fails to perform service as assigned.

(c) The Commission on Judicial Performance so orders.
(d) The judge attains the age of 73.

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## CHAPTER 1311

An act relating to the Pasadena Unified School District.

[Approved by Governor September 24, 1988 Filed with Secretary of State September 26, 1988.]

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

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

(a) In September 1985, the Pasadena Unified School District instituted a Tutoring and Homework Assistance Program through which pupils are able to receive appropriate homework or specialized tutorial assistance, or both, from trained personnel and volunteers after regular school hours at each of the district's 30 schools, at no cost to the pupil, and through which parents, teachers, and pupils receive information and referral services on the tutoring and homework support services available through the school district and other community organizations.

(b) In the 1986–87 school year, the Tutoring and Homework Assistance Program provided 30,922 hours of assistance to 1,136 pupils at 27 sites with the help of 219 volunteers who provided more than 3,000 hours of their time.

(c) Surveys completed by principals, site coordinators, classroom teachers, parents, and pupils generated favorable responses to the program.

(d) The Tutoring and Homework Assistance Program is of educational benefit and provides a cost-effective means of reaching pupils, of supporting rather than replacing the role of parents, and of enabling pupils to succeed in school and, therefore, to be more likely to remain in school.

(e) The development of a model program based upon the Tutoring and Homework Assistance Program in the Pasadena Unified School District over a three-year period would be useful for other school districts in the state, given the degree to which Pasadena is a microcosm of the State of California.

SEC. 2. (a) The Pasadena Unified School District, based upon its Tutoring and Homework Assistance Program, shall develop, over a three-year period, a model program for use in school districts throughout the state.

(b) The Pasadena Unified School District shall report to the Superintendent of Public Instruction annually, on or before October 30, on the implementation and effectiveness of the Tutoring and Homework Assistance Program and on the district's progress in

developing the model program. Each report shall be based on data supplied by program personnel and volunteers, and shall describe the number of volunteers, volunteer hours, pupil participants, and participant hours of assistance under the program in the prior school year, as compared to those numbers for the 1986–87 school year. In addition, the report shall describe the nature and extent of services available at each site, and the results of pupil participation in the following areas:

(1) Test performance, which shall be assessed as part of the district's annual California Achievement Test to determine if the pupils participating for 10 or more hours in the program have increased their scores by a statistically significant degree.

(2) Grade point averages of program participants in grades 9 to 12, inclusive, with 10 or more hours of tutoring.

(3) Other data that may be made available by the State Department of Education on the California Assessment Program, to be analyzed with the assistance of the State Department of Education.

(c) The district shall make its final report on or before July 1, 1992.

SEC. 3. The Pasadena Unified School District may credit for the purpose of its summer school apportionments computed pursuant to Section 42239 of the Education Code, as amended by the annual Budget Act, the hours of homework and tutorial assistance provided pursuant to Section 1 of this act, provided that the instruction is in core academic areas specified in paragraph (2) of subdivision (d) of Section 42239.

SEC. 4. It is the intent of the Legislature that colleges and universities be encouraged to grant academic credit to students enrolled in a teacher training program who participate as volunteers in the Tutoring and Homework Assistance Program pursuant to this act.

SEC. 5. Due to the unique circumstances concerning the Pasadena Unified 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. 6. Sections 1 to 5, inclusive, of this act shall become inoperative on June 30, 1991, and on January 1, 1992, are repealed, unless a later enacted statute, which becomes effective on or before January 1, 1992, deletes or extends the dates on which they become inoperative and are repealed.

SEC. 7. 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.

## CHAPTER 1312

An act to amend Section 5027 of the Business and Professions Code, relating to accountancy.

[Approved by Governor September 24, 1988. Filed with Secretary of State September 26, 1988.]

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

SECTION 1. Section 5027 of the Business and Professions Code is amended to read:

5027. The board shall by regulation prescribe, amend, or repeal rules including, but not limited to, all of the following:

(a) A definition of basic requirements for continuing education. A licensee who plans, directs, or approves any financial or compliance audit report on any governmental agency shall complete a minimum of 24 hours of qualifying continuing education in the area of governmental accounting and auditing or related subjects during the two-year license renewal period.

(b) A delineation of qualifying programs.

(c) A system of control and reporting.

In exercising its power under this section, the board shall establish standards which will assure reasonable currency of knowledge as a basis for a high standard of practice by certified public accountants and public accountants. The standards shall be established in a manner to assure that a variety of alternatives are available to licensees to comply with the continuing education requirements for renewal of licenses and taking cognizance of specialized areas of practice.

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## CHAPTER 1313

An act to add Section 53066.2 to the Government Code, relating to cable television.

[Approved by Governor September 24, 1988. Filed with Secretary of State September 26, 1988.]

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

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

(a) The federal Cable Communications Policy Act of 1984 (47 U.S.C. Sec. 521 et seq.) requires any city, county, or city and county with franchising authority to assure that access to cable service is not denied to any group of potential television residential subscribers because of the income of the residents of the local area in which the

group resides.

(b) Pursuant to that act, a franchisee is not permitted to "redline," or deny service to lower income areas. Furthermore, the city, county, or city and county with frachising authority is vested with the authority to require the wiring of all areas of the franchise area to avoid this type of practice.

(c) The franchisee's failure to construct or complete construction of facilities pursuant to the franchise agreement generally has the same effect as denying service to a group of residents.

SEC. 2. Section 53066.2 is added to the Government Code, to read:

53066.2. (a) In awarding a cable television franchise pursuant to Section 53066, a city, county, or city and county shall assure that access to cable service is not denied to any group of potential residential cable subscribers because of the income of the residents of the local area in which the group resides.

(b) Nothing in subdivision (a) authorizes a city, county, or city and county to require a cable operator to build a line extension to a home which may be too remote and where the cost to wire is substantially above the average cost of providing cable television service in that community.

(c) Any city, county, or city and county may consider that a franchise is abandoned and may take appropriate action, including revocation of a franchise agreement, after notice and an opportunity for hearing has been given to the franchisee, if it reasonably determines that the franchise has denied cable service to a group of residents because of the income of the residents of the local area in which the group resides in violation of subdivision (a).

SEC. 3. 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.

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## CHAPTER 1314

An act to add Section 18961 to the Welfare and Institutions Code, relating to child abuse.

[Approved by Governor September 24, 1988. Filed with Secretary of State September 26, 1988.]

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

SECTION 1. Section 18961 of the Welfare and Institutions Code is amended to read:

18961. Notwithstanding any provision of law governing the disclosure of information and records, including but not limited to Section 5328 of the Welfare and Institutions Code, persons who are trained and qualified to serve on "multidisciplinary personnel" teams pursuant to subdivision (d) of Section 18951 whether or not the person is serving on such a team, may be deemed, by the team, to be part of the team as necessary for the purpose of the prevention, identification, management, or treatment of an abused child and his or her parents. The designated team may deem a person to be a member of the team for a particular case, and that team shall specify its reasons, in writing, for deeming that person to be a member of the team. Such a person, when deemed a member of the team, may receive and disclose information relevant to a particular case situation as though he or she were a member of the team, the members of which may disclose to one another information and records which are relevant to the prevention, identification, management, or treatment of an abused child and his or her parents pursuant to this chapter. The information and records which may be disclosed shall not be restricted to those obtained in the course of providing services pursuant to this chapter.

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## CHAPTER 1315

An act to add Chapter 2a (commencing with Section 2970) to Part 4 of Division 3 of the Civil Code, relating to loans.

[Approved by Governor September 24, 1988. Filed with Secretary of State September 26, 1988.]

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

SECTION 1. Chapter 2a (commencing with Section 2970) is added to Part 4 of Division 3 of the Civil Code, to read:

### CHAPTER 2a. HOME EQUITY LOAN DISCLOSURE ACT

2970. For purposes of this chapter "home equity loan" means any open end consumer credit plan in which a consensual security interest is created or retained against the consumer's dwelling.

2971. (a) At the time that a customer makes an initial application to a creditor for a home equity loan in person, or within three business days if the customer applies by mail or telephone, the creditor shall provide the applicant with a disclosure in either of the following forms:

(1) The statement: "This home equity loan that you are applying for will be secured by your home and your failure to repay the loan for any reason could cause you to lose your home!"

(2) A statement to the effect that a home equity loan is secured

by a lien against the home of the consumer and in the event of any default the consumer risks the loss of the home.

(b) The disclosure required in subdivision (a) shall be made by either of the following means:

(1) A separate and specific document attached to or accompanying the application.

(2) A clear and conspicuous statement on the application.

(c) If a creditor is required by federal statute or regulation to make a substantially similar disclosure to that required by subdivision (a), and the creditor complies with that federal statute or regulation, the creditor shall be deemed to have complied with the requirements of this chapter.

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## CHAPTER 1316

An act to amend Sections 35120 and 72425 of the Education Code, relating to public educational officers.

[Approved by Governor September 24, 1988. Filed with Secretary of State September 26, 1988 ]

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

SECTION 1. Section 35120 of the Education Code is amended to read:

35120. (a) (1) In any school district in which the average daily attendance for the prior school year exceeded 400,000, each member of the city board of education or the governing board of the district who actually attends all meetings held may receive as compensation for his or her services a sum not to exceed two thousand dollars ($2,000) per month.

(2) In any school district that is not located in a city and county, and in which the average daily attendance for the prior school year exceeded 60,000, the governing board may prescribe, as compensation for the services of each member of the board who actually attends all meetings held, a sum not to exceed one thousand five hundred dollars ($1,500) in any month.

(3) In any school district in which the average daily attendance for the prior school year was 60,000, or less, but more than 25,000, each member of the city board of education or the governing board of the district who actually attends all meetings held may receive as compensation for his or her services a sum not to exceed seven hundred fifty dollars ($750) in any month.

(4) In any school district in which the average daily attendance for the prior school year was 25,000, or less, but more than 10,000, each member of the city board of education or the governing board of the district who actually attends all meetings held may receive as compensation for his or her services a sum not to exceed four

hundred dollars ($400) in any month.

(5) In any school district in which the average daily attendance for the prior school year was 10,000 or less but more than 1,000, each member of the city board of education or the governing board of the district who actually attends all meetings held may receive as compensation for his or her services a sum not to exceed two hundred forty dollars ($240) in any month.

(6) In any school district in which the average daily attendance for the prior school year was 1,000 or less but more than 150, each member of the city board of education or the governing board of the district who actually attends all meetings held may receive as compensation for his or her services a sum not to exceed one hundred twenty dollars ($120) in any month.

(7) In any school district in which the average daily attendance for the prior school year was less than 150, each member of the city board of education or the governing board of the district who actually attends all meetings held may receive as compensation for his or her services a sum not to exceed sixty dollars ($60) per month.

Any member who does not attend all meetings held in any month may receive, as compensation for his or her services, an amount not greater than the maximum amount allowed by this subdivision divided by the number of meetings held and multiplied by the number of meetings actually attended.

(b) The compensation of members of the governing board of a school district newly organized or reorganized shall be governed by subdivision (a). For this purpose, the total average daily attendance in all of the schools of the district in the school year in which the organization or reorganization became effective pursuant to Section 4062 shall be deemed to be the average daily attendance in the district for the prior school year.

(c) A member may be paid for any meeting when absent if the board by resolution duly adopted and included in its minutes finds that at the time of the meeting he or she is performing services outside the meeting for the school district or districts.

(d) A member may be paid in any calendar year for the first two meetings from which he or she is absent if the board by resolution duly adopted and included in its minutes finds that at the time of the meeting from which the member is absent he or she is ill. A member may not receive compensation for any meeting from which he or she is absent in excess of the first two meetings missed, except as specified in subdivision (c).

(e) The compensation shall be a charge against the funds of the school district. If the city board of education or the governing board of the district is the governing board of more than one school district, the compensation shall be charged against and paid by the respective school districts in the same proportion as the salary of the city superintendent of schools is charged against them. Compensation shall be reduced by an amount equal to any salary or compensation paid to the members of the city board of education from any funds

of the city.

SEC. 2. Section 72425 of the Education Code is amended to read:

72425. (a) (*l*) In any community college district that is not located in a city and county, and in which the average daily attendance for the prior school year exceeded 60,000, the governing board may prescribe, as compensation for the services of each member of the board who actually attends all meetings held by the board, a sum not to exceed one thousand five hundred dollars ($1,500) in any month.

(2) In any community college district in which the average daily attendance for the prior school year was 60,000 or less, but more than 25,000, each member of the governing board of the district who actually attends all meetings held by the board, may receive as compensation for his or her services a sum not to exceed seven hundred fifty dollars ($750) in any month.

(3) In any community college district in which the average daily attendance for the prior school year was 25,000 or less, but more than 10,000, each member of the governing board of the district who actually attends all meetings held may receive as compensation for his or her services a sum not to exceed four hundred dollars ($400) in any month.

(4) In any community college district in which the average daily attendance for the prior school year was 10,000 or less, but more than 1,000, each member of the governing board of the district who actually attends all meetings held by the board may receive as compensation for his or her services a sum not to exceed two hundred forty dollars ($240) in any month.

(5) In any community college district in which the average daily attendance for the prior school year was 1,000 or less, but more than 150, each member of the governing board of the district who actually attends all meetings held by the board may receive as compensation for his or her services a sum not to exceed one hundred twenty dollars ($120) in any month.

Any member of a governing board who does not attend all meetings held by the board in any month may receive, as compensation for his or her services, an amount not greater than a pro rata share of the number of meetings actually attended based upon the maximum compensation authorized by this subdivision.

(b) The compensation of members of the governing board of a community college district newly organized or reorganized shall be governed by subdivision (a). For this purpose, the total average daily attendance in all of the community colleges of the district in the school year in which the organization or reorganization became effective pursuant to Section 4062 shall be deemed to be the average daily attendance in the district for the prior school year.

(c) A member may be paid for any meeting when absent if the board by resolution duly adopted and included in its minutes finds that at the time of the meeting he or she is performing services outside the meeting for the community college district. The

compensation shall be a charge against the funds of the district.

(d) A member may be paid in any calendar year for the first two meetings from which he or she is absent if the board by resolution duly adopted and included in its minutes finds that, at the time of the meeting from which the member is absent, he or she is ill. A member may not receive compensation for any meeting from which he or she is absent in excess of the first two meetings missed, except as specified in subdivision (c).

(e) Notwithstanding any provision of law to the contrary, any member of the governing board of the community college district who also is a member of, and entitled to receive benefits from, any public retirement or pension system administered by the Teachers' Retirement Board or the Board of Administration of the Public Employees' Retirement System may elect to forego any compensation provided by subdivision (a), (b), or (c) and, if the compensation is foregone, the member shall not have his or her retirement benefits reduced and shall not be required to be reinstated in his or her retirement system.

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 five hundred thousand dollars ($500,000), reimbursement shall be made from the State Mandates Claims Fund.

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## CHAPTER 1317

An act to amend Section 89036 of the Education Code, relating to postsecondary education.

[Approved by Governor September 24, 1988 Filed with Secretary of State September 26, 1988.]

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

SECTION 1. Section 89036 of the Education Code is amended to read:

89036. The trustees may enter into agreements with any public or private agency, officer, person, or institution, corporation, association, or foundation for the performance of acts or for the furnishing of services, facilities, materials, or equipment by or for the trustees or for the joint performance of an act or function or the joint furnishing of services and facilities by the trustees and the other party to the agreement.

The trustees may enter into agreements with the federal

government or any agency thereof in accordance with the procedures prescribed by the federal government or agency in order to receive the benefits of any federal statute extending benefits to the California State University or to the California State University students, including, but not limited to:

(a) Agreements with any agency of the federal government for the education of persons in the service of the federal government.

(b) Agreements with any agency of the federal government for the education of veterans, provided that the agreements shall provide for payment of the maximum amount permitted under the act, or acts, of Congress under which the agreement is entered into.

Notwithstanding any other provision of law, the trustees have all power necessary to perform such acts and comply with conditions required or imposed by the federal government in order to receive the benefits. The trustees are vested with all necessary power and authority to cooperate with any such agency of the federal government in the administration of any applicable act of Congress and rules and regulations adopted thereunder.

Notwithstanding any other provision of law, the trustees have all power necessary to award contracts to one or more contractors, at any one or more campuses, for the collection of delinquent education loans required to be repaid under federal law.

The provisions of Article 1 (commencing with Section 4300) of Chapter 4 of Division 5 of Title 1 of the Government Code shall not apply to the purchase by the trustees of musical instruments for the use of students of the California State University.

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## CHAPTER 1318

An act to amend Section 15325 of, and to add Sections 15333.5, 15333.6, and 15379.11 to, the Government Code, relating to technology, and making an appropriation therefor.

[Approved by Governor September 24, 1988. Filed with Secretary of State September 26, 1988 ]

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

SECTION 1. Section 15325 of the Government Code is amended to read:

15325. The work of the department shall be divided into at least the following offices:

(a) The Office of Economic Research.
(b) The Office of Local Development.
(c) The Office of Business Development.
(d) The Office of Tourism.
(e) The Office of Small Business.
(f) The California Film Commission.

(g) The Office of Marketing and Communications.

(h) The Office of Competitive Technology.

SEC. 2. Section 15333.5 is added to the Government Code, to read:

15333.5. The Office of Competitive Technology shall perform all of the following functions and activities:

(a) Administer the California Competitive Technology Program pursuant to Chapter 3.5 (commencing with Section 15379).

(b) Identify and encourage technology transfers that accelerate market driven innovation by translating scientific discoveries into useful commercial products, processes, and services.

(c) Identify sectors of the state's economy in which the California Competitive Technology Program may provide a strategic opportunity for economic development and job retention and creation in California and develop ways the state may pursue and take advantage of these strategic opportunities.

(d) Establish liaisons with research universities and colleges, federal science and technology agencies, appropriate state agencies, the California Council on Science and Technology, the University of California, the California State University and independent colleges and universities, industry associations, national laboratories, and the private sector.

(e) Research and identify technological areas in which California Competitive Technology Program funds would be most effective in improving California's world economic competitive position.

(f) Maintain a body of information and material on technology and technological research and its usefulness to industry in increasing the competitiveness of the California economy and enhancing the opportunity for joint ventures and more effective communication between the public and private sectors.

SEC. 3. Section 15333.6 is added to the Government Code, to read:

15333.6. (a) There is hereby established within the Department of Commerce the Competitive Technology Advisory Committee which shall not exceed 18 members. The Speaker of the Assembly and the Senate Rules Committee shall each appoint three members who are California residents and members of the National Academy of Science, the National Academy of Engineering, or the National Institute of Medicine. The Governor shall appoint the remaining members of the committee upon nomination by the Director of Commerce and shall appoint one member as chair. The members of the committee shall be individuals with an advanced level of education or experience in science or technology obtained through service in higher education, research laboratories, or the private sector. Included on the committee shall be representatives from the University of California, the California State University, the independent colleges and universities in California, and federal laboratories. A majority of the members of the committee shall represent the private sector. All members of the committee shall

serve for a two-year term.

(b) Each committee member shall serve without compensation but may be reimbursed for actual and necessary travel expenses incurred in the performance of duties. No member shall, by virtue of serving as a member of the committee, be deemed to be an officer of the state.

(c) The committee shall advise the Department of Commerce regarding the following:

(1) Establishing priorities for the California Competitive Technology Program pursuant to Chapter 3.5 (commencing with Section 15379), taking into account the technological problems faced by California companies and competitive challenges facing the economy of this state.

(2) Scientific and technological expertise pursuant to Section 15379.6.

(3) The California Competitive Technology Program as needed and upon request of the Department of Commerce.

(d) Staff for the committee shall be supplied by the Department of Commerce and records of the council shall be maintained by the department.

SEC. 4. Section 15379.11 is added to the Government Code, to read:

15379.11. (a) In order to carry out the provisions of this chapter, there is hereby created in the State Treasury the California Competitive Technology Fund.

(b) The fund shall receive state funds appropriated to it, contributions from nonstate sources, reimbursements, federal funds, and interest which accrues to the moneys in the fund pursuant to subdivision (c).

(c) The Treasurer shall invest moneys contained in the fund not needed to meet current obligations in the same manner as other public funds are invested.

(d) Notwithstanding Section 13340, all moneys in the fund are continuously appropriated without regard to fiscal years to the department for the purposes of this chapter.

SEC. 5. The Department of Commerce shall prepare a report that identifies the most critical sectors of the state's economy where technology transfer may provide a strategic competitive advantage to California businesses, including the retention and creation of jobs. In preparing this report, the department shall consult with the California Council on Science and Technology and other experts as necessary. The report shall be submitted to the Governor and Legislature on or before July 1, 1989.

## CHAPTER 1319

An act to add Section 436.45 to the Health and Safety Code, relating to developmental disability facilities.

[Approved by Governor September 24, 1988. Filed with Secretary of State September 26, 1988.]

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

SECTION 1. Section 436.45 is added to the Health and Safety Code, to read:

436.45. The office shall establish a pilot program under this article of insuring loans to nonprofit borrowers that are not licensed to operate the facilities for which the loans are insured. The number of facilities for which loans are insured under this section shall not exceed 30 and the aggregate amount of loans insured under this section shall not exceed six million dollars ($6,000,000), which may be in addition to the maximum loan insurance amount otherwise authorized by subdivision (b) of Section 436.42. Construction of all projects assisted under this section shall be commenced on or before January 1, 1990.

The office may delay processing or decline acceptance of loan guarantee applications under this section if the volume of applications becomes too large for existing staff to process in a timely manner or if risks associated with the pilot program are determined by the office to be unreasonable.

The Office of Statewide Health Planning and Development shall submit a report to the Legislature, on or before January 1, 1991, specifically identifying potential problems and financial risks associated with insuring loans authorized by this section.

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## CHAPTER 1320

An act to amend Section 1367.15 of the Health and Safety Code, to amend Sections 10195 and 10195.6 of, and to add Article 6 (commencing with Section 10193) to Chapter 1 of Part 2 of Division 2 of, the Insurance Code, relating to insurance.

[Approved by Governor September 24, 1988. Filed with Secretary of State September 26, 1988.]

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

SECTION 1. The Legislature hereby finds and declares:

(a) Concerns about health care costs and fears of ruinous expenses result in four out of five seniors purchasing private health insurance, commonly called Medigap insurance, in order to cover the gaps in

Medicare.

(b) Terms and benefits of Medicare supplement policies must be simplified to facilitate public understanding and comparison of these policies.

(c) Provisions contained in Medigap policies which are misleading or confusing must be eliminated or prohibited.

(d) Full disclosure must be provided in the marketing and sale of Medigap policies.

SEC. 2. Section 1367.15 of the Health and Safety Code is amended to read:

1367.15. Plan contracts, except the contracts of plans which are federally qualified health maintenance organizations pursuant to Title XIII of the United States Public Health Service Act, which primarily or solely supplement Medicare or are advertised or represented as a supplement to Medicare shall, in addition to complying with the provisions of this chapter and rules of the commissioner:

(a) Meet the minimum benefit standards as established by the Commissioner of Corporations and Insurance Commissioner jointly.

(b) Provide an examination period of 30 days after the receipt of the contract for purposes of review of the contract at which time the applicant may return the contract. Such return shall void the contract from the beginning, and the parties shall be in the same position as if no policy or contract had been issued. All premiums paid and any policy fee paid for the policy shall be fully refunded to the owner by the plan in a timely manner.

(1) Each plan contract or certificate shall have a notice prominently printed in no less than 10-point upper case type, on the cover page of the plan contract or certificate or attached thereto, and on the cover page of the outline of coverage, stating that the applicant has the right to return the plan contract or certificate within 30 days after its receipt via regular mail, and to have the full premium refunded.

(2) For purposes of this section, a timely manner shall be no later than 30 days after the plan or entity issuing the contract or certificate receives the returned contract or certificate.

(3) If the plan or entity issuing the contract or certificate fails to refund all premiums paid, in a timely manner, then the applicant shall receive interest on the paid premium at the legal rate of interest on judgments as provided in Section 685.010 of the Code of Civil Procedure. The interest shall be paid from the date the plan or entity received the returned contract or certificate.

(c) Explain the relationship of the coverage under the contract to the benefits provided by Medicare.

(d) Not be limited to coverage exclusively for a single disease or affliction.

(e) If the plan contract or policy does not cover custodial care, on and after January 1, 1985, the cover page of the outline of coverages required by subdivision (c) shall contain the statement in upper case

type: THIS POLICY DOES NOT COVER CUSTODIAL CARE IN A SKILLED NURSING CARE FACILITY.

SEC. 3. Article 6 (commencing with Section 10193) is added to Chapter 1 of Part 2 of Division 2 of the Insurance Code, to read:

Article 6. Insurance to Supplement Medicare

10193. (a) With regard to insurance to supplement Medicare, all insurers, brokers, agents, and others engaged in the business of insurance owe a policyholder a duty of honesty, and a duty of good faith and fair dealing.

(b) Conduct of an insurer, broker, or agent during the offer and sale of a policy previous to the purchase is relevant to any action alleging a breach of the duty of honesty, and a duty of good faith and fair dealing set forth in subdivision (a).

10195.45. Every insurer or entity providing or seeking to provide group Medicare supplement benefits to a resident of this state shall file a copy of the master policy and certificate used or to be used in this state in accordance with the filing requirements and procedures applicable to group Medicare supplement policies issued in this state. For master policies issued for delivery outside this state, the filing shall be an informational filing made at least 30 days in advance of an insurer's or entity's plan to market or issue a certificate to supplement Medicare in this state.

10197.2. No insurer, broker, agent, or other person shall cause a policyholder to replace a Medicare supplement insurance policy unnecessarily. Nothing in this section shall be construed to allow an insurer, broker, agent, or other person to cause a policyholder to replace a Medicare supplement insurance policy which will result in a decrease in benefits and an increase in premium.

It shall be presumed that any third or greater policy sold to a policyholder in any 12-month period is unnecessary within the meaning of this section. This section shall not apply to those instances in which a policy is replaced solely for the purpose of consolidating policies with a single insurer.

10197.25. No insurer, broker, agent, or other person shall knowingly recommend for purchase or sell a Medicare supplement insurance policy which results in the policyholder having coverage, from any and all sources, of more than 100 percent of incurred charges.

10197.6. No entity shall provide compensation to its agents or other producers which is greater than the total renewal compensation which would have been paid on an existing policy or certificate if the existing policy or certificate is replaced by another policy or certificate with the same company where the new policy or certificate benefits are substantially similar to the benefits under the old policy or certificate and the old policy or certificate was issued by the same entity, insurer, or insurer group.

10198. (a) As prescribed in this chapter, the commissioner shall

have the administrative authority to assess penalties against insurers, brokers, agents, and other entities engaged in the business of insurance or any other person or entity for violations of this article.

(b) Upon a showing of a violation of this article in any civil action, a court may also assess the penalties prescribed in this chapter.

(c) Whenever the commissioner has reasonable cause to believe or determines after a public hearing that any insurer, agent, broker, or other person or entity engaged in the business of insurance, has violated this article he or she shall make and serve upon the insurer, broker, or other person or entity a notice of hearing. The notice shall state the commissioner's intent to assess the administrative penalties, the time and place of the hearing, and the conduct, condition, or ground upon which the commissioner is holding the hearing and assessing the penalties. The hearing shall occur within 30 days after the notice is served. Within 30 days after the hearing the commissioner shall issue an order specifying the amount of penalties to be paid. The penalties resulting from such hearing shall be paid to the Insurance Fund.

(d) The powers vested in the commissioner by this section shall be additional to any and all powers and remedies vested in the commissioner by law.

10198.1. (a) Any broker, agent, or other person or entity engaged in the business of insurance, other than an insurer, who violates this article is liable for administrative penalties of no less than two hundred fifty dollars ($250) for the first violation.

(b) Any broker, agent, other person, or other entity engaged in the business of insurance, other than an insurer, who engages in practices prohibited by this chapter a second or subsequent time or who commits a knowing violation of this article, is liable for administrative penalties of no less than one thousand dollars ($1,000) and no more than twenty-five thousand dollars ($25,000) for each violation.

(c) Any insurer who violates this article is liable for administrative penalties of no less than two thousand five hundred dollars ($2,500) for the first violation.

(d) Any insurer who violates this article with a frequency as to indicate a general business practice or commits a knowing violation of this article, is liable for administrative penalties of no less than ten thousand dollars ($10,000) and no more than one hundred thousand dollars ($100,000) for each violation.

10198.2. Actions for injunctive relief, penalties in the amounts specified in Section 10198, damages, restitution and all other remedies provided for in law, may be brought in superior court by the Attorney General, district attorney, or city attorney on behalf of the people of the State of California. The court shall award reasonable attorney's fees and costs to a prevailing plaintiff who establishes a violation of this article.

10198.3. In addition to any other applicable penalties, the commissioner may require insurers, agents, brokers, or other persons

or entities violating any provision of this article or regulations promulgated pursuant to this article, to cease marketing in this state any insurance policy or certificate to supplement Medicare or may require such insurer, agent, broker, or other person or entity to take such actions as are necessary to comply with the provisions of this article, or both.

10198.4. Any person who intentionally violates any provision of this article is guilty of a public offense punishable by imprisonment in the county jail not exceeding one year or by imprisonment in the state prison.

10198.5. (a) The requirements and remedies provided by this article are in addition to any other remedies provided by law.

(b) 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 the article which can be given effect without the invalid provision or application, and to this end the provisions of this article are severable.

SEC. 4. Section 10195 of the Insurance Code is amended to read:

10195. "Insurance policies to supplement Medicare" refers to disability insurance policies and nonprofit hospital service plan contracts which are designed primarily to supplement Medicare, or are advertised, marketed, or otherwise purported to be a supplement to Medicare and, which are issued on a group or individual basis.

(a) Insurance policies to supplement Medicare shall:

(1) Meet the minimum benefit standards as established by the Insurance Commissioner.

(2) Notwithstanding Section 10276, or any other provision of law, provide an examination period of 30 days after the receipt of the policy or certificate for purposes of review of the contract at which time the applicant may return the contract. The return shall void the policy or certificate from the beginning, and the parties shall be in the same position as if no policy or contract had been issued. All premiums paid and any policy fee paid for the policy shall be fully refunded to the applicant by the insurer or entity in a timely manner.

(A) Each policy or certificate shall have a notice prominently printed in no less than 10-point upper case type, on the cover page of the policy or certificate or attached thereto, and on the cover page of the outline of coverage or attached thereto, stating that the applicant has the right to return the policy or certificate within 30 days after its receipt via regular mail, and to have the full premium refunded.

(B) For purposes of this section a timely manner shall be no later than 30 days after the insurer or entity issuing the policy or certificate receives the returned policy or certificate.

(C) If the insurer or entity issuing the policy or certificate fails to refund all premiums paid, in a timely manner, then the applicant shall receive interest on the paid premium at the legal rate of interest on judgments as provided in Section 685.010 of the Code of Civil

Procedure. The interest shall be paid from the date the insurer or entity received the returned policy or certificate.

(3) Require insurers and plans to explain the relationship of the coverage of their policies to the benefits provided by Medicare.

(4) Not be limited to coverage exclusively for a single disease or affliction.

(5) If the policy does not cover custodial care in a skilled nursing care facility, dental care, eyeglasses, prescription drugs, or hearing aids, the cover page of the policy and the cover page of the outline of coverage required by subdivision (g) shall contain the statement in no less than 12-point upper case type THIS POLICY DOES NOT COVER (indicate the specific coverage set forth above in this paragraph that is not covered by the policy). Also, the cover page of the policy shall include at least ¼ inch below that statement, the following statement, in no less than 12-point upper case type: THERE MAY BE OTHER EXCLUSIONS IN THIS POLICY, PLEASE REFER TO PAGE (indicate page where other exclusions are described, if other exclusions exist). The requirements of this paragraph apply on and after July 1, 1989.

(6) Until July 1, 1989, if the policy does not cover custodial care, the cover page of the outline of coverage required by subdivision (g) shall contain the statement in upper case type: THIS POLICY DOES NOT COVER CUSTODIAL CARE IN A SKILLED NURSING CARE FACILITY.

(7) Comply with the provisions of subdivision (b) of Section 10291.5 and Chapter 7 (commencing with Section 10600) of Part 2 of Division 2, regardless of the situs of the contract.

(b) The commissioner shall issue reasonable regulations to establish specific standards for policy provisions of insurance policies to supplement Medicare. These standards shall be in addition to and in accordance with applicable laws of this state, including Sections 10290 and 10291, subdivision (b) of Section 10291.5, and Chapter 7 (commencing with Section 10600) of Part 2 of Division 2, regardless of the situs of the contract.

(c) The commissioner may issue reasonable regulations that specify prohibited policy provisions not otherwise specifically authorized by statute which, in the opinion of the commissioner, are unjust, unfair, or unfairly discriminatory to any person or class of persons insured or proposed for coverage under insurance policies or certificates to supplement Medicare.

(d) Notwithstanding any other provision of law, insurance policies to supplement Medicare shall not deny a claim for losses incurred more than six months from the effective date of coverage for a preexisting condition. A policy shall not define a preexisting condition more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within six months before the effective date of coverage.

(e) (1) Insurance policies or certificates to supplement Medicare

shall return to policyholders benefits which have a minimum loss ratio of 60 percent for individual policies and 75 percent for group policies. The loss ratio shall be on the basis of incurred claims experience and earned premiums.

(2) The commissioner shall require that every entity providing insurance policies or certificates to supplement Medicare in this state maintain detailed experience data for policies subject to this section and that they make an annual filing with the commissioner disclosing the loss ratio for each policy form or certificate subject to this section. The annual filing shall, at a minimum, include rates, rating schedules, and supporting documentation including ratios of incurred losses to earned premiums by number of years of policy duration. That information shall demonstrate that each policy form or certificate is in compliance with the applicable loss ratio standards.

(3) The commissioner shall assure that reserves are reasonable and based on sound actuarial principles with respect to the aggregate dollar amount of reserves for claims that are incurred but not yet paid and for claims that are incurred but not yet reported.

(4) Policy forms or certificates shall be deemed to comply with the purposes of this section if the expected losses in relation to premiums over the entire period for which the policy form is rated comply with the requirements of this section and either of the following applies:

(A) For policies or certificates which have been in force for three years or more, for the most recent year, the ratio of incurred losses to earned premiums is greater than or equal to the minimum loss ratios established by this section.

(B) For policies or certificates which have been in force for less than three years, the expected third-year loss ratio can be demonstrated to be greater than or equal to the minimum loss ratio.

(5) If the annual filing or other information received by the commissioner indicates that the actual loss ratio for a policy or certificate is less than the minimum loss ratio established by the commissioner, the commissioner shall require that the insurer or entity providing the insurance file and implement a corrective plan. This plan shall include the utilization of premium reductions, dividends, benefit increases, or any combination of these or other methods such that the minimum loss ratio can be reasonably expected to be achieved. Any corrective plan shall be reviewed and approved by the commissioner prior to implementation.

(6) If, in the opinion of the commissioner, a policy's or certificate's failure to meet the minimum loss ratio requirement is due to unusual reserve fluctuations, economic conditions, or other nonrecurring conditions, the commissioner may exempt the policy or certificate from the need for a corrective plan for that year. Any exemption shall be in writing and specify the reasons for the granting of the exemption.

(7) If an insurer or other entity providing Medicare supplement insurance in this state fails to file and implement a corrective plan

in a timely manner, the commissioner shall withdraw approval of the policy or certificate according to the procedures set forth in Section 10293. This remedy shall be in addition to any remedy available in this section or under other laws of this state. Any report, plan, exemption, or other document prepared pursuant to this subdivision shall be accessible to the public as a public record. A summary of reports, plans, exemptions, or other documents prepared pursuant to this subdivision shall be included in the commissioner's annual report to the Legislature in accordance with Section 911.5.

(8) The commissioner shall adopt regulations to implement this subdivision and shall amend existing regulations to conform to this subdivision on or before September 1, 1989.

(9) For the purposes of this subdivision, an insurance policy to supplement Medicare includes each specific insurance policy or certificate type for individual or group coverage, delivered or issued for delivery by any insurer or entity in this state. "Specific insurance policy or certificate type" includes a policy with all of the same provisions and coverage specifications.

(f) In addition to Chapter 7 (commencing with Section 10600) of Part 2 of Division 2, and in order to provide for full and fair disclosure in the sale of Medicare supplemental policies and certificates, no insurance policy or certificate to supplement Medicare shall be delivered or issued for delivery in this state or elsewhere and no certificate shall be delivered pursuant to a group Medicare supplemental policy or certificate delivered or issued for delivery in the state unless an outline of coverage is delivered to the applicant at the time application is made.

(g) The commissioner shall prescribe the format and content of the outline of coverage required by subdivision (f). For purposes of this section, "format" means style, arrangement, and overall appearance, including such items as the size, color, and prominence of type and the arrangement of text and captions. Such outline of coverage shall include all of the following:

(1) A description of the principal benefits and coverage provided in the policy.

(2) A statement of the exceptions, reductions, and limitations contained in the policy.

(3) An example showing how the policy would cover a two thousand dollar ($2,000) charge assuming the deductible has been met for a medical procedure which Medicare determines carries a one thousand five hundred dollar ($1,500) customary and reasonable charge. The statement shall be prominently displayed and in type no smaller than any other type on the page.

(4) A statement of the renewal provisions including any reservation by the insurer of a right to change premiums.

(5) A statement that the outline of coverage is a summary of the policy issued or applied for and that the policy should be consulted to determine governing contractual provisions.

(h) The commissioner may prescribe by regulation a standard

form, and the contents of, an informational brochure for persons eligible for Medicare by reason of age which is intended to improve the buyer's ability to select the most appropriate coverage and improve the buyer's understanding of Medicare. Except in the case of direct response insurance policies, the commissioner may require by regulation that the information brochure be provided to any prospective insured eligible for Medicare concurrently with delivery of the outline of coverage. With respect to direct response insurance policies, the commissioner may require by regulation that the prescribed brochure be provided upon request to any prospective insured eligible for Medicare by reason of age, but in no event later than the time of policy delivery.

(i) The commissioner may promulgate reasonable regulations for captions or notice requirements, determined to be in the public interest and designed to inform prospective insureds that particular insurance coverages are not insurance policies to supplement Medicare, for all accident and sickness insurance policies sold to persons eligible for Medicare by reason of age, other than insurance policies to supplement Medicare, disability income policies, basic, catastrophic, or major medical expense policies or single premium, nonrenewable policies.

(j) The commissioner may promulgate reasonable regulations to govern the full and fair disclosure of information in connection with the replacement of accident and sickness policies, subscriber contracts, or certificates by persons eligible for Medicare by reason of age.

(k) This section applies to insurance provided to residents of this state under a group policy, in accordance with applicable laws of this state, including provisions of Sections 10290 and 10291, subdivision (b) of Section 10291.5, and Chapter 7 (commencing with Section 10600) of Part 2 of Division 2 regardless of the situs of the contract.

This section shall not apply to policies issued to one or more employers or labor organizations, or to the trustees of a fund established by one or more employers or labor organizations, or combination thereof, for employees or former employees, or combination thereof, or for members or former members, or combination thereof, of the labor organization.

This section shall not apply to individual policies or contracts issued pursuant to a conversion privilege under a policy or contract of group or individual insurance when the group or individual policy or contract includes provisions which are inconsistent with the requirements of this section.

SEC. 5. Section 10195.6 of the Insurance Code is amended to read:

10195.6. (a) A television, radio, mail, or newspaper advertisement which is designed to produce leads either by use of a coupon or a request to write or otherwise contact the insurer, a production agent, or other person or a subsequent advertisement prior to contact shall include information disclosing that an agent

may contact the applicant if that is the fact. In addition, an agent who makes contact with a consumer, as a result of acquiring that consumer's name from a lead generating device shall disclose that fact in the initial contact with the consumer.

(b) No insurer, agent, broker, solicitor, or other person or other entity shall solicit residents of this state for the purchase of Medicare supplement insurance through the use of a true or fictitious name which is deceptive or misleading with regard to the status, character, or proprietary or representative capacity of the entity or person or the true purpose of the advertisement.

(c) For purposes of this section, an advertisement includes envelopes, stationery, business cards, or other materials designed to describe and encourage the purchase of a policy or certificate to supplement Medicare.

(d) Advertisements may not employ words, letters, initials, symbols, or other devices which are so similar to those used by governmental agencies, a nonprofit or charitable institution, senior organization, or other insurer that they could have the capacity or tendency to mislead the public. Examples of such misleading materials, include, but are not limited to, those which imply any of the following:

(1) The advertised coverages are somehow provided by or are endorsed by the governmental agencies or the other insurer.

(2) The advertiser is the same as, is connected with or is endorsed by the governmental agencies, other entity, or other insurers.

(3) That the advertised coverages are somehow provided by or are endorsed by the governmental agencies, other entity, or other insurers.

(e) No advertisement shall use the name of a state or political subdivision thereof in a policy name or description.

(f) No advertisement may use any name, service mark, slogan, symbol, or any device in any manner that implies that the insurer or the policy advertised, or that any agency who may call upon the consumer in response to the advertisement is connected with a governmental agency, such as the Social Security Administration.

(g) No advertisement shall be used that fails to prominently display the disclaimer to the effect of "Not Connected with or endorsed by the U.S. Government or the federal Medicare program."

(h) No advertisement may imply that the reader may lose a right or privilege or benefit under federal, state, or local law if he or she fails to respond to the advertisement.

(i) An insurer, agent, broker, or other entity may not use an address so as to mislead or deceive as to the true identity, location, or licensing status of the insurer, agent, broker, or other entity.

(j) No insurer may use, in the trade name of its insurance policy, any terminology or words so similar to the name of a governmental agency or governmental program as to have the tendency to confuse, deceive, or mislead a prospective purchaser.

(k) All advertisements used by agents, producers, brokers, solicitors, or other persons of an insurer must have prior written approval of the insurer before they may be used.

(*l*) No insurer, agent, broker, or other entity may solicit a particular class by use of advertisements which state or imply that the occupational or other status as members of the class entitles them to reduced rates on a group or other basis when, in fact, the policy being advertised is sold only on an individual basis at regular rates.

SEC. 6. Article 6 (commencing with Section 10193) of Chapter 1 of Part 2 of Division 2 of the Insurance Code, as added by this act, shall, in addition to the sections added by this act also include Sections 10195 to 10197.5, inclusive, of the Insurance Code.

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.

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## CHAPTER 1321

An act to amend Section 117.41 of the Code of Civil Procedure, and to amend Section 987.2 of the Penal Code, relating to legal representation.

[Approved by Governor September 24, 1988. Filed with Secretary of State September 26, 1988.]

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

SECTION 1. Section 117.41 of the Code of Civil Procedure is amended to read:

117.41. (a) A corporation may appear in small claims court only through an employee or a duly appointed or elected officer or director, employed, appointed, or elected for purposes other than the exclusive representation of the corporation in small claims court. Any other entity which is not a natural person may appear in small claims court only through a regularly employed person of that entity, employed for purposes other than the exclusive representation of the entity in small claims court.

(b) An action filed by a party who lacks standing under Section 17918 of the Business and Professions Code shall be dismissed without prejudice.

(c) The representative of a plaintiff which is not a natural person shall affirm that he or she is authorized to represent that party, and identify the basis for such authorization under subdivision (a), under penalty of perjury. A party filing a claim in a fictitious business name shall state under penalty of perjury its compliance with Section 17918

of the Business and Professions Code. The provisions of this section shall be implemented in accordance with rules and forms adopted by the Judicial Council.

(d) If a corporation is a party to an action on appeal from a judgment entered by a small claims court, it may appear before the superior court for purposes of the appeal through a director, an officer, or an employee, whether or not that person is an attorney at law.

SEC. 2. Section 987.2 of the Penal Code is amended to read:

987.2. (a) In any case in which a person, including a person who is a minor, desires but is unable to employ counsel and in which counsel is assigned in the superior court, municipal court, or justice court to represent the person in a criminal trial, proceeding or appeal, the assigned counsel: (1) in a county or city and county in which there is no public defender; (2) in a county of the first or second class where there is no contract for criminal defense services between the county and one or more responsible attorneys; (3) in a case in which the court finds that because of a conflict of interest or other reasons the public defender has properly refused; or (4) in a county of the first or second class where attorneys contracted by the county are unable to represent the person accused, shall receive a reasonable sum for compensation and for necessary expenses, the amount of which shall be determined by the court, to be paid out of the general fund of the county.

(b) The sum provided for in subdivision (a) may be determined by contract between the court and one or more responsible attorneys after consultation with the board of supervisors as to the total amount of compensation and expenses to be paid, which shall be within the amount of funds allocated by the board of supervisors for the cost of assigned counsel in such cases.

(c) In counties that utilize an assigned private counsel system as either the primary method of public defense or as the method of appointing counsel in cases where the public defender is unavailable, the county, the courts, or the local county bar association working with the courts are encouraged to do all of the following:

(1) Establish panels that shall be open to members of the State Bar of California.

(2) Categorize attorneys for panel placement on the basis of experience.

(3) Refer cases to panel members on a rotational basis within the level of experience of each panel, except that a judge may exclude an individual attorney from appointment to an individual case for good cause.

(4) Seek to educate those panel members through an approved training program.

(5) Establish a cost-efficient plan to insure maximum recovery of costs pursuant to Section 987.8.

(d) In a county of the first or second class, the court shall first utilize the services of the public defender to provide criminal

defense services for indigent defendants. In the event that such public defender is unavailable and the county has contracted with one or more responsible attorneys to provide criminal defense services for indigent defendants, the court shall utilize the services of the county-contracted attorneys prior to assigning any other private counsel. Nothing in this subdivision shall be construed to require the appointment of counsel in any case in which such counsel has a conflict of interest. In the interest of justice, a court may depart from the procedure requiring appointment of a public defender or a county-appointed attorney only after making a finding of good cause and stating the reasons therefor on the record.

(e) The county may recover costs of public defender services under Chapter 6 (commencing with Section 4750) of Title 5 of Part 3 for any case subject to Section 4750.

(f) Counsel shall be appointed to represent, in the municipal or justice court, a person who desires but is unable to employ counsel, when it appears that such appointment is necessary to provide an adequate and effective defense for the defendant.

(g) As used in this section, "county of the first or second class" means the county of the first class and county of the second class as provided by Section 28022 of the Government Code as amended by Chapter 43 of the Statutes of 1961 and Sections 28020 and 28023 of the Government Code as amended by Chapter 1204 of the Statutes of 1977.

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## CHAPTER 1322

An act to add Section 10270.507 to the Insurance Code, relating to insurance.

[Approved by Governor September 24, 1988 Filed with Secretary of State September 26, 1988.]

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

SECTION 1. Section 10270.507 is added to the Insurance Code, to read:

10270.507. Except as provided in Section 10195 with respect to regulation of group Medicare supplemental insurance, and provisions of law regulating group long-term care insurance, no certificate of group disability insurance advertised or marketed to persons in this state shall be issued or delivered on or after January 1, 1989, to any person 55 years of age or older in this state pursuant to a group master insurance policy issued or delivered in another state unless the certificate and master policy have been filed with, and approved by, the commissioner.

This section does not apply to policies issued to one or more employers or labor organizations, or to the trustees of funds

established by one or more employers or labor organizations, or combination thereof, for employees or former employees, or combination thereof, or for members or former members, or combination thereof, of the labor organization.

The commissioner shall adopt regulations necessary to interpret and implement this section.

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## CHAPTER 1323

An act to add Section 15392.7 to the Government Code, relating to exports.

[Approved by Governor September 24, 1988. Filed with Secretary of State September 26, 1988.]

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

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

(a) By the year 2000, trade will account for 25 percent of California's total output, and in 1987 goods passing through our ports were valued at over one hundred billion dollars ($100,000,000,000).

(b) Since guaranteeing its first loan in August 1985, the California Export Finance Program (CEFP) has supported over forty million dollars ($40,000,000) in export transactions and has created over 1,000 jobs.

(c) Variation of current export accounts receivables financing support will allow the California Export Finance Office to provide better services to California's small- and medium-sized exporters and will lead to greater export sales and increased employment opportunities.

SEC. 2. Section 15392.7 is added to the Government Code, to read:

15392.7. In addition to other powers and duties of the California Export Finance Office under this chapter, the office may do the following:

(a) Act as agent for creditworthy California growers, manufacturers, and other exporters to sell accounts receivables that are approved by the California Export Finance Program and insured by the Foreign Credit Insurance Association (FCIA), or an acceptable private insurer, to qualified parties.

(b) Function as a clearing house for collection and disbursement of funds relative to those sales through use of a segregated bank account.

(c) Take any other related actions as may be appropriate and necessary to facilitate sale of export accounts receivables for California exporters.

# CHAPTER 1324

An act to amend Sections 15399, 15399.1, 15399.2, 15399.4, 15399.7, and 15399.8 of, and to repeal and add Section 15399.5 of, the Government Code, relating to economic development.

[Approved by Governor September 24, 1988. Filed with Secretary of State September 26, 1988 ]

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

SECTION 1. Section 15399 of the Government Code is amended to read:

15399. The Legislature finds and declares the following:

(a) The continued economic vitality of business districts in our state's smaller cities and the neighborhoods of larger urban and suburban cities are essential to community preservation, social cohesion, and economic growth.

(b) In recent years these central business districts have experienced economic difficulties due to shifting population bases, changes in the marketplace, and greater competition from suburban shopping malls.

(c) This decline has further eroded the ability of small businesses and property owners to renovate and enhance their commercial and residential properties.

(d) Merchants in the smaller cities are also experiencing greater difficulties in obtaining financial aid at reasonable interest rates, thereby further inhibiting their ability to develop new business as well as continue existing operations.

(e) Neighborhood commercial areas in medium-sized and larger cities need to maintain their local economies in order to provide goods and services to adjacent residents, to provide employment opportunities, and to avoid disinvestment and economic dislocations.

SEC. 2. Section 15399.1 of the Government Code is amended to read:

15399.1. (a) It is the intent of the Legislature to establish in the Department of Commerce a program, the California Main Street Program, to provide technical assistance and training for small cities' government, business organizations, and merchants and property owners to accomplish community and economic revitalization and development of older central business districts and neighborhoods.

It is the further intent of the Legislature that this program shall employ the techniques developed by the National Trust of Historic Preservation's Main Street Center which are designed to stimulate business reinvestment, restore building facades, retain existing small businesses, strengthen the local tax base, create employment opportunities, promote new businesses in downtown areas, and help to create a renewed sense of community pride. The Legislature further intends that this program be a joint state, local government,

and private sector partnership utilizing private and public financial resources.

(b) It is the further intent of the Legislature to expand the California Main Street Program enacted pursuant to Chapter 1577 of the Statutes of 1985 to include assistance for commercial areas in medium-sized cities and larger urban communities.

(c) For purposes of this chapter, "department" means the Department of Commerce.

SEC. 3. Section 15399.2 of the Government Code is amended to read:

15399.2. (a) There is hereby created within the Department of Commerce a California Main Street Program which shall operate according to a plan developed by the department with the assistance of all of the following:

(1) Organizations representing merchants and governments of small cities, historic preservation interests, financial institutions, and economic development groups.

(2) The California private industry councils.

(3) The Office of Small Business Development, the Office of Local Development, and the Small Business Development Center within the Department of Commerce.

(4) The Office of Historic Preservation.

(5) The Department of Housing and Community Development.

(6) The chairpersons of the following committees of the Legislature:

(A) The Assembly Select Committee on Small Business.

(B) The Senate Select Committee on Small Business Enterprises.

(C) The Assembly Committee on Economic Development and New Technologies.

(D) The Joint Committee on the State's Economy.

These chairpersons shall assist in the development of the plan to the extent that their participation is not incompatible with their positions as Members of the Legislature.

(7) The California Preservation Foundation.

(b) The Department of Commerce shall modify and expand the California Main Street Program plan pursuant to Chapter 1577 of the Statutes of 1985 to include program elements designed to assist merchants and residents in the neighborhoods of larger and medium-sized cities.

SEC. 4. Section 15399.4 of the Government Code is amended to read:

15399.4. In order to implement this program, the department shall do all of the following:

(a) Contract with the National Main Street Center of the National Trust for Historic Preservation to assist in accomplishing the program's objectives, to provide technical assistance to the department, and to assist in developing criteria for the selection of, and aid in selecting, the participating and demonstration communities.

(b) Designate a program manager and staff.

(c) Develop objective criteria for selecting the participating and demonstration communities. The criteria shall include, but shall not be limited to, all of the following:

(1) Evidence of interest and commitment to downtown economic development and historic preservation by both the private and public sectors.

(2) Evidence of potential private investment in the downtown area.

(3) A downtown with sufficient historic fabric to become a foundation for an enhanced community image.

(4) Organization and financial commitment to implement a long-term economic revitalization program which includes a commitment to employ a full-time, professional project manager with an operating budget.

(d) Devise a method of inviting eligible communities to submit applications, select demonstration communities, and additional participating communities in subsequent years.

(e) Include in the program, in addition to the demonstration communities, any city which has on the effective date of this chapter a contract with the National Trust's Main Street Center for a local main street program.

SEC. 5. Section 15399.5 of the Government Code is repealed.

SEC. 6. Section 15399.5 is added to the Government Code, to read:

15399.5. The program established pursuant to Chapter 1577 of the Statutes of 1985 shall continue to provide services to cities with populations of less than 50,000. There shall be three pilot programs for cities with the following characteristics:

(a) For cities with populations in excess of 50,000 but less than 200,000.

(b) For cities with populations of 200,000 or more but less than 400,000.

(c) For cities with a population of 400,000 or more.

SEC. 7. Section 15399.7 of the Government Code is amended to read:

15399.7. There is hereby established in the State Treasury the California Main Street Program Fund. All private contributions, federal funds, and fees for services, if levied, shall be deposited into the fund for the operation of the program.

SEC. 8. Section 15399.8 of the Government Code is amended to read:

15399.8. (a) The department shall include in its annual report to the Legislature a special report on the effectiveness of this program.

(b) The department shall assess the feasibility of operating the California Main Street Program independent of state support. This report, which shall be submitted to the Legislature no later than January 1, 1990, shall identify and evaluate operational and financial options, including an assessment as to whether this program should

be more closely linked with other state economic development efforts. This report shall be completed following consultation with the individuals and groups described in subdivision (a) of Section 15399.2.

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## CHAPTER 1325

An act to amend Sections 2285, 2415, 2424, 2443, and 2499.5 of the Business and Professions Code, relating to healing arts, and making an appropriation therefor.

[Approved by Governor September 24, 1988. Filed with Secretary of State September 26, 1988.]

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

SECTION 1. Section 2285 of the Business and Professions Code is amended to read:

2285. The use of any fictitious, false, or assumed name, or any name other than his or her own by a licensee either alone, in conjunction with a partnership or group, or as the name of a professional corporation, in any public communication, advertisement, sign, or announcement of his or her practice without a fictitious-name permit obtained pursuant to Section 2415 constitutes unprofessional conduct. This section shall not apply to licensees who contract with, are employed by, or are on the staff of, any clinic licensed by the State Department of Health Services under Chapter 1 (commencing with Section 1200) of Division 2 of the Health and Safety Code or any medical school approved by the division or a faculty practice plan connected with such a medical school.

SEC. 2. Section 2415 of the Business and Professions Code is amended to read:

2415. (a) Any physician and surgeon or any podiatrist, as the case may be, who as a sole proprietor, or in a partnership, group, or professional corporation, desires to practice under any name that would otherwise be a violation of Section 2285 may practice under that name if the proprietor, partnership, group, or corporation obtains and maintains in current status a fictitious-name permit issued by the Division of Licensing or, in the case of podiatrists, the California Board of Podiatric Medicine under the provisions of this section.

(b) The division or the board shall issue a fictitious-name permit authorizing the holder thereof to use the name specified in the permit in connection with his, her, or its practice if the division or the board finds to its satisfaction that:

(1) The applicant or applicants or shareholders of the professional corporation hold valid and current licenses as physicians and

surgeons or podiatrists, as the case may be.

(2) The professional practice of the applicant or applicants is wholly owned and entirely controlled by the applicant or applicants.

(3) The name under which the applicant or applicants propose to practice is not deceptive, misleading, or confusing, and contains one of the following designations: "medical group," "medical clinic," "medical corporation," "medical associates," "medical center," or "medical office." In the case of podiatrists, the same designations may be used substituting the word "podiatry" or "podiatrists" for the word "medical," or the designation "foot clinic" may be used.

(c) This section shall not apply to licensees who contract with, are employed by, or are on the staff of, any clinic licensed by the State Department of Health Services under Chapter 1 (commencing with Section 1200) of Division 2 of the Health and Safety Code or any medical school approved by the division or a faculty practice plan connected with such a medical school.

(d) Fictitious-name permits issued under this section shall be subject to Article 19 (commencing with Section 2420) pertaining to renewal of licenses, except the division shall establish procedures for the renewal of fictitious-name permits every two years on an anniversary basis. For the purpose of the conversion of existing permits to this schedule the division may fix prorated renewal fees.

(e) The division or the board may revoke or suspend any permit issued if it finds that the holder or holders of the permit are not in compliance with the provisions of this section or any regulations adopted pursuant to this section. A proceeding to revoke or suspend a fictitious-name permit shall be conducted in accordance with Section 2230.

(f) A fictitious-name permit issued to any licensee in a sole practice is automatically revoked in the event the licensee's certificate to practice medicine or podiatric medicine is revoked.

(g) The division or the board may delegate to the executive director, or to another official of the board, its authority to review and approve applications for fictitious-name permits and to issue those permits.

(h) The California Board of Podiatric Medicine shall administer and enforce this section as to doctors of podiatric medicine.

SEC. 3. Section 2424 of the Business and Professions Code is amended to read:

2424. (a) The Division of Licensing or the California Board of Podiatric Medicine, as the case may be, shall notify in writing by certified mail, return receipt requested, any physician and surgeon or any podiatrist who does not renew his or her license within 60 days from its date of expiration.

(b) Notwithstanding Section 163.5, any such licensee who does not renew his or her expired license within 90 days of its date of expiration shall pay all the following fees:

(1) The renewal fee in effect at the time of renewal.

(2) A penalty fee equal to 50 percent of the renewal fee.

(3) The delinquency fee required by Section 2435 or 2499.5, as the case may be.

(c) Notwithstanding any other provision of law, the renewal of any expired physician's and surgeon's or podiatrist's license within six months from its date of expiration shall be retroactive to the date of expiration of that license. The division or board, for good cause, may waive the 50 percent penalty fee and may extend retroactivity up to two years from the expiration date of any such license.

SEC. 4. Section 2443 of the Business and Professions Code is amended to read:

2443. The following fees apply to fictitious-name permits issued under Section 2415:

(a) The initial permit fee shall be fifty dollars ($50). If the permit will expire less than one year after its issuance, then the initial permit fee is an amount equal to 50 percent of the fee in effect at the beginning of the current renewal cycle.

(b) The biennial renewal fee shall be forty dollars ($40).

(c) The delinquency fee is twenty dollars ($20).

SEC. 5. Section 2499.5 of the Business and Professions Code is amended to read:

2499.5. The following fees apply to certificates to practice podiatric medicine. The amount of fees prescribed for doctors of podiatric medicine shall be those set forth in this section unless a lower fee is fixed by the board in accordance with Section 2499.6. Fees collected pursuant to this section shall be fixed by the board in amounts not to exceed the actual costs of providing the service for which the fee is collected.

(a) Each applicant for a certificate by written examination, unless otherwise provided by this chapter, shall pay an application fee fixed by the board at an amount of one hundred fifty dollars ($150).

(b) Each applicant for a certificate based upon a national board examination, and each applicant for a certificate based upon reciprocity shall pay an application fee of twenty dollars ($20) at the time the application is filed. If the applicant qualifies for a certificate, he or she shall pay a fee which shall be fixed by the board at an amount not to exceed one hundred dollars ($100) nor less than five dollars ($5) for the issuance of the certificate.

(c) The oral examination fee shall be seven hundred dollars ($700), or the actual cost, whichever is lower, and shall be paid by each applicant. If the applicant's credentials are insufficient or if the applicant does not desire to take the examination, and has so notified the board 30 days prior to the examination date, only the examination fee is returnable to the applicant. The board may charge an examination fee for any subsequent reexamination of the applicant.

(d) Each applicant who qualifies for a certificate, as a condition precedent to its issuance, in addition to other fees required herein, shall pay an initial license fee. The initial license fee shall be five hundred twenty-five dollars ($525). If the license will expire less than one year after its issuance, then the initial license fee is an amount

equal to 50 percent of the initial license fee fixed by the board. The board may waive or refund the initial license fee where the license will expire within 45 days after it is issued.

(e) The biennial renewal fee shall be five hundred twenty-five dollars ($525). Any licensee enrolled in an approved residency program shall be required to pay only 50 percent of the biennial renewal fee at the time of his or her first renewal.

(f) The delinquency fee is one hundred fifty dollars ($150).

(g) The duplicate wall certificate fee is forty dollars ($40).

(h) The duplicate renewal receipt fee is forty dollars ($40).

(i) The endorsement fee is thirty dollars ($30).

(j) The letter of good standing fee or for loan deferment is thirty dollars ($30).

(k) There shall be a fee of sixty dollars ($60) for the issuance of a limited license under Section 2475.

(*l*) The application fee for certification under Section 2473 shall be fifty dollars ($50). The examination and reexamination fee for this certification shall be seven hundred dollars ($700).

(m) The filing fee to appeal the failure of an oral examination shall be twenty-five dollars ($25).

(n) The fee for approval of a continuing education course or program shall be one hundred dollars ($100).

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## CHAPTER 1326

An act to add Sections 71095, 71096, 71097, and 71098 to the Education Code, and to add Section 1597.057 to the Health and Safety Code, relating to child care, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 24, 1988. Filed with Secretary of State September 26, 1988.]

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

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

There is an acute shortage of qualified teachers available to work in licensed child care centers. Although very low wages and poor benefits are at the root of the problem, a narrow range of training options for child care teachers and unequal availability of postsecondary coursework exacerbate the shortage.

Currently, in order to be hired as a teacher in a nonsubsidized child care center, administrative rules and regulations require an applicant to complete six college units of early childhood education or child development, and an additional six units to be fully qualified. Unfortunately, many potential child care teachers refuse to spend their time and money to enroll in formal postsecondary coursework,

particularly when their subsequent earnings will be low, particularly when those potential child care teachers live far from campuses where the required courses are offered. There is a substantial need to provide a wider range of high quality training options. In order to maximize available training resources, there is a need for day care center licensees and their staff to become aware of all the various training options that exist in the state as well as the procedures involved in establishing specially designed classes to meet training needs. The Legislature recognizes that the California Community Colleges, the California State University, and private training institutions provide courses in early childhood education. The Legislature encourages colleges and universities to expand the availability of courses in early childhood education and child development to underserved areas of California, including rural areas that are far from college or university campuses.

SEC. 2. Section 71095 is added to the Education Code, to read:

71095. The chancellor's office shall conduct a survey to obtain the following information:

(a) The number and location of all colleges, universities, and training institutions offering instruction in early childhood education or child development, or both.

(b) The number and location of all colleges, universities, and training institutions offering instruction in specialized areas, including, but not limited to, infant care, school age care, child health, and care for special needs children.

(c) The mode or modes of delivery utilized by the colleges, universities, and training institutions, including, but not limited to, the following:

(1) Onsite instruction.

(2) Offsite or outreach instruction, or both.

(3) Use of regular semesters or short-term courses.

(4) Days of week used and time of offering.

(5) Availability of bilingual instruction.

(6) Use of mentor teachers.

(7) Use of part-time staff.

(d) Integration of competency-based curriculum into programs.

SEC. 3. Section 71096 is added to the Education Code, to read:

71096. (a) The chancellor's office, in cooperation with the Chancellor of the California State University, the State Department of Social Services, and the State Department of Education, shall develop basic information for day care center licensees regarding various training options existing in the state and the procedures involved in establishing specially designed classes to meet training needs. The State Department of Social Services shall reproduce and distribute this basic information to current and future child care center licensees. The basic information required by this section shall be distributed to current child care licensees on or before July 1, 1989.

(b) The chancellor's office shall support the continuation of community college child development regional meetings and shall

encourage expansion of these meetings to include participation by representatives from the California State University, the State Department of Social Services' Community Care Licensing Division, resource and referral programs, professional child care associations, local providers, and other local training institutions.

SEC. 4. Section 71097 is added to the Education Code, to read:

71097. The chancellor's office shall, to the extent resources permit, be available to refer and assist day care center licensees and prospective day care center teachers in locating appropriate courses and to respond to specific questions or concerns.

SEC. 5. Section 1597.057 is added to the Health and Safety Code, to read:

1597.057. Any requirement established by the department, pursuant to Article 1 (commencing with Section 1596.70) of Chapter 3.4, that coursework in early childhood education or child development, or both, be completed in order to fully qualify as a day care center teacher, may be satisfied with a valid child development associate credential issued by the Child Development Associate National Credentialing Program for a center-based setting with a preschool age level or infant/toddler age level endorsement. The preschool age level endorsement shall qualify the holder of the credential as a day care center teacher for ages three to five, inclusive, and the infant/toddler age level endorsement shall qualify the holder of the credential as a day care center teacher for up to, and including, age two.

The child development associate credential used to qualify individuals as day care center teachers shall involve standards that are no less stringent than those in effect on January 1, 1988.

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 address the critical shortage of qualified child care teachers and to make every effort to ensure that children are instructed and supervised by teachers with appropriate training and education, it is necessary that this act take effect immediately.

# CHAPTER 1327

An act to amend Sections 8005, 8008, 8020, 8022, 8023.5, 8024.5, and 8027 of, to amend and repeal Section 8025 of, and to amend the heading of Article 3 (commencing with Section 8020) of Chapter 13 of Division 3 of, the Business and Professions Code, relating to certified shorthand reporters.

[Approved by Governor September 24, 1988. Filed with Secretary of State September 26, 1988.]

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

SECTION 1. Section 8005 of the Business and Professions Code is amended to read:

8005. The Certified Shorthand Reporters Board is charged with the executive functions necessary for effectuating the purposes of this chapter. It may appoint committees as it deems necessary or proper. The board may appoint, prescribe the duties, and fix the salary of an executive officer. Except as provided by Section 159.5, the board may also employ other employees as may be necessary, subject to civil service and other provisions of law.

SEC. 2. Section 8008 of the Business and Professions Code, as added by Section 1 of Chapter 529 of the Statutes of 1986, is amended to read:

8008. The board also has the following powers and duties:

(a) To adopt a seal.

(b) By affirmative vote of at least three members of the board, to suspend or revoke a certificate, for any cause specified in this chapter.

(c) To charge and collect from all applicants for examinations and certificates the fees provided for in this chapter.

(d) To require the renewal of all certificates and to collect therefor the renewal fee prescribed by this chapter.

(e) To issue subpoenas, to administer oaths, and to take testimony concerning any matter within the jurisdiction of the board.

(f) To administer a fund established from the fees collected pursuant to Section 8031, or from any other donated sources, to reimburse indigent litigants for the cost of preparation of official transcripts of court proceedings and deposition proceedings.

(g) To submit to the Legislature no later than September 1, 1987, and annually thereafter, a report concerning the past fiscal year's experience with the Transcript Reimbursement Fund. The report shall include, but is not limited to, information which indicates the following:

(1) The number of requests for reimbursement.

(2) The number of requests granted.

(3) The number of requests denied.

(4) The total amount of funds disbursed.

(5) The amount of any remaining unexpended funds.

(6) The anticipated funding level needed to meet all requests in the following fiscal year.

(7) The total amount of refunds resulting from either a judicial award or settlement agreement which includes provisions for attorneys' fees or costs as provided in subdivision (c) of Section 8030.2.

(8) The amount of funds received from other sources.

(h) To investigate the actions of any licensee, upon receipt of a verified complaint in writing from any person, for alleged acts or omissions constituting grounds for disciplinary action under the chapter.

This section shall remain in effect only until June 30, 1991, and as of that date is repealed.

SEC. 3. Section 8008 of the Business and Professions Code, as amended by Section 2 of Chapter 529 of the Statutes of 1986, is amended to read:

8008. The board also has the following powers and duties:

(a) To adopt a seal.

(b) By affirmative vote of at least three members of the board, to suspend or revoke a certificate, for any cause specified in this chapter.

(c) To charge and collect from all applicants for examinations and certificates the fees provided for in this chapter.

(d) To require the renewal of all certificates and to collect therefor the renewal fee prescribed by this chapter.

(e) To issue subpoenas, to administer oaths, and to take testimony concerning any matter within the jurisdiction of the board.

(f) To investigate the actions of any licensee, upon receipt of a verified complaint in writing from any person, for alleged acts or omissions constituting grounds for disciplinary action under the chapter.

This section shall become operative on June 30, 1991.

SEC. 4. The heading of Article 3 (commencing with Section 8020) of Chapter 13 of Division 3 of the Business and Professions Code is amended to read:

Article 3. Application, Examination, and Certificate; Requirement and Contents

SEC. 5. Section 8020 of the Business and Professions Code is amended to read:

8020. Any person over the age of 18 years, who has not committed any acts or crimes constituting grounds for denial of licensure under Section 480, who has a high school education or its equivalent as determined by the board, and who has satisfactorily passed an examination under any regulations that the board may prescribe shall be entitled to a certificate and shall be styled and known as a certified shorthand reporter. No person shall be admitted to the

examination without first presenting satisfactory evidence to the board that within the five years immediately preceding the date the application for an examination is filed with the board he or she has obtained one of the following:

(a) One year of experience in making verbatim records of meetings, conferences, hearings, or judicial or related proceedings by means of written symbols or abbreviations in shorthand or machine writing and transcribing these records.

(b) A verified certificate of satisfactory completion of a prescribed course of study in a recognized court reporting school or certificate from the school evidencing equivalent proficiency and of the ability to make a verbatim record of material dictated in accordance with regulations adopted by the board contained in Title 16 of the California Code of Regulations.

(c) National Shorthand Reporters Association certificate of proficiency or certificate of merit.

(d) A passing grade on the California state hearing reporters examination.

(e) A valid certified shorthand reporters certificate or license to practice shorthand reporting issued by a state other than California.

SEC. 6. Section 8022 of the Business and Professions Code is amended to read:

8022. Each applicant for the examination under this chapter shall file an application with the executive officer of the board at least 45 days before the date fixed for examination, and the application shall be accompanied by the required fee.

SEC. 7. Section 8023.5 of the Business and Professions Code is amended to read:

8023.5. If an applicant for an examination is from a country where the principal language spoken is one other than English, the board may, in addition to any other examination required by this chapter, examine the applicant on his or her knowledge of the English language.

SEC. 8. Section 8024.5 of the Business and Professions Code is amended to read:

8024.5. A certificate which is not renewed within three years after its expiration may not be renewed, restored, reinstated, or reissued thereafter. The holder of the certificate shall return the expired certificate to the board. To obtain a new certificate, the holder shall pay all of the fees and meet all of the qualifications and requirements set forth in this chapter for obtaining an original certificate.

SEC. 9. Section 8025 of the Business and Professions Code, as added by Section 5 of Chapter 529 of the Statutes of 1986, is amended to read:

8025. A certificate issued under this chapter may be suspended or revoked for one or more of the following causes:

(a) Conviction of a crime substantially related to the qualifications, functions and duties of a certified shorthand reporter.

The record of conviction, or a certified copy thereof, shall be conclusive evidence of the conviction.

(b) Fraud or misrepresentation resorted to in obtaining a certificate hereunder.

(c) Fraud, dishonesty, corruption, willful violation of duty, gross incompetency in practice, or unprofessional conduct.

"Unprofessional conduct" includes, but is not limited to, acts contrary to professional standards concerning confidentiality; impartiality; filing and retention of notes; notifications, availability, delivery, execution and certification of transcripts; and any provision of law substantially related to the duties of a certified shorthand reporter.

(d) Repeated unexcused failure, whether or not willful, to transcribe notes of cases pending on appeal and to file the transcripts thereof within the time required by law or to transcribe or file notes of other proceedings within the time required by law or agreed by contract.

(e) Violation of this chapter or the rules and regulations adopted by the board.

SEC. 10. Section 8025 of the Business and Professions Code, as amended by Section 6 of Chapter 529 of the Statutes of 1986, is repealed.

SEC. 11. Section 8027 of the Business and Professions Code is amended to read:

8027. (a) As used in this section, "school" means the court reporter training program of any department or institution, public or private.

(b) A court reporting school shall be primarily organized to train students for the practice of shorthand reporting, as defined in Sections 8016 and 8017. Its educational program shall be on the postsecondary or collegiate level, and shall be a residence program; its educational program shall not be a correspondence program. It shall be legally organized and authorized to conduct its program under all applicable laws of the state, and shall conform to and offer the minimum prescribed course of study established by the board. Its records shall be kept and shall be maintained in a manner to render them safe from theft, fire, or other loss. The records shall indicate positive daily and clock-hour attendance of each student; apprenticeship and graduation reports; high school transcripts or equivalent; transcript of other education; and, student progress to date.

(c) The board may grant provisional recognition to a new court reporting school upon satisfactory evidence that it has met all of the provisions of subdivision (b). Recognition shall be granted by the board to a provisionally recognized school after it has been in continuous operation for a period of no less than three consecutive years from the date provisional recognition was granted, during which period the school shall provide satisfactory evidence that at least one person has successfully completed the entire course of

study established by the board and complied with the provisions of Section 8020, and has been issued a license to practice shorthand reporting as defined in Sections 8016 and 8017. Failure to meet the provisions and terms of this section shall require the board to deny recognition after the three-year period.

(d) Application for recognition of a court reporting school shall be made upon a form prescribed by the board and shall be accompanied by all evidence, statements, or documents requested. Each branch, extension center or off-campus facility requires separate application.

(e) All recognized and provisionally recognized court reporting schools shall notify the board of any change in school name, address, telephone number, responsible court reporting program manager, owner of private schools, and the effective date thereof, within 30 days of the change. The board shall be notified, immediately, of the discontinuance, or pending discontinuance of the school or program. All of these notifications shall be made in writing.

(f) The board shall maintain a roster of currently recognized and provisionally recognized court reporting schools including, but not limited to, the name, address, telephone number, and the name of the responsible court reporting program manager of each school.

(g) The board shall maintain statistics which display the number and passing percentage of all first-time examinees including, but not limited to, those qualified by each recognized or provisionally recognized school and those first-time examinees qualified by other methods as defined in Section 8020.

(h) Inspections and investigations shall be conducted by the board as necessary to carry out the provisions of this section.

(i) Each court reporting school shall file with the board, not later than June 30 of each year, a current school catalog which shows all course offerings and staff, and for private schools, the owner. In addition, each school shall also file with the board a statement certifying that the school is in compliance with all statutes and the rules and regulations of the board, signed by the responsible court reporting program manager.

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## CHAPTER 1328

An act to add Chapter 2.7 (commencing with Section 10235) to Part 2 of Division 2 of the Insurance Code, relating to health.

[Approved by Governor September 24, 1988. Filed with Secretary of State September 26, 1988.]

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

SECTION 1. Chapter 2.7 (commencing with Section 10235) is added to Part 2 of Division 2 of the Insurance Code, to read:

## CHAPTER 2.7. STANDARDS FOR LONG-TERM CARE INSURANCE

### Article 1. Definitions

10235. Unless the context requires otherwise, the definitions in this article shall govern the construction of this chapter.

10235.2. "Long-term care insurance" means any insurance policy, contract, or rider advertised, marketed, offered, or designed to provide coverage for not less than 12 consecutive months for each covered person on an expense incurred, indemnity, prepaid, or other basis for one or more necessary or medically necessary diagnostic, preventive, therapeutic, rehabilitative, maintenance, or personal care services, provided in a setting other than an acute care unit of a hospital. "Long-term care insurance" includes group and individual policies, contracts, or riders whether issued by insurers, fraternal benefit societies, nonprofit hospital service plans, or any similar organization regulated by the commissioner. "Long-term care insurance" does not include any insurance policy which is offered primarily to provide basic Medicare supplement coverage, basic hospital expense coverage, basic medical-surgical expense coverage, hospital confinement indemnity coverage, major medical expense coverage, disability income protection coverage, accident only coverage, specified disease or specified accident coverage, or limited benefit health coverage.

10235.4. "Applicant" means either of the following:

(a) In the case of an individual long-term care insurance policy, the person who seeks to contract for benefits.

(b) In the case of a group long-term care insurance policy, the proposed certificate holder.

10235.5. "Certificate" means any certificate issued under a group long-term care insurance policy, which policy has been delivered or issued for delivery in this state.

10235.6. "Group long-term care insurance" means a long-term care insurance policy which is delivered or issued for delivery in this state and issued to any of the following:

(a) One or more employers or labor organizations, or a trust or to the trustees of a fund established by one or more employers or labor organizations, or a combination thereof, for employees or former employees or a combination thereof or for members or former members or a combination thereof, of the labor organization.

(b) Any professional, trade, or occupational association for its members or former or retired members, or combination thereof, if that association meets both of the following:

(1) Is composed of individuals all of whom are or were actively engaged in the same profession, trade, or occupation.

(2) Has been maintained in good faith for purposes other than obtaining insurance.

(c) An association or a trust or the trustees of a fund established, created, or maintained for the benefit of members of one or more

associations. Prior to advertising, marketing, or offering that policy or a certificate within this state, the association or associations, or the insurer of the association or associations, shall file evidence with the commissioner that the association or associations have at the outset a minimum of 100 persons and have been organized and maintained in good faith for purposes other than that of obtaining insurance, have been in active existence for at least one year, and have a constitution and bylaws which provide all of the following:

(1) The association or associations hold regular meetings, not less than annually, to further purposes of the members.

(2) Except for credit unions, the association or associations collect dues or solicit contributions from members.

(3) The members have voting privileges and representation on the governing board and committees.

Thirty days after that filing the association or associations shall be deemed to satisfy these organizational requirements, unless the commissioner makes a finding that the association or associations do not satisfy those organizational requirements.

(d) A group other than as described in subdivisions (a), (b), and (c), subject to all of the following findings by the commissioner:

(1) The issuance of the group policy or certificate is not contrary to the best interest of the public.

(2) The issuance of the group policy will result in economies of acquisition or administration.

(3) The benefits are reasonable in relation to the premiums charged.

(e) A life care contract provider which has received a certificate of authority in accordance with Chapter 10 (commencing with Section 1770) of Division 2 of the Health and Safety Code. Any life care contract provider which has not received the certificate of authority from the State Department of Social Services shall be subject to this chapter.

10235.8. "Policy" means any policy, contract, subscriber agreement, rider, or endorsement delivered or issued for delivery in this state by an insurer, fraternal benefit society, nonprofit hospital service plan, or any similar organization, regulated by the commissioner.

## Article 2. General Provisions

10236. Precedent to the payment of benefits for any care covered by the terms of the policy, any insurer offering long-term care insurance under this chapter may obtain a written declaration by a physician, independent needs assessment agency, or any other source of independent judgment suitable to the insurer that services are necessary.

10236.2. Long-term care insurance may not:

(a) Be canceled, nonrenewed, or otherwise terminated on the grounds of the age or the deterioration of the mental or physical

health of the insured individual or certificate holder.

(b) Contain a provision establishing a new waiting period in the event existing coverage is converted to, or replaced by, a new or other form within the same insurer, except with respect to an increase in benefits voluntarily selected by the insured individual or group policy holder.

(c) Provide coverage for skilled nursing care only or provide significantly more coverage for skilled care in a facility than coverage for lower levels of care.

(d) Effective January 1, 1990, require hospitalization prior to the provision or payment of skilled care benefits.

(e) Effective January 1, 1990, require hospitalization or skilled care prior to the provision or payment of intermediate or custodial care benefits.

(f) Limit or deny benefits to a policyholder or certificate holder diagnosed as having any significant destruction of brain tissue with resultant loss of brain function, including, but not limited to, progressive, degenerative, and dementing illnesses, including, but not limited to, Alzheimer's disease. Where a particular disease can be determined only with an autopsy, "diagnosed" means clinical diagnosis as specified in Section 10123.16. The requirements of this subdivision do not modify any preexisting condition or underwriting standard contained in the National Association of Insurance Commissioners Long-Term Care Insurance Model Regulations, as most recently revised. On and after July 1, 1989, any outline of coverage used in connection with long-term care insurance issued in this state shall include or have attached thereto a statement in positive terms, to the effect that the coverage described and required by this subdivision is provided. That statement shall describe the coverage and not merely make reference to this subdivision.

10236.4. No long-term care benefits may be reduced because of out-of-pocket expenditures by the insured or on behalf of the insured by a family member of the insured or by any other individual.

10236.5. An outline of coverage, prepared in the standard format developed by the commissioner pursuant to Section 10237, shall be delivered to an individual prospective insured at the time an application for long-term care insurance is presented to an applicant. The outline of coverage shall include all of the following:

(a) A description of the principal benefits and coverage provided in the policy.

(b) A statement of the principal exclusions, reductions, and limitations contained in the policy.

(c) A statement of the terms under which the policy may be continued in force or discontinued, including any reservation in the policy of a right to change premiums.

(d) A statement that the outline of coverage is a summary of the coverage applied for, and that the policy should be consulted to determine governing contractual provisions.

(e) A prominently displayed statement that the applicant may wish to contact the Department of Insurance or the Health Insurance Counseling and Advocacy Program if in existence by calling 1-800-233-9045.

10236.6. A certificate issued pursuant to a group long-term care insurance policy, which policy is delivered or issued for delivery in this state, shall include all of the following:

(a) A description of the principal benefits and coverage provided in the policy.

(b) A statement of the principal exclusions, reductions, and limitations contained in the policy.

(c) A statement of the terms under which the policy or certificate, or both, may be continued in force or discontinued, including any reservation in the policy of a right to change premiums.

(d) A statement that the group master policy determines governing contractual provisions.

10236.7. No policy may be advertised, marketed, or offered as long-term care or nursing home insurance unless it complies with this chapter.

10236.8. A television, radio, mail, or newspaper advertisement which is designed to produce leads either by use of a coupon or a request to write to an insurer, producer, or any other person, or a subsequent advertisement prior to contact in regard to long-term care insurance shall include a prominent disclosure that a licensed or authorized agent may contact the prospective applicant, if that is the fact.

10236.9. (a) Any insurer offering long-term care insurance under this chapter shall provide to the Department of Insurance, for the commissioner's conveyance to the Department of Aging, a copy of the following materials for every long-term care insurance product advertised, marketed, or offered by that insurer in this state:

(1) Specimen individual policy form or group master policy and certificate forms.

(2) Corresponding outline of coverage, using the standard format developed by the commissioner.

(3) Representative advertising materials to be used in this state.

(b) If an insurer offering insurance in this state through a group described in subdivision (c) of Section 10235.6 provides all the information required in subdivision (a), the insurer and the association or associations through which it is offering group long-term care insurance shall meet the following requirements:

(1) The association or associations hold regular meetings, not less than annually, to further purposes of the members.

(2) Except for credit unions, the association or associations collect dues or solicit contributions from members.

(3) The members have voting privileges and representation on the governing board and committees.

Thirty days after submitting evidence of compliance with the requirements in subdivision (c) of Section 10235.6, the association or

associations shall be deemed to satisfy those organizational requirements, unless the commissioner makes the finding that the association or associations do not satisfy those organizational requirements.

Article 3. Administration and Enforcement

10237. (a) The commissioner shall prescribe the format and content of the outline of coverage required by Section 10236.5. For purposes of this section, "format" means style, arrangement, and overall appearance, including such items as the size and prominence of type and the arrangement of text and captions.

(b) The format prescribed by the commissioner shall be further designed for disclosure of the benefits provided by the policy or policies offered by a particular insurer and conditions that must be met to receive the benefits.

(c) To the extent that the standardized benefit disclosure form developed by the National Association of Insurance Commissioners contains the same elements of information required to be itemized by subdivision (b), the commissioner shall revise California's standard format for the outline of coverage to substantially reflect the form designed by the National Association of Insurance Commissioners.

10237.2. The commissioner shall, as required by this chapter, or from time to time as conditions warrant, after notice and public hearing, adopt reasonable regulations, and amendments and additions thereto, as are necessary to administer this chapter.

10237.4. The commissioner may suspend or revoke the license or licenses issued to any production agent found, after notice and hearing, to have violated this chapter or a regulation adopted pursuant to the authority of this chapter. Notice of hearing shall be accomplished and a hearing 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 shall have all of the powers granted therein.

10237.5. In addition to any other penalty provided by law or the availability of any administrative procedure, if an insurer, after notice and hearing, is found to have violated this chapter, or regulations adopted pursuant to this chapter, or knowingly permits any person to do so, the commissioner, in accordance with the procedures provided in Section 704, may suspend the insurer's certificate of authority to transact disability insurance. Section 704.7 shall apply in any proceeding conducted pursuant to this section.

10237.6. (a) On or before September 1, 1991, and on or before every September 1 thereafter, the commissioner shall report to the Legislature regarding all of the following aspects of long-term care insurance:

(1) Loss ratios in California and nationwide, by policy form number plus a summary and description of the data used as the basis

for that analysis.

(2) Means and devices alternative to loss ratio standards which may be under consideration by the commissioner for determining whether the benefits under long-term care insurance are reasonable in relation to premiums charged.

(3) The insurers offering coverage that includes home-based long-term care services in California, by policy form number plus a summary describing the specific types of services covered.

(4) The insurers offering coverage that includes community-based long-term care services in California, by policy form number plus a summary describing the specific types of services covered.

(b) The commissioner shall adopt a standard submittal form for insurers to attach to new long-term care insurance policies and certificates at the time they are submitted for the commissioner's review. The information specified on the standard form shall include, but not be limited to, all categories of information required to facilitate preparation of the report required by paragraphs (3) and (4) of subdivision (a).

10237.7. The commissioner's annual report to the Legislature, as required by Section 10237.6, shall be compiled in consultation with a task force designated by the commissioner for this purpose, which shall include insurance industry representatives, other individuals deemed appropriate by the commissioner, and one or more representatives from each of the following:

(a) The Health Insurance Counseling and Advocacy Program.

(b) The California Health Policy and Data Advisory Commission.

(c) The office of the Legislative Analyst.

The commissioner shall have the responsibility, in consultation with the task force, to develop analytic methods and to select indicators for evaluation of the impact of long-term care insurance on the public share of costs for long-term care.

SEC. 2. If any provision of this act or the application thereof to any person or circumstances is held invalid, such 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 1329

An act to add Section 29473 to the Elections Code, relating to elections.

[Approved by Governor September 24, 1988. Filed with Secretary of State September 26, 1988.]

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

SECTION 1. The Legislature finds and declares that no person, other than the voter and the election official, should have access to, or possession of, the ballot except as permitted by the federal Voting Rights Act of 1965, as amended.

SEC. 2. Section 29473 is added to the Elections Code, to read:

29473. (a) No candidate or representative of a candidate, and no proponent, opponent, or representative of a proponent or opponent, of an initiative, referendum, or recall measure, or of a charter amendment, shall solicit the vote of an absentee voter, or do any electioneering, while in the residence or in the immediate presence of the voter, and during the time he or she knows the absentee voter is voting.

(b) Any person who knowingly violates this section is guilty of a misdemeanor.

(c) This section shall not be construed to conflict with any provision of the federal Voting Rights Act of 1965, as amended, nor to preclude electioneering by mail or telephone or in public places, except as prohibited by Section 29470, or by any other provision of law.

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.

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## CHAPTER 1330

An act to amend Section 66452.6 of, and to add and repeal Section 66413.5 of, the Government Code, relating to subdivisions.

[Approved by Governor September 24, 1988. Filed with Secretary of State September 26, 1988.]

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

SECTION 1. Section 66413.5 is added to the Government Code, to read:

66413.5. (a) When any area in a subdivision or proposed subdivision as to which a tentative map meeting the criteria of this section has been approved by a board of supervisors is incorporated into a newly incorporated city, the newly incorporated city shall approve the final map if it meets all of the conditions of the tentative map, meets the requirements and conditions for approval of the final map as provided in Article 4 (commencing with Section 66456) of Chapter 3, other requirements of this division, and the county's subdivision ordinance.

(b) When any area in a subdivision or proposed subdivision as to which a vesting tentative map meeting the criteria of this section has been approved by a board of supervisors is incorporated into a newly incorporated city, the newly incorporated city shall approve the final map and shall give effect to the vesting tentative map as provided in Chapter 4.5 (commencing with Section 66498.1) if the final map meets all of the conditions of the vesting tentative map, meets the requirements and conditions for approval of the final map as provided in Article 4 (commencing with Section 66456) of Chapter 3, Chapter 4.5 (commencing with Section 66498.1), other requirements of this division, and the county's subdivision ordinance.

(c) Notwithstanding subdivisions (a) and (b), the newly incorporated city may condition or deny a permit, approval, or extension, or entitlement if it determines any of the following:

(1) A failure to do so would place the residents of the subdivision or the immediate community, or both, in a condition dangerous to their health or safety, or both.

(2) The condition or denial is required, in order to comply with state or federal law.

(d) The rights conferred by this section shall expire if a final map is not approved prior to the expiration of the tentative map or of the vesting tentative map. If the final map is approved, the rights conferred by this section shall be subject to the periods of time set forth in Section 66452.6, but shall not exceed eight years from the date of incorporation unless an applicant and the newly incorporated city mutually agree to a longer period provided by this division.

(e) An approved tentative map or vesting tentative map shall not limit a newly incorporated city from imposing reasonable conditions on subsequent required approvals or permits necessary for the development, and authorized by the ordinances, policies, and standards described in Section 66474.2.

(f) Except as otherwise provided in subdivision (g) or (h), this section applies to any approved tentative map or approved vesting tentative map which meets both of the following requirements:

(1) The application for the tentative map or the vesting tentative map is submitted prior to the date that the first signature was affixed to the petition for incorporation pursuant to Section 56704, regardless of the validity of the first signature, or the adoption of the resolution pursuant to Section 56800, whichever occurs first.

(2) The county approves the tentative map or the vesting

tentative map prior to the date of the election on the question of incorporation.

(g) This section does not apply to any territory for which the effective date of the incorporation is prior to January 1, 1989.

(h) This section does not apply to any subdivision subject to Section 66427.1 and it is not the intent of the Legislature to influence or affect any litigation pending on December 31, 1988.

(i) This section shall remain in effect only until January 1, 1992, and as of that date is repealed, unless a later enacted statute, which is enacted before that date, deletes or extends that date.

SEC. 2. Section 66452.6 of the Government Code is amended to read:

66452.6. (a) An approved or conditionally approved tentative map shall expire 24 months after its approval or conditional approval, or after any additional period of time as may be prescribed by local ordinance, not to exceed an additional 12 months. However, if the subdivider is subject to a requirement of one hundred thousand dollars ($100,000) or more to construct, improve, or finance the construction or improvement of public improvements outside the boundaries of the tentative map, each filing of a final map authorized by Section 66456.1 shall extend the expiration of the approved or conditionally approved tentative map by 36 months from the date of its expiration, as provided in this section, or the date of the previously filed final map, whichever is later. The extensions shall not extend the tentative map more than 10 years from its approval or conditional approval. However, a tentative map on property subject to a development agreement authorized by Article 2.5 (commencing with Section 65864) of Chapter 4 of Division 1 may be extended for the period of time provided for in the agreement, but not beyond the duration of the agreement. The number of phased final maps which may be filed shall be determined by the advisory agency at the time of the approval or conditional approval of the tentative map.

"Public improvements," as used in this subdivision, include traffic controls, streets, roads, highways, freeways, bridges, overcrossings, street interchanges, flood control or storm drain facilities, sewer facilities, water facilities, and lighting facilities.

(b) (1) The period of time specified in subdivision (a) shall not include any period of time during which a development moratorium, imposed after approval of the tentative map, is in existence. However, the length of the moratorium shall not exceed five years.

(2) The length of time specified in paragraph (1) shall be extended for up to three years, but in no event beyond January 1, 1992, during the pendency of any lawsuit in which the subdivider asserts, and the local agency which approved or conditionally approved the tentative map denies, the existence or application of a development moratorium to the tentative map.

(3) Once a development moratorium is terminated, the map shall be valid for the same period of time as was left to run on the map at the time that the moratorium was imposed. However, if the

remaining time is less than 120 days, the map shall be valid for 120 days following the termination of the moratorium.

(c) The period of time specified in subdivision (a), including any extension thereof granted pursuant to subdivision (e), shall not include the period of time during which a lawsuit involving the approval or conditional approval of the tentative map is or was pending in a court of competent jurisdiction, if the stay of the time period is approved by the local agency pursuant to this section. After service of the initial petition or complaint in the lawsuit upon the local agency, the subdivider may apply to the local agency for a stay pursuant to the local agency's adopted procedures. Within 40 days after receiving the application, the local agency shall either stay the time period for up to five years or deny the requested stay. The local agency may, by ordinance, establish procedures for reviewing the requests, including, but not limited to, notice and hearing requirements, appeal procedures, and other administrative requirements.

(d) The expiration of the approved or conditionally approved tentative map shall terminate all proceedings and no final map or parcel map of all or any portion of the real property included within the tentative map shall be filed with the legislative body without first processing a new tentative map. Once a timely filing is made, subsequent actions of the local agency, including, but not limited to, processing, approving, and recording, may lawfully occur after the date of expiration of the tentative map. Delivery to the county surveyor or city engineer shall be deemed a timely filing for purposes of this section.

(e) Upon application of the subdivider filed prior to the expiration of the approved or conditionally approved tentative map, the time at which the map expires may be extended by the legislative body or by an advisory agency authorized to approve or conditionally approve tentative maps for a period or periods not exceeding a total of three years. Prior to the expiration of an approved or conditionally approved tentative map, upon an application by the subdivider to extend that map, the map shall automatically be extended for 60 days or until the application for the extension is approved, conditionally approved, or denied, whichever occurs first. If the advisory agency denies a subdivider's application for an extension, the subdivider may appeal to the legislative body within 15 days after the advisory agency has denied the extension.

(f) For purposes of this section, a development moratorium includes a water or sewer moratorium, or a water and sewer moratorium, as well as other actions of public agencies which regulate land use, development, or the provision of services to the land, other than the public agency with the authority to approve or conditionally approve the tentative map, which thereafter prevents, prohibits, or delays the approval of a final or parcel map. A development moratorium shall also be deemed to exist for purposes of this section for any period of time during which a condition

imposed by the city or county could not be satisfied because of either of the following:

(1) The condition was one which, by its nature, necessitated action by the city or county, and the city or county either did not take the necessary action or by its own action or inaction was prevented or delayed in taking the necessary action prior to expiration of the tentative map.

(2) The condition necessitates acquisition of real property or any interest in real property from a public agency, other than the city or county that approved or conditionally approved the tentative map, and that other public agency fails or refuses to convey the property interest necessary to satisfy the condition. However, nothing in this subdivision shall be construed to require any public agency to convey any interest in real property owned by it. A development moratorium specified in this paragraph shall be deemed to have been imposed either on the date of approval or conditional approval of the tentative map, if evidence was included in the public record that the public agency which owns or controls the real property or any interest therein may refuse to convey that property or interest, or on the date that the public agency which owns or controls the real property or any interest therein receives an offer by the subdivider to purchase that property or interest for fair market value, whichever is later. A development moratorium specified in this paragraph shall extend the tentative map up to the maximum period as set forth in subdivision (b), but not later than January 1, 1992, so long as the public agency which owns or controls the real property or any interest therein fails or refuses to convey the necessary property interest, regardless of the reason for the failure or refusal, except that the development moratorium shall be deemed to terminate 60 days after the public agency has officially made, and communicated to the subdivider, a written offer or commitment binding on the agency to convey the necessary property interest for a fair market value, paid in a reasonable time and manner.

(g) The rights conferred by a vesting tentative map as provided by Chapter 4.5 (commencing with Section 66498.1) shall last for an initial time period, as provided by ordinance, but shall not be less than one year or more than two years beyond the recording of the final map. Where several final maps are recorded on various phases of a project covered by a single vesting tentative map, the one year initial time period shall begin for each phase when the final map for that phase is recorded.

The initial time period shall be automatically extended by any time used by the local agency for processing a complete application for a grading permit or for design or architectural review, if the time used by the local agency to process the application exceeds 30 days, from the date that a complete application is filed. At any time prior to the expiration of the initial time period provided by this section, the subdivider may apply for a one-year extension. If the extension is denied by an advisory agency, the subdivider may appeal that denial

to the legislative body within 15 days.

(h) If the subdivider submits a complete application for a building permit during the periods of time specified in subdivision (g), the rights conferred by Chapter 4.5 (commencing with Section 66498.1) shall continue until the expiration of that permit, or any extension of that permit granted by the local agency.

SEC. 2.5. Section 66452.6 of the Government Code is amended to read:

66452.6. (a) An approved or conditionally approved tentative map shall expire 24 months after its approval or conditional approval, or after any additional period of time as may be prescribed by local ordinance, not to exceed an additional 12 months. However, if the subdivider is subject to a requirement of one hundred thousand dollars ($100,000) or more to construct, improve, or finance the construction or improvement of public improvements outside the boundaries of the tentative map, each filing of a final map authorized by Section 66456.1 shall extend the expiration of the approved or conditionally approved tentative map by 36 months from the date of its expiration, as provided in this section, or the date of the previously filed final map, whichever is later. The extensions shall not extend the tentative map more than 10 years from its approval or conditional approval. However, a tentative map on property subject to a development agreement authorized by Article 2.5 (commencing with Section 65864) of Chapter 4 of Division 1 may be extended for the period of time provided for in the agreement, but not beyond the duration of the agreement. The number of phased final maps which may be filed shall be determined by the advisory agency at the time of the approval or conditional approval of the tentative map.

"Public improvements," as used in this subdivision, include traffic controls, streets, roads, highways, freeways, bridges, overcrossings, street interchanges, flood control or storm drain facilities, sewer facilities, water facilities, and lighting facilities.

(b) (1) The period of time specified in subdivision (a) shall not include any period of time during which a development moratorium, imposed after approval of the tentative map, is in existence. However, the length of the moratorium shall not exceed five years.

(2) The length of time specified in paragraph (1) shall be extended for up to three years, but in no event beyond January 1, 1992, during the pendency of any lawsuit in which the subdivider asserts, and the local agency which approved or conditionally approved the tentative map denies, the existence or application of a development moratorium to the tentative map.

(3) Once a development moratorium is terminated, the map shall be valid for the same period of time as was left to run on the map at the time that the moratorium was imposed. However, if the remaining time is less than 120 days, the map shall be valid for 120 days following the termination of the moratorium.

(c) The period of time specified in subdivision (a), including any extension thereof granted pursuant to subdivision (e), shall not

include the period of time during which a lawsuit involving the approval or conditional approval of the tentative map is or was pending in a court of competent jurisdiction, if the stay of the time period is approved by the local agency pursuant to this section. After service of the initial petition or complaint in the lawsuit upon the local agency, the subdivider may apply to the local agency for a stay pursuant to the local agency's adopted procedures. Within 40 days after receiving the application, the local agency shall either stay the time period for up to five years or deny the requested stay. The local agency may, by ordinance, establish procedures for reviewing the requests, including, but not limited to, notice and hearing requirements, appeal procedures, and other administrative requirements.

(d) The expiration of the approved or conditionally approved tentative map shall terminate all proceedings and no final map or parcel map of all or any portion of the real property included within the tentative map shall be filed with the legislative body without first processing a new tentative map. Once a timely filing is made, subsequent actions of the local agency, including, but not limited to, processing, approving, and recording, may lawfully occur after the date of expiration of the tentative map. Delivery to the county surveyor or city engineer shall be deemed a timely filing for purposes of this section.

(e) Upon application of the subdivider filed prior to the expiration of the approved or conditionally approved tentative map, the time at which the map expires may be extended by the legislative body or by an advisory agency authorized to approve or conditionally approve tentative maps for a period or periods not exceeding a total of three years. Prior to the expiration of an approved or conditionally approved tentative map, upon an application by the subdivider to extend that map, the map shall automatically be extended for 60 days or until the application for the extension is approved, conditionally approved, or denied, whichever occurs first. If the advisory agency denies a subdivider's application for an extension, the subdivider may appeal to the legislative body within 15 days after the advisory agency has denied the extension.

(f) For purposes of this section, a development moratorium includes a water or sewer moratorium, or a water and sewer moratorium, as well as other actions of public agencies which regulate land use, development, or the provision of services to the land, other than the public agency with the authority to approve or conditionally approve the tentative map, which thereafter prevents, prohibits, or delays the approval of a final or parcel map. A development moratorium shall also be deemed to exist for purposes of this section for any period of time during which a condition imposed by the city or county could not be satisfied because of either of the following:

(1) The condition was one which, by its nature, necessitated action by the city or county, and the city or county either did not take

the necessary action or by its own action or inaction was prevented or delayed in taking the necessary action prior to expiration of the tentative map.

(2) The condition necessitates acquisition of real property or any interest in real property from a public agency, other than the city or county that approved or conditionally approved the tentative map, and that other public agency fails or refuses to convey the property interest necessary to satisfy the condition. However, nothing in this subdivision shall be construed to require any public agency to convey any interest in real property owned by it. A development moratorium specified in this paragraph shall be deemed to have been imposed either on the date of approval or conditional approval of the tentative map, if evidence was included in the public record that the public agency which owns or controls the real property or any interest therein may refuse to convey that property or interest, or on the date that the public agency which owns or controls the real property or any interest therein receives an offer by the subdivider to purchase that property or interest for fair market value, whichever is later. A development moratorium specified in this paragraph shall extend the tentative map up to the maximum period as set forth in subdivision (b), but not later than January 1, 1992, so long as the public agency which owns or controls the real property or any interest therein fails or refuses to convey the necessary property interest, regardless of the reason for the failure or refusal, except that the development moratorium shall be deemed to terminate 60 days after the public agency has officially made, and communicated to the subdivider, a written offer or commitment binding on the agency to convey the necessary property interest for a fair market value, paid in a reasonable time and manner.

(g) The rights conferred by a vesting tentative map as provided by Chapter 4.5 (commencing with Section 66498.1) shall last for an initial time period, as provided by ordinance, but shall not be less than one year or more than three years beyond the recording of the final map with respect to vesting tentative maps whose applications are submitted after January 1, 1989. Where several final maps are recorded on various phases of a project covered by a single vesting tentative map, a one year initial time period shall begin for each phase when the final map for that phase is recorded.

The initial time period shall be automatically extended by any time used by the local agency for processing a complete application for a grading permit or for design or architectural review, if the time used by the local agency to process the application exceeds 30 days, from the date that a complete application is filed. At any time prior to the expiration of the initial time period provided by this section, the subdivider may apply for a one-year extension. If the extension is denied by an advisory agency, the subdivider may appeal that denial to the legislative body within 15 days.

(h) If the subdivider submits a complete application for a building permit during the periods of time specified in subdivision (g), the

rights conferred by Chapter 4.5 (commencing with Section 66498.1) shall continue until the expiration of that permit, or any extension of that permit granted by the local agency.

SEC. 3. Section 2.5 of this bill incorporates amendments to Section 66452.6 of the Government Code proposed by both this bill and SB 2158. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1989, (2) each bill amends Section 66452.6 of the Government Code, and (3) this bill is enacted after SB 2158, in which case Section 2 of this bill shall not become operative.

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## CHAPTER 1331

An act to amend Sections 14041, 72252.3, 76060.5, 78022, 79020, 84040.5, 84330, and 84700 of, and to add Section 84207 to, the Education Code, relating to education.

[Approved by Governor September 24, 1988. Filed with Secretary of State September 26, 1988.]

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

SECTION 1. Section 14041 of the Education Code is amended to read:

14041. (a) The Controller shall draw warrants on the State Treasury in favor of the county treasurer of each county in each month of each year in the amounts and manner as herein prescribed so as to provide in each warrant a portion of the total amount certified by the Superintendent of Public Instruction as apportioned under the provisions of Sections 41330 to 41343, inclusive, and Chapter 4 (commencing with Section 41600) and Chapter 5 (commencing with Section 41700) and Article 2 (commencing with Section 42237) of Chapter 7 of Part 24 of Division 3 of Title 2, inclusive, during the fiscal year from the State School Fund to the school districts under the jurisdiction of the county superintendent of schools of the county, to the county school service fund, and to the county school tuition fund of the county.

(1) Warrants for amounts allowed to the county school service funds under subdivisions (a) and (b) of Section 14054 shall be for amounts equal to 6 percent in July, 12 percent in August, 10 percent in September, and 8 percent in each remaining month of the fiscal year of the amounts certified by the Superintendent of Public Instruction as a part of the advance apportionment.

(2) Warrants for amounts apportioned to school districts and county school service funds for classes maintained by county superintendents of schools and to the county school tuition funds shall be for amounts equal to 6 percent in July, 12 percent in August, and 8 percent in September, October, November, December, and

January, of the amounts certified by the Superintendent of Public Instruction as a part of the advance apportionment.

(3) Warrants in the months of February to May, inclusive, shall be for amounts equal to one-sixth of the difference between the amounts certified by the Superintendent of Public Instruction for school districts and county school service funds for classes maintained by county superintendents of schools and county school tuition funds as the first principal apportionment and the amounts required by paragraph (2). An additional one-sixth of such difference shall be included in the warrants for the month of February.

(4) Warrants for the month of June shall be for amounts equal to the difference between the amounts certified by the Superintendent of Public Instruction for school districts and county school service funds for classes maintained by county superintendents of schools and county school tuition funds as the second principal apportionment and the amounts required by paragraphs (2) and (3).

(5) Warrants in the months of September to November, inclusive, shall include one-tenth of the estimated total amounts of the special purpose apportionment, as determined by the Superintendent of Public Instruction. Warrants in December shall include one-tenth of the amounts certified by the Superintendent of Public Instruction as the special purpose apportionment, as adjusted, if necessary, to correct excesses or deficiencies in the estimates made for purposes of the warrants in the months of September to November, inclusive. An additional one-tenth of the amounts of the special purpose apportionment shall be included in the warrants for the months from January to June, inclusive.

(6) Warrants in June shall include the total amounts certified by the Superintendent of Public Instruction as the final apportionment.

(7) Notwithstanding paragraph (2) to the contrary, for school districts which reported less than 5,000 units of average daily attendance in the 1979–80 fiscal year and which received 39 percent or more, but less than 75 percent, of their total revenue limits from local property taxes in that fiscal year, warrants for amounts apportioned to the districts shall be for amounts equal to 15 percent in July, August, September, and October; zero percent in November and December; and 6 percent in January of the amounts certified by the Superintendent of Public Instruction as a part of the advance apportionment. Warrants for amounts apportioned to the districts for the months of February to May, inclusive, shall be in accordance with paragraph (3), and for the month of June, shall be in accordance with paragraph (4).

(8) Notwithstanding paragraph (2) or (7) to the contrary, for school districts which reported less than 5,000 units of average daily attendance in the 1979–80 fiscal year and which received 75 percent or more of their total revenue limits from local property taxes in that fiscal year, warrants for amounts apportioned to the districts shall be for amounts equal to 15 percent in July; 30 percent in August and September; 15 percent in October; zero percent in November and

December; 6 percent in January; and zero percent in February, March, April, and May, of the amounts certified by the Superintendent of Public Instruction as a part of the advance apportionment. Warrants for the month of June shall be in accordance with paragraph (4).

(b) The drawing of the warrants required to be drawn during any one of the months mentioned may be postponed by the Controller for not to exceed 30 days, but the total amounts due the several counties during any fiscal year shall be paid within the fiscal year. The warrants shall be paid by the State Treasurer from the State School Fund and are not subject to the provisions of Government Code Section 925.6.

SEC. 2. Section 72252.3 of the Education Code is amended to read:

72252.3. The governing board of a community college district may authorize a person to audit a community college course and may charge that person a fee pursuant to this section.

(a) If a fee for auditing is charged, it shall not exceed fifteen dollars ($15) per unit per semester.

The governing board shall proportionately adjust the amount of the fee for term lengths based upon a quarter system or other alternative system approved pursuant to Section 78002, and shall also proportionately adjust the amount of the fee for summer sessions, intersessions, and other short-term courses. In making these adjustments, the governing board may round the per unit fee and the per term or per session fee to the nearest dollar.

(b) Students enrolled in classes to receive credit for 10 or more semester credit units shall not be charged a fee to audit three or fewer semester units per semester.

(c) No student auditing a course shall be permitted to change his or her enrollment in that course to receive credit for the course.

(d) Priority in class enrollment shall be given to students desiring to take the course for credit towards a degree or certificate.

(e) Classroom attendance of students auditing a course shall not be included in computing the apportionment due a community college district.

(f) The board of governors shall adopt any necessary regulations implementing this section as regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 3. Section 76060.5 of the Education Code is amended to read:

76060.5. If a student body association has been established at a community college as authorized by Section 76060, the governing body of the association may order that an election be held for the purpose of establishing a student representation fee of one dollar ($1) per semester. The election shall be held in compliance with regulations of the Board of Governors of the California Community Colleges and shall be open to all regularly enrolled students of the

community college. The affirmative vote of two-thirds of the students voting in the election shall be sufficient to establish the fee. However, the election shall not be sufficient to establish the fee unless the number of students who vote in the election equals or exceeds the average of the number of students who voted in the previous three student body association elections.

The student representation fee authorized by this section shall be collected by the officials of the community college, together with all other fees, at the time of registration or before registration and shall be deposited in a separate fiduciary fund established per the California Community Colleges Budget and Accounting Manual for student representation fees. The money collected pursuant to this section shall be expended to provide for the support of governmental affairs representatives who may be stating their positions and viewpoints before city, county, and district governments, and before offices and agencies of the state government. The chief fiscal officer of the community college shall have custody of the money collected pursuant to this section and the money shall be disbursed for the purposes described above upon the order of the governing body of the student body association. The district may retain a portion of the fees collected and deposited pursuant to this section that is equal to the actual cost of administering these fees up to, but not more than, 7 percent.

The student representation fee authorized by this section may be terminated by a majority vote of the students voting in an election held for that purpose. The election shall be called and held in compliance with regulations of the Board of Governors of the California Community Colleges and shall be open to all regularly enrolled students of the community college.

A student may, for religious, political, financial, or moral reasons, refuse to pay the student representation fee established under this section. The refusal shall be submitted in writing to the college officials at the time the student pays other fees collected by the college officials. The refusal shall be submitted on the same form that is used for collection of fees as provided by the college, which, as determined by the college, shall be as nearly as practical in the same form as a model form prescribed by regulations of the Board of Governors of the California Community Colleges.

SEC. 4. Section 78022 of the Education Code is amended to read:

78022. (a) Faculty in all credit and noncredit contract education classes shall be selected and hired according to procedures existing in a community college district for the selection of instructors for credit classes.

(b) Faculty teaching credit and noncredit contract education classes shall be compensated in the same manner as comparable faculty in the regular, noncontract education program. This subdivision shall not apply to faculty teaching in contract education programs conducted outside the United States for the United States armed forces, unless the faculty member is covered by a collective

bargaining agreement.

(c) Faculty teaching credit or noncredit contract education classes shall be evaluated according to the procedures used for the evaluation of faculty in the regular, noncontract education program.

(d) Faculty teaching not-for-credit contract education classes shall be compensated in the same manner as faculty in the regular, noncontract education program if the course meets the same standards as a course in the credit curriculum.

(e) Faculty teaching not-for-credit contract educational programs shall be evaluated according to procedures specified in the contract between the community college district and the public or private entity to establish the program.

(f) This section shall not be construed to restrict the appearance of guest lecturers in any programs or classes operated by a community college district.

SEC. 5. Section 79020 of the Education Code is amended to read:

79020. Except as otherwise provided the community colleges shall continue in session or close on specified holidays as follows:

(a) The community colleges shall close on January 1st, the third Monday in January, commencing in the 1989–90 fiscal year, known as "Dr. Martin Luther King, Jr. Day," February 12th known as "Lincoln Day," the third Monday in February known as "Washington Day," the last Monday in May known as "Memorial Day," July 4th, the first Monday in September known as "Labor Day," November 11th known as "Veterans Day," that Thursday in November proclaimed by the President as "Thanksgiving Day," and December 25th.

(b) Any contractual provision between any community college district and its employees in effect on the effective date of the act that adds this subdivision shall prevail over any conflict regarding Dr. Martin Luther King, Jr. Day until the termination date of the contract or upon termination by mutual agreement of the parties, whichever occurs first.

(c) The Governor in appointing any other day for a public fast, thanksgiving, or holiday may provide whether the community colleges shall close on the day. If the Governor does not provide whether the community colleges shall close, they shall continue in session on all special or limited holidays appointed by the Governor, but shall close on all other days appointed by the Governor for a public fast, thanksgiving, or holiday.

(d) The community colleges shall close on every day appointed by the President as a public fast, thanksgiving, or holiday, unless it is a special or limited holiday.

(e) The community colleges shall continue in session on all legal holidays other than those designated by or pursuant to this section, or Section 79022, and shall hold proper exercises commemorating the day.

(f) When any of the holidays on which the schools would be closed fall on Sunday, the community colleges shall close on the Monday

following, except that (1) if Lincoln Day falls on a Sunday, the community colleges may observe this holiday on the preceding Friday, the following Monday, or the following Tuesday, and maintain classes on the date specified in subdivision (a) where applicable, or (2) if Lincoln Day falls on a Monday, the community colleges may observe this holiday on the preceding Friday, that Monday, or the following Tuesday, and maintain classes on the date specified in subdivision (a) where applicable.

(g) When any of the holidays on which the schools would be closed fall on Saturday, the community colleges shall close on the preceding Friday, and that Friday shall be declared a state holiday.

(h) If any holiday on which the community colleges are required to close pursuant to subdivision (a) occurs under federal law on a date different than the date specified in subdivision (a), the governing board of any community college district may close the community colleges of the district on the date recognized by federal law and maintain classes on the date specified in subdivision (a).

(i) When Veterans Day or Lincoln Day would fall on Tuesday, the governing board of a community college district may close the colleges on the preceding Monday, and maintain classes on the date specified in subdivision (a). When Veterans Day or Lincoln Day would fall on Wednesday, the governing board of a community college district may close the colleges on either the preceding Monday or the following Friday, and maintain classes on the date specified in subdivision (a). When Veterans Day or Lincoln Day would fall on Thursday, the governing board of a community college district may close the colleges on the following Friday, and maintain classes on the date specified in subdivision (a).

(j) Nothing in this section is to be interpreted as authorizing a community college district governing board to maintain community colleges in its district for a lesser number of days during the college year than the minimum established by law.

SEC. 6. Section 84040.5 of the Education Code is amended to read:

84040.5. The board of governors, in cooperation with, and upon approval by, the Department of Finance, shall prescribe the statements and other information to be included in the audit reports filed with the state and shall develop audit procedures for carrying out the purposes of this section. The Department of Finance may make audits, surveys, and reports which, in the judgment of the department will serve the best interest of the state.

A review of existing audit procedures, statements, and other information required to be included in the audit reports shall be conducted periodically by the board of governors, in cooperation with the Department of Finance. Standards shall be updated periodically.

SEC. 7. Section 84207 is added to the Education Code, to read:

84207. On or before November 15 of each year, the county auditor of each county shall furnish to the office of the Chancellor of

the California Community Colleges the actual previous year's receipts, along with estimated current year receipts for secured tax receipts, unsecured tax receipts, prior year tax receipts, timber tax receipts, and any other appropriate taxes or subventions for each community college district or portion of a district situated within his or her county. This information shall be forwarded on forms prescribed by the Chancellor of the California Community Colleges.

SEC. 8. Section 84330 of the Education Code is amended to read:

84330. If during any fiscal year there is apportioned to a community college district or to any fund from Section B of the State School Fund at least one hundred dollars ($100) more or at least one hundred dollars ($100) less than the amount to which the district or fund was entitled, the chancellor, not later than the third succeeding fiscal year shall withhold from, or add to, the apportionment made during such fiscal year, the amount of such excess or deficiency, as the case may be. Notwithstanding, any other provision of this code to the contrary, excesses withheld or deficiencies added by the chancellor under this section shall be added to or allowed from any portion of Section B of the State School Fund.

SEC. 9. Section 84700 of the Education Code is amended to read:

84700. For the 1983–84 fiscal year, and each fiscal year thereafter, the chancellor shall apportion state aid to community college districts according to the following procedure:

(a) The fiscal year revenues for each community college district shall be the noncredit base revenues as defined in subdivision (d) of Section 84701, plus the credit base revenues as defined in subdivision (e) of Section 84701, plus the average daily attendance adjustments based on incremental cost adjustments prescribed in Sections 84702 and 84702.5, plus the equalization adjustment specified in Section 84703, plus the inflation adjustment specified in Section 84704, plus the equalization adjustment specified in Section 84705.

(b) For each community college district, the chancellor shall subtract from the revenues determined pursuant to subdivision (a), the local property tax revenue specified by law for general operating support, exclusive of bond interest and redemption and including 98 percent of the fee revenues collected pursuant to Section 72252 and of moneys received for fees defrayed pursuant to subdivision (f) of Section 72252, and motor vehicle license fees received pursuant to Section 11003.4 of the Revenue and Taxation Code, and timber yield tax revenue received pursuant to Section 38905 of the Revenue and Taxation Code. The remainder shall be the state general apportionment for each district.

(c) The chancellor shall adjust the amount determined pursuant to subdivision (b) to provide for prior year adjustments required pursuant to Section 84330.

(d) The chancellor may, upon the demonstrated need of any community college district for increased levels of allocations of state funds in any month based on district expenditure patterns and cash flow needs, adjust the allocations provided in subdivision (e),

provided that the total of the allocations to be made between July 1 and February 1 shall not exceed 70 percent.

(e) Warrants shall be drawn on the State Treasury by the Controller in favor of the treasurer of each county for the allocations certified by the Chancellor of the California Community Colleges for the period of July through January in accordance with the following schedule, as may be adjusted by the chancellor in accordance with provisions of subdivision (d):

(1) Eight percent of district eligibility shall be allocated in July.

(2) Eight percent of district eligibility shall be allocated in August.

(3) Twelve percent of district eligibility shall be allocated in September.

(4) Ten percent of district eligibility shall be allocated in October.

(5) Nine percent of district eligibility shall be allocated in November.

(6) Five percent of district eligibility shall be allocated in December.

(7) Eight percent of district eligibility shall be allocated in January.

(f) The remaining percent of district eligibility shall be allocated in the months of February through June on a schedule as certified by the chancellor.

SEC. 10. 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 five hundred thousand dollars ($500,000), reimbursement shall be made from the State Mandates Claims Fund.

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## CHAPTER 1332

An act to add Chapter 3.5 (commencing with Section 15379) to Part 6.7 of Division 3 of Title 2 of the Government Code, relating to science and technology, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 24, 1988. Filed with Secretary of State September 26, 1988.]

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

SECTION 1. Chapter 3.5 (commencing with Section 15379) is added to Part 6.7 of Division 3 of Title 2 of the Government Code, to read:

## CHAPTER 3.5. CALIFORNIA COMPETITIVE TECHNOLOGY PROGRAM

### Article 1. General Provisions

15379. The Legislature finds and declares all of the following:

(a) California companies must compete in world markets against foreign manufacturers who are supported in technology development by their national governments.

(b) Companies in this state, as well as throughout the United States, are losing markets for manufactured goods, yet America has led the world in basic research.

(c) To retain California manufacturing and service jobs and maintain our industrial competitiveness, California must make use of its universities and national laboratories for solutions to technological problems. California has the benefit of unique federal laboratories, such as Lawrence Berkeley Laboratory, Lawrence Livermore National Laboratory, Jet Propulsion Laboratory, Ames Research Center, and Stanford Linear Accelerator Center, and world renowned universities such as the University of California, Stanford University, the California Institute of Technology, and the University of Southern California to draw upon for this purpose.

(d) The state should facilitate, promote, and enhance technology transfer programs which will make the unparalleled resources of our universities and national laboratories available to private industry, and ultimately into the marketplace.

(e) The state should support collaborative research projects, involving the state, academia, and private industry, which have been carefully screened and offer a likely return on the state's investment. The Department of Commerce should identify and facilitate collaborative research projects which may solve critical industry and environmental problems.

15379.1. Unless the context otherwise requires, the definitions in this section govern the construction of this chapter.

(a) "Collaborative research" means technological or scientific research that accelerates existing research towards the commercialization of products, processes, and services, and is conducted jointly or funded jointly by some or all of the following:

(1) The private sector, including intra-industry groups.

(2) The federal government.

(3) The state.

(4) Public or private universities, colleges, and laboratories.

(b) "Department" means the Department of Commerce.

(c) "Director" means the Director of the Department of Commerce.

(d) "Program" means the California Competitive Technology Program.

(e) "Technology transfer" means the movement of the results of basic or applied technology or scientific research to the design,

development, and production of new or improved products, services, or processes.

15379.3. (a) There is hereby established within the department the California Competitive Technology Program to provide grants to technology transfer projects. The department may fund a variety of technology transfer projects, including, but not limited to, the following: access to ongoing research and research findings, exchange or transfer of personnel, research support services, including capital outlay, and collaborative research.

(b) The department shall fund projects that include, but are not limited to, environmental improvement, energy development, advanced materials, automated manufacturing, biotechnology, optoelectronics, manufacturing technologies, medical technologies, electronics, computer science, software, robotics, and superconductivity.

(c) The department shall award grants based upon a competitive two part application process addressing the project's eligiblity and ability to fulfill the goals of the program. This process shall include:

(1) A preliminary qualifications screening.

(2) A proposal review which shall include a peer review of the proposal's scientific and technological aspects.

The request for application may include categories of technologies or industries for project funding. The department shall periodically determine and update the categories of technologies and industries based and upon advice from the Competitive Technology Advisory Committee. The request for application may also indicate the allocation of grant funds between the categories of technologies and industries.

(d) The department may award grants for a multiyear period of time not to exceed five years. Funds for the second and subsequent years of a multiyear grant shall be contingent upon satisfactory completion by the grantee of the prior year grant.

15379.4. An eligible project shall, at least, do all of the following:

(a) Include a significant amount of matching contributions from a private sector company or companies. "Matching contributions" include cash and in-kind contributions.

(b) Show evidence of a workable agreement between the parties participating in the project that at least includes both of the following:

(1) Resolution of the intellectual property rights relative to the project.

(2) A direct and ongoing involvement of the public and private sectors, when applicable, in the project.

(c) Identify the sources of funding for the entire project.

(d) Not supplant other funding for such purposes as facilities and personnel of public and independent universities, colleges, and laboratories.

(e) Include a private sector company or companies which have significant operations in the state.

(f) Be performed in the state.

15379.5. In awarding grants, the department shall consider the following:

(a) The likelihood of commercialization of a product, service, or process.

(b) The potential impact on the state's economy.

(c) The cost-effectiveness of the project.

(d) The importance of state funding for the viability of the project.

(e) Cost sharing by other participants.

(f) Inclusion within the categories of technology and industries as determined as priorities pursuant to subdivision (c) of Section 15379.3.

(g) The involvement of small businesses and minority- and women-owned businesses.

(h) Other criteria that the department determines are consistent with the purposes of the program.

15379.6. The project may include reasonable overhead costs incurred by a research institute and related to the project which shall not exceed the allowable federal overhead costs for research.

15379.7. Only a public agency or a not-for-profit or nonprofit organization shall receive funds under this chapter.

15379.8. The department may obtain scientific and technological expertise as needed to provide advice and input on the program, the establishment of program priorities and categories, the review of grant applications, and the review of project performance.

15379.9. The department shall adopt regulations to implement the grant program authorized by this chapter. The department shall adopt these regulations as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1, and for purposes of that chapter, including Section 11349.6, the adoption of the regulations shall be considered by the Office of Administrative Law to be necessary for the immediate preservation of the public peace, health and safety, and general welfare. Notwithstanding subdivision (e) of Section 11346.1, the regulations shall be repealed within 180 days after their effective date, unless the department complies with Chapter 3.5 (commencing with Section 11340) of Part 1 as provided in (e) of Section 11346.1.

15379.10. Notwithstanding Section 15379.3, 15379.4, and 15379.5, and the regulations implementing this chapter, the director may award discretionary technology transfer grants totalling not more than 5 percent or one hundred thousand dollars ($100,000), whichever is greater, of the funds appropriated each year for this program.

15379.12. The department shall report on this program in its annual report as required by subdivision (e) of Section 15323.

15379.13. (a) Of the funds appropriated for the program, up to 50 percent of the first ten million dollars ($10,000,000) in each fiscal year may be allocated for projects related to superconductivity until

a total of twenty-five million dollars ($25,000,000) has been expended for these projects.

(b) Of the amount appropriated for local assistance, the first two hundred thousand dollars ($200,000) shall be allocated for the purposes described in Chapter 1500 of the Statutes of 1987.

(c) The department may establish six positions to implement and operate this program upon receiving an appropriation for this program.

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 that the Department of Commerce may establish the California Competitive Technology Program, the establishment of which is critical for the economy of the state, as soon as funding becomes available, it is necessary that this act take effect immediately.

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## CHAPTER 1333

An act to amend Section 30 of the Business and Professions Code, to amend Sections 18403, 19276, and 25107 of the Revenue and Taxation Code, and to amend Section 5 of Chapter 825 of the Statutes of 1981, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor September 24, 1988. Filed with Secretary of State September 26, 1988.]

*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 (hereinafter referred to as licensing board) 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) 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.

(d) 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.

(e) 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.

(f) Licensing boards shall begin providing to the Franchise Tax Board the information required by this section as soon as economically feasible but no later than July 1, 1987. The information shall be furnished at a time which the Franchise Tax Board may require.

(g) 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.

(h) 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, shall not disclose or make known in any manner that information, except as provided in this section to the Franchise Tax Board.

(i) 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, to that end, the information furnished pursuant to this section shall be used exclusively for tax enforcement purposes.

SEC. 2. Section 18403 of the Revenue and Taxation Code is amended to read:

18403. If an individual is unable to make a return, the return shall be made by a duly authorized agent or by the guardian, fiduciary, conservator, or other person charged with the care of the person or property of the individual.

SEC. 3. Section 19276 of the Revenue and Taxation Code is amended to read:

19276. (a) Notwithstanding any other provision of law, the Franchise Tax Board may require any board, as defined in Section 22 of the Business and Professions Code, and the State Bar, the Department of Real Estate, and the Insurance Commissioner (hereinafter referred to as licensing board) to provide 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.

(b) The Franchise Tax Board may do the following:

(1) Send a notice to any licensee failing to provide the identification number or social security number as required by subdivision (a) of Section 30 of the Business and Professions Code and subdivision (a) of Section 1666.5 of the Insurance Code, describing the information that was missing, the penalty associated with not providing it, and that failure to provide the information within 30 days will result in the assessment of the penalty.

(2) After 30 days following the issuance of the notice described in paragraph (1), assess a one hundred dollar ($100) penalty, due and payable upon notice and demand, for any licensee failing to provide either its federal employer identification number (if the licensee is a partnership) or his or her social security number (for all others) as required in Section 30 of the Business and Professions Code and Section 1666.5 of the Insurance Code.

(c) Notwithstanding Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code, the information furnished to the Franchise Tax Board pursuant to Section 30 of the Business and Professions Code or Section 1666.5 of the Insurance Code shall not be deemed to be a public record and shall not be open to the public for inspection.

SEC. 4. Section 25107 of the Revenue and Taxation Code is amended to read:

25107. (a) For the purposes of allocation and apportionment of income under Sections 25101 and 25121, an international banking facility maintained by a bank within California shall be considered doing business without the state. Intangible personal property and sales reflected on the segregated books and records maintained pursuant to Section 23044 and recognized by the Board of Governors of the Federal Reserve System as attributable to the international banking facility shall be attributed to that international banking

facility in determining the property, payroll, and sales factors of the bank.

(b) As used in this section, "bank" means a commercial bank, the principal office of which is located in this state and which is incorporated and doing business under the laws of the United States or of this state, a United States branch or agency of a foreign bank, an Edge corporation organized under Section 25 (a) of the Federal Reserve Act, 12 United States Code 611-631, or an Agreement corporation having an agreement or undertaking with the Board of Governors of the Federal Reserve System under Section 25 of the Federal Reserve Act, 12 United States Code 601-604 (a).

SEC. 5. Section 5 of Chapter 825 of the Statutes of 1981 is amended to read:

Sec. 5. This act shall remain in effect only until January 1, 1991, and as of that date is repealed, unless a later enacted statute, which is chaptered before January 1, 1991, deletes or extends that date.

SEC. 6. The Legislative Analyst shall report to the Legislature on or before January 1, 1990, on the economic impact and tax implications of those provisions of this act relating to international banking facilities.

SEC. 7. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.

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## CHAPTER 1334

An act to amend Sections 11553, 11555, and 66740 of the Government Code, relating to solid waste.

[Approved by Governor September 24, 1988. Filed with Secretary of State September 26, 1988.]

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

SECTION 1. Section 11553 of the Government Code is amended to read:

11553. Effective July 1, 1984, an annual salary of sixty-five thousand dollars ($65,000) will be paid to each of the following:

(a) Chairman of the Unemployment Insurance Appeals Board.

(b) Chairperson of the Agricultural Labor Relations Board.

(c) President of the Public Utilities Commission.

(d) Chairman of the Fair Political Practices Commission.

(e) Chairperson of the Energy Resources Conservation and Development Commission.

(f) Chairperson of the Public Employment Relations Board.

(g) Chairperson of the Workers' Compensation Appeals Board.

(h) Administrative Director of the Division of Industrial Accidents.

On July 1, the annual compensation provided by this section shall

be increased in any fiscal year in which a cost-of-living increase is provided for state employees. The amount of the increase provided by this section shall be determined by multiplying the then current compensation by the percentage of the general cost-of-living salary increases provided for state employees during that fiscal year.

SEC. 2. Section 11553 of the Government Code is amended to read:

11553. Effective July 1, 1984, an annual salary of sixty-five thousand dollars ($65,000) will be paid to each of the following:

(a) Chairperson of the Unemployment Insurance Appeals Board.

(b) Chairperson of the Agricultural Labor Relations Board.

(c) President of the Public Utilities Commission.

(d) Chairperson of the Fair Political Practices Commission.

(e) Chairperson of the Energy Resources Conservation and Development Commission.

(f) Chairperson of the Public Employment Relations Board.

(g) Chairperson of the Workers' Compensation Appeals Board.

(h) Administrative Director of the Division of Industrial Accidents.

(i) Chairperson of the State Water Resources Control Board.

On July 1, the annual compensation provided by this section shall be increased in any fiscal year in which a cost-of-living increase is provided for state employees. The amount of the increase provided by this section shall be determined by multiplying the then current compensation by the percentage of the general cost-of-living salary increases provided for state employees during that fiscal year.

SEC. 3. Section 11555 of the Government Code is amended to read:

11555. Effective July 1, 1984, an annual salary of fifty-seven thousand dollars ($57,000) shall be paid to the following:

(a) Chairman of the Board of Prison Terms.

(b) Chairman of the State Water Resources Control Board.

(c) Chairman of the Youthful Offender Parole Board.

(d) Chairman of the Occupational Safety and Health Appeals Board.

(e) Chairperson of the California Waste Management Board.

On July 1, the annual compensation provided by this section shall be increased in any fiscal year in which a cost-of-living increase is provided for state employees. The amount of the increase provided by this section shall be determined by multiplying the then current compensation by the percentage of the general cost-of-living salary increases provided for state employees during that fiscal year.

SEC. 4. Section 11555 of the Government Code is amended to read:

11555. Effective July 1, 1984, an annual salary of fifty-seven thousand dollars ($57,000) shall be paid to the following:

(a) Chairperson of the Board of Prison Terms.

(b) Chairperson of the Youthful Offender Parole Board.

(c) Chairperson of the Occupational Safety and Health Appeals

Board.

(d) Chairperson of the California Waste Management Board.

On July 1, the annual compensation provided by this section shall be increased in any fiscal year in which a cost-of-living increase is provided for state employees. The amount of the increase provided by this section shall be determined by multiplying the then current compensation by the percentage of the general cost-of-living salary increases provided for state employees during that fiscal year.

SEC. 5. Section 11555 of the Government Code is amended to read:

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(a) Chairperson of the Board of Prison Terms.

(b) Chairperson of the State Water Resources Control Board.

(c) Chairperson of the Youthful Offender Parole Board.

(d) Chairperson of the California Waste Management Board.

On July 1, the annual compensation provided by this section shall be increased in any fiscal year in which a cost-of-living increase is provided for state employees. The amount of the increase provided by this section shall be determined by multiplying the then current compensation by the percentage of the general cost-of-living salary increases provided for state employees during that fiscal year.

SEC. 6. Section 11555 of the Government Code is amended to read:

11555. Effective July 1, 1984, an annual salary of fifty-seven thousand dollars ($57,000) shall be paid to the following:

(a) Chairperson of the Board of Prison Terms.

(b) Chairperson of the Youthful Offender Parole Board.

(c) Chairperson of the California Waste Management Board.

On July 1, the annual compensation provided by this section shall be increased in any fiscal year in which a cost-of-living increase is provided for state employees. The amount of the increase provided by this section shall be determined by multiplying the then current compensation by the percentage of the general cost-of-living salary increases provided for state employees during that fiscal year.

SEC. 7. Section 66740 of the Government Code is amended to read:

66740. There is in the Resources Agency the State Solid Waste Management Board, which is continued in existence and shall be known as the California Waste Management Board. Any reference in any law or regulation to the State Solid Waste Management Board is a reference to the California Waste Management Board.

The board shall consist of the following members:

(a) One member appointed by the Governor who is a mayor or a city council member.

(b) One member appointed by the Governor who is a county supervisor.

(c) Three representatives of the public appointed by the Governor.

(d) One representative of the public appointed by the Speaker of the Assembly, who shall have specialized education and experience in natural resources conservation and resources recovery.

(e) One representative of the public appointed by the Senate Committee on Rules, who shall be a registered civil engineer under the laws of this state and have specialized education and experience in natural resources conservation and resources recovery.

(f) One member appointed by the Governor from the private sector of the solid waste management industry from southern California.

(g) One member appointed by the Governor from the private sector of the solid waste management industry from northern California.

The Governor shall appoint, subject to the advice and consent of a majority of the Members of the Senate, one of the members of the board as chairperson. The chairperson shall serve full time.

SEC. 8. Section 2 of this bill incorporates amendments to Section 11553 of the Government Code proposed by both this bill and SB 1764. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1989, (2) each bill amends Section 11553 of the Government Code, and (3) this bill is enacted after SB 1764, in which case Section 1 of this bill shall not become operative.

SEC. 9. (a) Section 4 of this bill incorporates amendments to Section 11555 of the Government Code proposed by both this bill and SB 1764. It shall only become operative if (1) both bills are enacted and become effective January 1, 1989, (2) each bill amends Section 11555 of the Government Code, (3) AB 2888 is not enacted or as enacted does not operatively amend that section, and (4) this bill is enacted after SB 1764, in which case Sections 3, 5, and 6 of this bill shall not become operative.

(b) Section 5 of this bill incorporates amendments to Section 11555 of the Government Code proposed by both this bill and AB 2888. It shall only become operative if (1) both bills are enacted and become effective and operative January 1, 1988, (2) each bill amends Section 11555 of the Government Code, (3) SB 1764 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 2888 in which case Sections 3, 4, and 6 of this bill shall not become operative.

(c) Section 6 of this bill incorporates amendments to Section 11555 of the Government Code proposed by this bill, SB 1764, and AB 2888. It shall only become operative if (1) all three bills are enacted and become effective and operative January 1, 1989, (2) all three bills amend Section 11555 of the Government Code, (3) this bill is enacted after SB 1764 and AB 2888, in which case Sections 3, 4, and 5 of this bill shall not become operative.

# CHAPTER 1335

An act to amend Sections 23075 and 23095 of the Business and Professions Code, and to add Section 11561 to the Government Code, relating to alcoholic beverages, and making an appropriation therefor.

[Approved by Governor September 24, 1988. Filed with Secretary of State September 26, 1988.]

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

SECTION 1. Section 23075 of the Business and Professions Code is amended to read:

23075. There is in the state government an Alcoholic Beverage Control Appeals Board the members of which shall be appointed and shall serve as provided in Section 22 of Article XX of the Constitution, and shall receive an annual salary as provided for by Chapter 6 (commencing with Section 11550) of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 2. Section 23095 of the Business and Professions Code is amended to read:

23095. (a) Whenever a decision of the department suspending a license for 30 days or less becomes final, whether by failure of the licensee to appeal the decision or by exhaustion of all appeals and judicial review, the licensee may, before the operative date of the suspension, petition the department for permission to make an offer in compromise, to be paid into the Alcohol Beverage Control Fund, consisting of a sum of money in lieu of serving the suspension. Upon the receipt of the petition, the department may stay the proposed suspension and cause any investigation to be made which it deems desirable and may grant the petition if it is satisfied (a) that the public welfare and morals would not be impaired by permitting the licensee to operate during the period set for suspension and that the payment of the sum of money will achieve the desired disciplinary purposes; (b) that the books and records of the licensee are kept in such a manner that the loss of sales of alcoholic beverages which the licensee would have suffered had the suspension gone into effect can be determined with reasonable accuracy therefrom. The offer in compromise shall be the equivalent of 20 percent of the estimated gross sales of alcoholic beverages for each day of the proposed suspension, and the offer in compromise shall be not less than seven hundred fifty dollars ($750) or more than six thousand dollars ($6,000).

(b) Notwithstanding any other provision of this division, the department may accept an offer in compromise from a retail licensee in the equivalent of 20 percent of the estimated gross sales of alcoholic beverages for each day of a proposed suspension and the offer in compromise shall be not less than three hundred dollars

($300) or more than one thousand five hundred dollars ($1,500) provided the petitioning retailer has had no other accusation filed against him or her by the department during the prior three years from the date of the petition which has resulted in a final decision to suspend or revoke the retail license concerned.

(c) Notwithstanding the provisions of subdivision (a), the offer in compromise for nonretail licensees shall be the equivalent of 20 percent of the estimated gross sales of alcoholic beverages for each day of the proposed suspension, and the offer in compromise shall be not less than three hundred dollars ($300) and shall not exceed ten thousand dollars ($10,000) unless the nonretail licensee has violated Section 25500, 25502, 25503, or 25600 by giving to any licensee illegal inducements, secret rebates, or free goods amounting to more than ten thousand dollars ($10,000) in value, in which case the offer in compromise shall be equal to the value of the illegal inducements, secret rebates, or free goods given. All moneys collected as a result of penalties imposed under this subdivision shall be deposited directly in the General Fund in the State Treasury, rather than the Alcohol Beverage Control Fund as provided for in Section 25761.

SEC. 3. Section 11561 is added to the Government Code, to read:

11561. An annual salary of twenty-five thousand five hundred dollars ($25,500) shall be paid to each member of the Alcoholic Beverage Control Appeals Board.

SEC. 4. There is hereby appropriated from the Alcoholic Beverage Control Appeals Fund to the Controller the amount necessary to pay for the salary of each member of the Alcoholic Beverage Control Appeals Board, as specified in Section 11561 of the Government Code as contained in Section 3 of this act, for the six-month period commencing January 1, 1989.

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## CHAPTER 1336

An act to add Section 977.3 to the Penal Code, relating to crimes.

[Approved by Governor September 24, 1988. Filed with Secretary of State September 26, 1988.]

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

SECTION 1. Section 977.3 is added to the Penal Code, to read:

977.3. (a) Notwithstanding Section 977, the Board of Supervisors of Alameda County, with the approval of the presiding judge of the court, the supervising judge of any division of the court in which the project is to be conducted, the district attorney, and the public defender, may establish a pilot project. The project shall be developed in close consultation between the presiding judge, the supervising judge, the district attorney, the public defender, and the sheriff, and shall not exceed four years in duration.

(b) The project shall permit the initial arraignment in municipal court of defendants held in any state, county, or local penal facility within the county on misdemeanor charges, to be conducted by two-way electronic audio video communication between the defendant and the courtroom in lieu of the physical presence of the defendant in the courtroom. The defendant may be accompanied by his or her attorney, and may enter a plea, during such an arraignment. The defendant shall have the right to make his or her plea while physically present in the courtroom if he or she so requests.

(c) If the county conducts a pilot project pursuant to this section, it shall submit reports to the Legislative Analyst and the Judicial Council no later than September 30 of each year. The report shall include the following data:

(1) The number of add-on pleas, and the number of cases disposed of, through the use of audio video arraignment.

(2) The number of defendants who refuse to sign the waiver of personal appearance and are transported to the courtroom to be physically present for the arraignment proceedings.

(3) The number and impact of add-on defendants arraigned.

(4) Initial costs and maintenance costs of the project.

(5) Cost savings, including transportation costs, over the previous method of arraignment.

(6) The impact of audio video arraignment on all participants in the procedures used under this section, including, but not limited to, security personnel, attorneys, judges, defendants, and court employees.

(7) Any other benefits or problems incurred.

(8) Any future plans for the project.

Other specific data for inclusion in the report may be specified by the Judicial Council.

(d) The Legislative Analyst shall review and summarize all data submitted by the county and shall submit a report on the fiscal effects of this section along with any recommendations to the Legislature no later than December 1 of each year. The Judicial Council shall also review and summarize all data submitted by the county and shall submit a report on the nonfiscal, policy consequences of this section along with any recommendations to the Legislature no later than December 1 of each year.

(e) Notwithstanding any other provision of this section, a judge may order a defendant's personal appearance in court for arraignment, and shall not pursuant to this section accept a plea of guilty or no contest from a defendant not physically in the courtroom.

# CHAPTER 1337

An act to add Section 51551 to the Education Code, relating to education.

[Approved by Governor September 24, 1988. Filed with Secretary of State September 26, 1988.]

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

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

(a) Sixty-four percent of male teens and 44 percent of female teens have had sexual intercourse by age 18.

(b) Each year, one in seven teens contracts a sexually transmitted disease.

(c) The teen pregnancy rate for California's 15 to 19 year-olds--the sum of births, abortions, and miscarriages--has increased by 32.9 percent in California from 1970 to 1985.

(d) The abortion rate for teens 15 to 19 years of age has more than tripled from 1970 to 1985 and now exceeds the rate of births among California women under 20 by 38 percent.

(e) California's abortion rate for 15 to 19 year-olds is 64.8 percent higher than the national average.

(f) California's Superintendent of Public Instruction and the California State Board of Education have issued the Family Life/Sex Education Guidelines which affirm sexual abstinence outside the context of marriage.

(g) Sex education programs which do not emphasize sexual abstinence are inconsistent with society's concern for reducing unwanted teenage pregnancy, AIDS, and other sexually transmitted diseases.

SEC. 2. Section 51551 is added to the Education Code, to read:

51551. (a) All public elementary, junior high, and senior high school classes that teach sex education and discuss sexual intercourse shall emphasize that abstinence from sexual intercourse is the only protection that is 100 percent effective against unwanted teenage pregnancy, sexually transmitted diseases, and acquired immune deficiency syndrome (AIDS) when transmitted sexually. All material and instruction in classes that teach sex education and discuss sexual intercourse shall be age appropriate.

(b) All sex education courses that discuss sexual intercourse shall satisfy the following criteria:

(1) Course material and instruction shall be age appropriate.

(2) Course material and instruction shall stress that abstinence is the only contraceptive method which is 100 percent effective, and that all other methods of contraception carry a risk of failure in preventing unwanted teenage pregnancy. Statistics based on the latest medical information shall be provided to pupils citing the

failure and success rates of condoms and other contraceptives in preventing pregnancy.

(3) Course material and instruction shall stress that sexually transmitted diseases are serious possible hazards of sexual intercourse. Pupils shall be provided with statistics based on the latest medical information citing the failure and success rates of condoms in preventing AIDS and other sexually transmitted diseases.

(4) Course material and instruction shall include a discussion of the possible emotional and psychological consequences of preadolescent and adolescent sexual intercourse outside of marriage and the consequences of unwanted adolescent pregnancy.

(5) Course material and instruction shall stress that pupils should abstain from sexual intercourse until they are ready for marriage.

(6) Course material and instruction shall teach honor and respect for monogamous heterosexual marriage.

(7) Course material and instruction shall advise pupils of the laws pertaining to their financial responsibility to children born in and out of wedlock.

(8) Course material and instruction shall advise pupils that it is unlawful for males of any age to have sexual relations with females under the age of 18 to whom they are not married pursuant to Section 261.5 of the Penal Code.

(9) Course material and instruction shall emphasize that the pupil has the power to control personal behavior. Pupils shall be encouraged to base their actions on reasoning, self-discipline, sense of responsibility, self-control, and ethical considerations, such as respect for one's self and others.

(10) Course material and instruction shall teach pupils to not make unwanted physical and verbal sexual advances and how to say no to unwanted sexual advances. Pupils shall be taught that it is wrong to take advantage of, or to exploit, another person. The material and instruction shall also encourage youth to resist negative peer pressure.

(c) This section shall become operative July 1, 1989.

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## CHAPTER 1338

An act to amend Section 1276 of, and to add Section 15040.5 to, the Health and Safety Code, relating to health care.

[Approved by Governor September 24, 1988. Filed with Secretary of State September 26, 1988.]

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

SECTION 1. The Legislature finds and declares that:

(a) Hospital costs have increased at a greater rate than inflation

in general.

(b) There are many factors which drive the costs of hospital care. These factors include:

(1) Constant demands for upgrading current technology as a well as purchasing new technology. Besides staying abreast with competitors, demands are made on the hospital by physicians and surgeons and informed consumers for improved technology. Such demands are partially fueled by malpractice issues.

(2) The labor intensive nature of hospital care which is compounded by periodic shortages of certain types of personnel critical to hospital functions.

(3) An aging population which increasingly consumes more curative and restorative health care resources. This is a function of an overall healthier population which lives long enough to succumb to chronic and debilitating conditions as well as diseases which require intense and costly treatment.

(4) A hospital inpatient population which is much sicker than past patient populations and, therefore, consumes more resources, more intensely, in a shorter time frame.

(5) The current market incentives which can encourage the marketing of marginally necessary but profitable services at the expense of unprofitable services which the hospital must provide anyway and usually at a heavily discounted rate.

(6) Certain system inefficiencies which are gradually improving but which cannot be eliminated in the short run without a massive reordering of the health delivery system.

(7) Compliance with regulations and adminstrative policies and procedures some of which are no longer relevant or necessary for ensuring quality of care or patient safety. This factor overlays, in some degree, most other factors.

(c) Most factors which drive hospital costs are complex, are rooted in our social structure, ethics, and business practices, and do not allow for simple or expedient solutions. One factor, compliance with inappropriate regulations and procedures, can, however, be addressed by state government and the industry in the short run and without a great expenditure of resources. While the effect of this factor cannot be readily quantified, it may be significant in the continuing cost escalation. Towards the objective of reducing the impact of regulations and administrative procedures on hospital costs, there are certain issues which can be addressed immediately. These issues are:

(1) Formalizing and improving due process in administration of "program flexibility" by the State Department of Health Services.

(2) Streamlining the plan review process which is required by the Hospital Seismic Safety Act of 1983, Chapter 1 (commencing with Section 15000) of Division 12.5 of the Health and Safety Code.

(3) Positioning hospital licensing and certification activities within state government so that those responsible may be more responsive to the Legislature, the general public, and the industry.

(d) As a major payor for hospital services in California and in its role of assuring affordable health care for all citizens, state government has the obligation to identify, qualify to the extent possible, and address factors which contribute to the costs of hospital care in California. To that end a study should be commissioned to further identify and quantify cost factors, the extent to which such factors are out of the sphere of influence of individual hospitals, and how the state government might assist in reducing such costs.

SEC. 2. Section 1276 of the Health and Safety Code is amended to read:

1276. (a) The building standards published in the State Building Standards Code by the Office of Statewide Health Planning and Development, and the regulations adopted by the state department shall, as applicable, prescribe standards of adequacy, safety, and sanitation of the physical plant, of staffing with duly qualified licensed personnel, and of services, based on the type of health facility and the needs of the persons served thereby.

(b) These regulations shall permit program flexibility by the use of alternate concepts, methods, procedures, techniques, equipment, personnel qualifications, or conducting of pilot projects as long as statutory requirements are met and the use has the prior written approval of the department or the office, as applicable. The approval of the department or the office shall provide for the terms and conditions under which the exception is granted. A written request plus supporting evidence shall be submitted by the applicant or licensee to the department or office regarding the exception, as applicable.

(c) While it is the intent of the Legislature that health facilities shall maintain continuous, ongoing compliance with the licensing rules and regulations, it is the further intent of the Legislature that the state department expeditiously review and approve, if appropriate, applications for program flexibility. The Legislature recognizes that health care technology, practice, and personnel qualifications and availability is changing rapidly. Therefore, requests for program flexibility require expeditious consideration.

(d) The state department shall, on or before April 1, 1989, develop a standardized form and format for requests by health facilities for program flexibility. Health facilities shall thereafter apply to the state department for program flexibility in the prescribed manner. After the state department receives a complete application requesting program flexibility, it shall have 60 days within which to approve, approve with conditions or modifications, or deny the application. Denials and approvals with conditions or modifications shall be accompanied by an analysis and a detailed justification for any conditions or modifications imposed. Summary denials to meet the 60-day timeframe shall not be permitted.

SEC. 3. Section 15040.5 is added to the Health and Safety Code, to read:

15040.5. Notwithstanding this chapter or any other provision of

law, a city or county may operate a federally owned facility for the purpose of providing services to persons with human immunodeficiency (HIV) infections, and the operation of that facility shall be subject only to those seismic safety standards contained in federal law.

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## CHAPTER 1339

An act to amend Sections 25214, 25215, 25540, and 25541 of, and to add Sections 25213.3 and 25502.5 to, the Corporations Code, relating to corporations.

[Approved by Governor September 24, 1988. Filed with Secretary of State September 26, 1988.]

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

SECTION 1. Section 25213.3 is added to the Corporations Code, to read:

25213.3. The commissioner shall, after appropriate notices and opportunity for hearing, by order suspend, for a period not exceeding 12 months, or bar from any position of employment, management or control of any broker-dealer, any officer, director, partner, agent, employee of, or person performing similar functions for, a broker-dealer, if the person has been convicted of, or has pleaded nolo contendere to, a felony or misdemeanor in violation of Section 25541 that was committed on or after January 1, 1989.

SEC. 2. Section 25214 of the Corporations Code is amended to read:

25214. (a) It is unlawful for any person, as to whom an order suspending or barring employment or control is in effect pursuant to Section 25213 or 25213.3, willfully to become or to be employed by any broker-dealer or investment adviser, contrary to the terms of that order, without the consent of the commissioner; and it is unlawful for any broker-dealer to permit a person as to whom an order is in effect pursuant to Section 25213, 25213.3, or 25232.1 to become or to remain a person employed by the broker-dealer, contrary to the terms of that order, without the consent of the commissioner, if the broker-dealer knew, or in the exercise of reasonable care should have known, of the order.

(b) Any person as to whom an order suspending or barring employment or control is issued pursuant to Section 25213 or 25213.3 may petition the commissioner for reinstatement or reduction of penalty, or for modification of the order, as provided in and subject to the provisions of Section 11522 of the Government Code. The commissioner may, at any time and with the consent of that person without hearing, modify such order.

SEC. 3. Section 25215 of the Corporations Code is amended to

read:

25215. No order may be entered under Section 25212, 25213, or 25213.3 except after notice to any person affected thereby (and, in the case of an agent, to his employer or prospective employer if known to the commissioner) of the intention of the commissioner to enter such order and of the reasons therefor and that upon receipt of a request the matter will be set down for hearing to commence within 15 business days after such receipt unless the person affected consents to a later date. If no hearing is requested within 30 days after the mailing of the notice and none is ordered by the commissioner, the order may be entered without hearing to remain in effect until it is modified or vacated by the commissioner. In the case of an original application for a certificate, such a hearing must be set down to commence within 15 business days after receipt of a written request by the applicant made 30 days or more after the filing of the application, even though no such notice by the commissioner has been given, unless the applicant consents to a later date. If a hearing is requested or ordered, it shall be held in accordance with the provisions of the Administrative Procedure Act, Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the commissioner shall have all of the powers granted thereunder.

SEC. 4. Section 25502.5 is added to the Corporations Code, to read:

25502.5. (a) Any person other than the issuer who violates Section 25402 shall be liable to the issuer of the security purchased or sold in violation of Section 25402 for damages in an amount up to three times the difference between the price at which the security was purchased or sold and the market value which the security would have had at the time of the purchase or sale if the information known to the defendant had been publicly disseminated prior to that time and a reasonable time had elapsed for the market to absorb the information and shall be liable to the issuer of the security or to a person who institutes an action under this section in the right of the issuer of the security for reasonable costs and attorney's fees.

(b) The amounts recoverable under this section by the issuer shall be reduced by any amount paid by the defendant in a proceeding brought by the Securities and Exchange Commission with respect to the same transaction or transactions under the federal Insider Trading Sanctions Act of 1984 (15 U.S.C. Secs. 78a, 78c, 78o, 78t, 78u, and 78ff) or any other act regardless of whether the amount was paid pursuant to a judgment or settlement or paid before or after the filing of an action by the plaintiff against the defendant. If a proceeding has been commenced by the Securities and Exchange Commission but has not been finally resolved, the court shall delay entering a judgment for the plaintiff under this section until that proceeding is resolved.

(c) If any shareholder of an issuer alleges to the board that there has been a violation of this section, the board shall be required to

consider the allegation in good faith, and if the allegation involves misconduct by any director, that director shall not be entitled to vote on any matter involving the allegation. However, that director may be counted in determining the presence of a quorum at a meeting of the board or a committee of the board.

(d) This section shall only apply to issuers who have total assets in excess of one million dollars ($1,000,000) and have a class of equity security held of record by 500 or more persons.

SEC. 5. Section 25540 of the Corporations Code is amended to read:

25540. (a) Except as provided for in subdivision (b), any person who willfully violates any provision of this law, or who willfully violates any rule or order under this law, shall upon conviction be fined not more than two hundred fifty thousand dollars ($250,000) or imprisoned in the state prison, or in a county jail for not more than one year, or be punished by both such fine and imprisonment; but no person may be imprisoned for the violation of any rule or order if he or she proves that he or she had no knowledge of the rule or order.

(b) Any person who willfully violates Section 25400, 25401, or 25402 shall upon conviction be fined not more than two hundred fifty thousand dollars ($250,000), or imprisoned in the state prison for two, three, or five years, or be punished by both such fine and imprisonment.

SEC. 6. Section 25541 of the Corporations Code is amended to read:

25541. Any person who willfully employs, directly or indirectly, any device, scheme, or artifice to defraud in connection with the offer, purchase, or sale of any security or willfully engages, directly or indirectly, in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person in connection with the offer, purchase, or sale of any security shall upon conviction be fined not more than two hundred fifty thousand dollars ($250,000) or imprisoned in the state prison for two, three, or five years, or be punished by both such fine and imprisonment.

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.

# CHAPTER 1340

An act to amend Sections 10148, 10232.4, and 10236.2 of the Business and Professions Code, relating to real property.

[Approved by Governor September 24, 1988. Filed with Secretary of State September 26, 1988 ]

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

SECTION 1. Section 10148 of the Business and Professions Code is amended to read:

10148. (a) A licensed real estate broker shall retain for three years copies of all listings, deposit receipts, canceled checks, trust records, and other documents executed by him or her or obtained by him or her in connection with any transactions for which a real estate broker license is required. The retention period shall run from the date of the closing of the transaction or from the date of the listing if the transaction is not consummated. After notice, such books, accounts and records shall be made available for examination and inspection by the commissioner or his or her designated representative during regular business hours; and shall, upon the appearance of sufficient cause, be subject to audit without further notice, except that such audit shall not be harassing in nature.

(b) The commissioner shall charge a real estate broker for the cost of an audit, if prior to the audit the commissioner has found, in a final desist and refrain order issued under Section 10086 or in a final decision following a disciplinary hearing held in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code that the broker has violated Section 10145 or a regulation or rule of the commissioner interpreting Section 10145.

The commissioner may maintain an action for the recovery of the cost in any court of competent jurisdiction. In determining the cost incurred by the commissioner for an audit, the commissioner may use the estimated average hourly cost for all persons performing audits of real estate brokers.

SEC. 2. Section 10232.4 of the Business and Professions Code is amended to read:

10232.4. (a) In making a solicitation to a particular person and in negotiating with that person to make a loan secured by real property or to purchase a real property sales contract or a note secured by a deed of trust, a real estate broker shall deliver to the person solicited the applicable completed statement described in Section 10232.5 as early as practicable before he or she becomes obligated to make the loan or purchase and, except as provided in subdivision (c), before the receipt by or on behalf of the broker of any funds from that person. The statement shall be signed by the prospective lender or purchaser and by the real estate broker, or by a real estate

salesperson licensed to the broker, on the broker's behalf. When so executed, an exact copy shall be given to the prospective lender or purchaser, and the broker shall retain a true copy of the executed statement for a period of four years.

(b) The requirement of delivery of a disclosure statement pursuant to subdivision (a) shall not apply with respect to the following persons:

(1) The prospective purchaser of a security offered under authority of a permit issued pursuant to the provisions of Article 6 (commencing with Section 10237) of this chapter or applicable provisions of the Corporate Securities Law of 1968 (Div. 1. (commencing with Sec. 25000) of Title 4 of the Corp. C.) which requires that each prospective purchaser of a security be given a prospectus or other form of disclosure statement approved by the department issuing the permit.

(2) The seller of real property who agrees to take back a promissory note of the purchaser as a method of financing all or a part of the purchase of the property.

(3) The prospective purchaser of a security offered pursuant to and in accordance with a regulation duly adopted by the Commissioner of Corporations granting an exemption from qualification under the Corporate Securities Law of 1968 for the offering of one of the conditions of the exemption is that each prospective purchaser of the security be given a disclosure statement prescribed by the regulation before the prospective purchaser becomes obligated to purchase the security.

(4) A prospective lender or purchaser, if that lender or purchaser is the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Government National Mortgage Association, a bank, a bank holding company, a savings and loan association, a savings and loan association holding company, an industrial loan company, a credit union, an insurance company, or a pension trust.

(c) When the broker has custody of funds of a prospective lender or purchaser which were received and are being maintained with the express permission of the owner and in accordance with law, and the broker retains the funds in an escrow depository or a trust fund account pending receipt of the owner's express written instructions to disburse the funds for a loan or purchase, the broker shall cause the disclosure statement to be delivered to the owner and shall obtain the owner's written consent to the proposed disbursement before making the disbursement. Unless the broker has a written agreement with the owner as provided in Section 10231.1, the broker shall transmit to the owner not later than 60 days after receipt, all funds then in the broker's custody for which the owner has not given written instructions authorizing disbursement.

SEC. 3. Section 10236.2 is added to the Business and Professions Code, to read:

10236.2. (a) A real estate broker who satisfies the criteria of

subdivision (a) or (b) of Section 10232 and who fails to notify the Department of Real Estate, in writing, of that fact within 30 days thereafter as required by subdivision (e) of Section 10232 shall be assessed a penalty of fifty dollars ($50) per day for each additional day written notification has not been received up to and including the 30th day after the first day of the assessment penalty. On and after the 31st day the penalty is one hundred dollars ($100) per day, not to exceed a total penalty of ten thousand dollars ($10,000) regardless of the number of days, until the department receives the written notification.

(b) The commissioner may suspend or revoke the license of any real estate broker who fails to pay a penalty imposed under this section. In addition, the commissioner may bring an action in an appropriate court of this state to collect payment of the penalty.

(c) All penalties paid or collected under this section shall be deposited into the Real Estate Fund.

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## CHAPTER 1341

An act to amend Section 16241 of the Probate Code, relating to trusts.

[Approved by Governor September 24, 1988. Filed with Secretary of State September 26, 1988.]

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

SECTION 1. Section 16241 of the Probate Code is amended to read:

16241. The trustee has the power to borrow money for any trust purpose to be repaid from trust property. The lender may include, but is not limited to, a bank holding company, affiliate, or subsidiary of the trustee.

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## CHAPTER 1342

An act to add Chapter 2.6 (commencing with Section 10230) to Part 2 of Division 2, and to add, repeal, and add Section 10232.5 or of the Insurance Code, relating to insurance.

[Approved by Governor September 24, 1988. Filed with Secretary of State September 26, 1988.]

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

SECTION 1. Chapter 2.6 (commencing with Section 10230) is added to Part 2 of Division 2 of the Insurance Code, to read:

## CHAPTER 2.6. LONG-TERM CARE INSURANCE

### Article 1. Purpose and Title

10230. The purpose of this chapter is to promote the public interest, to promote the availability of long-term care insurance policies, to protect applicants for, and consumers of, long-term care insurance from unfair or deceptive sales or enrollment practices, to establish standards for long-term care insurance, to facilitate public understanding and comparison of long-term care insurance policies, and to facilitate flexibility and innovation in the development of long-term care insurance coverage.

10230.2. Unless otherwise specifically prohibited, the requirements of this chapter shall apply to policies or certificates issued, delivered, or amended on or after January 1, 1989. This chapter does not supersede the obligations of entities subject to this chapter to comply with the substance of other applicable insurance provisions insofar as they do not conflict with this chapter, except that laws and regulations designed and intended to apply to medicare supplement insurance policies shall not be applied to long-term care insurance. Any policy that provides long-term care insurance benefits, or is advertised, marketed, or offered as long-term care insurance or nursing home insurance shall be considered long-term care insurance as defined in this chapter.

10230.4. This chapter shall be known and may be cited as the "Long-Term Care Insurance Act."

### Article 2. Definitions

10231. Unless the context requires otherwise, the definitions in this article shall govern the construction of this chapter.

10231.2. "Long-term care insurance" means any insurance policy, contract, or rider advertised, marketed, offered, or designed to provide coverge for not less that 12 consecutive months for each covered person on an expense incurred, indemnity, prepaid, or other basis for one or more necessary or medically necessary diagnostic, preventive, therapeutic, rehabilitative, maintenance, or personal care services, provided in a setting other than an acute care unit of a hospital. Long-term care insurance includes group and individual policies, contracts, or riders whether issued by insurers, fraternal benefit societies, nonprofit hospital service plans, or any similar organization regulated by the commissioner. Long-term care insurance does not include any insurance policy which is offered primarily to provide basic Medicare supplement coverage, basic hospital expense coverage, basic medical-surgical expense coverage, hospital confinement indemnity coverage, major medical expense coverage, disability income protection coverage, accident only coverage, specified disease or specified accident coverage, or limited benefit health coverage.

10231.4. "Applicant" means either of the following:

(a) In the case of an individual long-term care insurance policy, the person who seeks to contract for benefits.

(b) In the case of a group long-term care insurance policy, the proposed certificate holder.

10231.5. "Certificate" means any certificate issued under a group long-term care insurance policy, which policy has been delivered or issued for delivery in this state.

10231.6. "Group long-term care insurance" means a long-term care insurance policy which is delivered or issued for delivery in this state and issued to any of the following:

(a) One or more employers or labor organizations, or a trust or to the trustees of a fund established by one or more employers or labor organizations, or a combination thereof, for employees or former employees or a combination thereof or for members or former members or a combination thereof, of the labor organization.

(b) Any professional, trade, or occupational association for its members or former or retired members, or combination thereof, if that association meets both of the following:

(1) Is composed of individuals all of whom are or were actively engaged in the same profession, trade, or occupation.

(2) Has been maintained in good faith for purposes other than obtaining insurance.

(c) An association or a trust or the trustees of a fund established, created, or maintained for the benefit of members of one or more associations. Prior to advertising, marketing, or offering that policy or a certificate within this state, the association or associations, or the insurer of the association or associations, shall file evidence with the commissioner that the association or associations have at the outset a minimum of 100 persons and have been organized and maintained in good faith for purposes other than that of obtaining insurance, have been in active existence for at least one year, and have a constitution and by laws which provide all of the following:

(1) The association or associations hold regular meeting, not less than annually, to further purposes of the members.

(2) Except for credit unions, the association or associations collect dues or solicit contributions from members.

(3) The members have voting privileges and representation on the governing board and committees.

Thirty days after that filing the association or associations shall be deemed to satisfy these organizational requirements, unless the commissioner makes a finding that the association or associations do not satisfy those organizational requirements.

(d) A group other than as described in subdivisions (a), (b), and (c), subject to all of the following findings by the commissioner:

(1) The issuance of the group policy or certificate is not contrary to the best interest of the public.

(2) The issuance of the group policy will result in economies of acquisition or administration.

(3) The benefits are reasonable in relation to the premiums charged.

(e) A life care contract provider which has received a certificate of authority in accordance with Chapter 10 (commencing with Section 1770) of Division 2 of the Health and Safety Code. Any life care contract provider which has not received the certificate of authority from the State Department of Social Services shall be subject to this chapter.

10231.8. "Policy" means any policy, contract, subscriber agreement, rider or endorsement delivered or issued for delivery in this state by an insurer, fraternal benefit society, nonprofit hospital service plan, or any similar organization, regulated by the commissioner.

## Article 3. General Provisions

10232. (a) No group long-term care insurance coverage may be offered or sold to a resident of this state under a group policy issued in another state to a group described in subdivision (d) of Section 10231.6, unless the commissioner has determined that the requirements imposed by subdivision (d) of Section 1231.6 have been met. At least 30 days in advance of advertising, marketing, or offering coverage within this state, an insurer issuing a policy to a group described in subdivision (d) of Section 10231.6 shall accomplish an informational filing with the commissioner which consists of the following materials:

(1) A specimen master policy and certificate.

(2) The corresponding outline of coverage.

(3) Representative advertising materials to be used in this state.

(4) At the option of the insurer, any other documentation which the insurer believes will provide information sufficient to allow the commissioner to determine that the requirements of subdivision (d) of Section 10231.6 have been met or which establishes that the insurance regulatory authority of another state has made a determination that the requirements have been met, or both.

(b) No group long-term care insurance coverage may be offered or sold to a resident of this state under a group policy issued in another state to a group described in subdivision (c) of Section 10231.6, unless, prior to advertising, marketing, or offering that coverage within this state, the association or associations, or the insurer of the association or associations, files evidence with the commissioner that the association or associations have at the outset a minimum of 100 persons, have been organized and maintained in good faith for purposes other than that of obtaining insurance, have been in active existence for at least one year, and have a constitution and bylaws which provide all of the following:

(1) The association or associations hold regular meetings, not less than annually, to further purposes of the members.

(2) Except for credit unions, the association or associations collect

dues or solicit contributions from members.

(3) The members have voting privileges and representation on the governing board and committees.

Thirty days after that filing, the association or associations shall be deemed to satisfy those organizational requirements, unless the commissioner makes the finding that the association or associations do not satisfy those organizational requirements.

The association or associations, or the insurer of the association or associations, shall accompany this organizational filing with an informational filing which consists of the following materials:

(1) A specimen master policy and certificate.

(2) The corresponding outline of coverage.

(3) Representative advertising materials to be used in this state.

(c) Compliance with the informational filings required to be made by this section shall also constitute compliance with the requirements of Section 10236.9.

(d) The materials required to be filed with the commissioner by this section shall be filed with the commissioner for informational purposes only, and not for approval purposes. Compliance with the informational filings required to be made by this section shall also constitute compliance with the requirements of Section 10236.9.

10232.1. The commissioner shall, in carrying out the purposes of this chapter, adopt rules and regulations that include the standards for full and fair disclosure setting forth the manner, content, and required disclosures for the sale of long-term care insurance policies, terms of renewability, initial and subsequent conditions of eligibility, nonduplication of coverage provisions, coverage of dependents, preexisting conditions, termination of insurance, continuation or conversion, probationary periods, limitations, exceptions, reductions, eliminations periods, requirements for replacement, recurrent conditions, and definitions of terms. Any regulations adopted by the commissioner, with respect to terms of renewability, shall substantially reflect the renewability standards contained in Section 6A of the National Association of Insurance Commissioners Long-Term Care Insurance Model Regulations, as most recently revised. The commissioner shall adopt any other reasonable rule or regulation that is necessary to carry out this chapter.

10232.4. (a) No long-term care insurance policy or certificate other than a group policy or certificate, as described in subdivision (a) of Section 10231.6, shall use a definition of preexisting condition which is more restrictive than a condition for which medical advice or treatment was recommended by, or received from a provider of health care services, within six months preceding the effective date of coverage of an insured person.

(b) No long-term care insurance policy or certificate other than an employer's group policy or certificate as described in subdivision (a) of Section 10231.6 may exclude coverage for a loss or confinement which is the result of a preexisting condition unless that loss or confinement begins within six months following the effective date of

coverage of an insured.

(c) The commissioner may extend the limitation periods set forth in subdivisions (a) and (b) as to specific age group categories in specific policy forms upon findings that the extension is in the best interest of the public.

(d) The definition of preexisting condition does not prohibit an insurer from using an application form designed to elicit the complete health history of an applicant, and on the basis of the answers on that application, from underwriting in accordance with that insurer's established underwriting standards. Unless otherwise provided in the policy or certificate a preexisting condition, regardless of whether it is disclosed on the application, need not be covered until the waiting period described in subdivision (b) expires. Unless such waiver or rider has been specifically approved by the commissioner, no long-term care insurance policy or certificate may exclude or use waivers or riders of any kind to exclude, limit, or reduce coverage or benefits for specifically named or described preexisting diseases or physical conditions beyond the waiting period described in subdivision (b).

10232.5. (a) No long-term care insurance policy which provides benefits only following institutionalization shall condition those benefits upon admission to a facility for the same or related conditions within a period of less than 30 days after discharge from the institution.

(b) No long-term care insurance policy, which preconditions the availability of benefits on prior hospitalization in an acute care facility, may be delivered or issued for delivery in this state unless the insurer offering that policy also makes available a long-term care insurance policy which does not precondition payment of benefits on prior hospitalization in an acute care facility.

(c) This section shall only be operative until January 1, 1990, and as of that date is repealed.

10232.5. On or after January 1, 1990, no long-term care insurance policy, which preconditions the availability of benefits on prior hospitalization, may be delivered or issued for delivery in this state.

This section shall become operative January 1, 1990.

10232.6. The commissioner may adopt regulations establishing loss ratio standards for long-term care insurance policies provided that a specific reference to long-term care insurance policies is contained in the regulation. Any regulations adopted by the commissioner shall substantially reflect the loss ratio standards contained in Section 10 of the National Association of Insurance Commissioners Long-Term Care Insurance Model Regulations, as most recently revised.

10232.7. (a) An applicant for a long-term care insurance policy or a certificate, other than an applicant as described in subdivisions (a), (b), and (c) of Section 10231.6, shall have the right to return the policy or certificate by first-class United States mail within 30 days of its delivery and to have the premium refunded if, after examination

of the policy or certificate, the applicant is not satisfied for any reason.

(b) The return of a policy or certificate shall void the policy or certificate from the beginning and the parties shall be in the same position as if no policy, certificate, or contract had been issued. All premiums paid and any policy fee paid for the policy shall be fully refunded directly to the applicant by the insurer within 30 days after the policy or certificate is returned.

(c) Notwithstanding Section 10276 or any other law, long-term care insurance policies or certificates shall have a notice prominently printed on the first page of the policy or certificate, or attached thereto, stating in substance the conditions described in subdivisions (a) and (b).

10232.8. The commissioner shall, as required by this chapter, or from time to time as conditions warrant, after notice and public hearing, adopt reasonable regulations, and amendments and additions thereto, as are necessary to administer this chapter.

SEC. 2. If any provision of this act or the application thereof to any person or circumstance is held invalid, such 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.

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## CHAPTER 1343

An act to amend Section 1780 of the Civil Code, relating to consumer legal remedies.

[Approved by Governor September 24, 1988. Filed with Secretary of State September 26, 1988.]

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

SECTION 1. Section 1780 of the Civil Code is amended to read:

1780. (a) Any consumer who suffers any damage as a result of the use or employment by any person of a method, act, or practice declared to be unlawful by Section 1770 may bring an action against such person to recover or obtain any of the following:

(1) Actual damages, but in no case shall the total award of damages in a class action be less than three hundred dollars ($300).

(2) An order enjoining such methods, acts, or practices.

(3) Punitive damages.

(4) Any other relief which the court deems proper.

(b) Such action may be commenced in the county in which the person against whom it is brought resides, has his or her principal place of business, or is doing business, or in the county where the transaction or any substantial portion thereof occurred.

If within any such county there is a municipal or justice court,

having jurisdiction of the subject matter, established in the city and county or judicial district in which the person against whom the action is brought resides, has his or her principal place of business, or is doing business, or in which the transaction or any substantial portion thereof occurred, then such court is the proper court for the trial of such action. Otherwise, any municipal or justice court in such county having jurisdiction of the subject matter is the proper court for the trial thereof.

In any action subject to the provisions of this section, concurrently with the filing of the complaint, the plaintiff shall file an affidavit stating facts showing that the action has been commenced in a county or judicial district described in this section as a proper place for the trial of the action. If a plaintiff fails to file the affidavit required by this section, the court shall, upon its own motion or upon motion of any party, dismiss any such action without prejudice.

(c) The court shall award court costs and attorney fees to prevailing plaintiffs in litigation filed pursuant to this section. Reasonable attorney fees may be awarded to a prevailing defendant upon a finding by the court that the plaintiff's prosecution of the action was not in good faith.

SEC. 2. Section 1780 of the Civil Code is amended to read:

1780. (a) Any consumer who suffers any damage as a result of the use or employment by any person of a method, act, or practice declared to be unlawful by Section 1770 may bring an action against such person to recover or obtain any of the following:

(1) Actual damages, but in no case shall the total award of damages in a class action be less than one thousand dollars ($1,000).

(2) An order enjoining such methods, acts, or practices.

(3) Restitution of property.

(4) Punitive damages.

(5) Any other relief which the court deems proper.

(b) Any consumer who is a senior citizen or a disabled person, as defined in subdivisions (f) and (g) of Section 1761, as part of an action under subdivision (a), may seek and be awarded, in addition to the remedies specified therein, up to five thousand dollars ($5,000) where the trier of fact (1) finds that the consumer has suffered substantial physical, emotional, or economic damage resulting from the defendant's conduct, (2) makes an affirmative finding in regard to one or more of the factors set forth in subdivision (b) of Section 3345, and (3) finds that an additional award is appropriate. Judgment in a class action by senior citizens or disabled persons under Section 1781 may award each class member such an additional award where the trier of fact has made the foregoing findings.

(c) An action under subdivision (a) or (b) may be commenced in the county in which the person against whom it is brought resides, has his or her principal place of business, or is doing business, or in the county where the transaction or any substantial portion thereof occurred.

If within any such county there is a municipal or justice court,

having jurisdiction of the subject matter, established in the city and county or judicial district in which the person against whom the action is brought resides, has his or her principal place of business, or is doing business, or in which the transaction or any substantial portion thereof occurred, then such court is the proper court for the trial of such action. Otherwise, any municipal or justice court in such county having jurisdiction of the subject matter is the proper court for the trial thereof.

In any action subject to the provisions of this section, concurrently with the filing of the complaint, the plaintiff shall file an affidavit stating facts showing that the action has been commenced in a county or judicial district described in this section as a proper place for the trial of the action. If a plaintiff fails to file the affidavit required by this section, the court shall, upon its own motion or upon motion of any party, dismiss any such action without prejudice.

(d) The court shall award court costs and attorney's fees to a prevailing plaintiff in litigation filed pursuant to this section. Reasonable attorney's fees may be awarded to a prevailing defendant upon a finding by the court that the plaintiff's prosecution of the action was not in good faith.

SEC. 3. Section 2 of this bill incorporates amendments to Section 1780 of the Civil Code proposed by both this bill and SB 1157. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1989, (2) each bill amends Section 1780 of the Civil Code, and (3) this bill is enacted after SB 1157, in which case Section 1 of this bill shall not become operative.

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## CHAPTER 1344

An act to add Article 3.6 (commencing with Section 53717) to Chapter 4 of Part 1 of Division 2 of Title 5 of the Government Code, relating to taxation, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 24, 1988 Filed with Secretary of State September 26, 1988.]

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

SECTION 1. Article 3.6 (commencing with Section 53717) is added to Chapter 4 of Part 1 of Division 2 of Title 5 of the Government Code, to read:

### Article 3.6. Public Library Special Taxes

53717. (a) Pursuant to Section 4 of Article XIII A of the California Constitution and Article 3.5 (commencing with Section 50075) of Chapter 1 of Part 1 of Division 1, and consistent with Article

3.7 (commencing with Section 53720), any city, county, city or county, or library district may impose special taxes for the purpose of providing public library facilities and services as described in Chapter 1.5 (commencing with Section 18010) of Part 11 of the Education Code.

(b) As used in this section, "special taxes" means special taxes that apply uniformly to all taxpayers or all real property within the city, county, city and county, or library district.

53717.2. A tax imposed pursuant to this article is a special tax and not a special assessment, and there is no requirement that the tax be apportioned on the basis of benefit to any property. However, a special tax levied pursuant to this article may be on or based on benefit received by parcels of real property, the cost of making facilities or authorized services available to each parcel, or other reasonable basis as determined by the city, county, city or county, or library district. A special tax apportioned on any of these bases shall not be construed to be on or based upon the ownership of real property.

53717.4. This article does not apply to any special tax or other charge imposed under Chapter 2.5 (commencing with Section 53311).

53717.6. This article does not apply to any special tax imposed prior to the effective date of this article.

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 certain local agencies to seek voter approval at the election of November 8, 1988, for the imposition of special taxes for public library facilities and services purposes, it is necessary that this act take effect immediately.

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## CHAPTER 1345

An act to add Article 3.8 (commencing with Section 53730.01) to Chapter 4 of Part 1 of Division 2 of Title 5 of the Government Code, and to amend Section 32121 of the Health and Safety Code, relating to financing for hospital districts.

[Approved by Governor September 24, 1988. Filed with Secretary of State September 26, 1988.]

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

SECTION 1. Article 3.8 (commencing with Section 53730.01) is added to Chapter 4 of Part 1 of Division 2 of Title 5 of the Government Code, to read:

Article 3.8. Hospital Districts: Special Taxes

53730.01. A hospital district established pursuant to Division 23 (commencing with Section 32000) of the Health and Safety Code whose hospitals are wholly owned and are operated by the district shall have the authority to impose special taxes pursuant to Article XIII A of the California Constitution and Article 3.5 (commencing with Section 50075) of Chapter 1 of Part 1 of Division 1 and consistent with Article 3.7 (commencing with Section 53720). The board of directors shall determine the basis and nature of any special tax and its manner of collection.

"Special taxes" as used in this section, means special taxes which apply uniformly to all taxpayers or all real property within the hospital district.

53730.02. This article does not apply to any special tax imposed prior to January 1, 1989, nor does this article affect the validity of any special tax imposed by a hospital district prior to January 1, 1989.

SEC. 2. Section 32121 of the Health and Safety Code is amended to read:

32121. Each local hospital district shall have and exercise the following powers:

(a) To have and use a corporate seal and alter it at its pleasure.

(b) To sue and be sued in all courts and places and in all actions and proceedings whatever.

(c) To purchase, receive, have, take, hold, lease, use, and enjoy property of every kind and description within and without the limits of the district, and to control, dispose of, convey, and encumber the same and create a leasehold interest in the same for the benefit of the district.

(d) To exercise the right of eminent domain for the purpose of acquiring real or personal property of every kind necessary to the exercise of any of the powers of the district.

(e) To establish one or more trusts for the benefit of the district, to administer any trust declared or created for the benefit of the district, to designate one or more trustees for trusts created by the district, to receive by gift, devise, or bequest, and hold in trust or otherwise, property, including corporate securities of all kinds, situated in this state or elsewhere, and where not otherwise provided, dispose of the same for the benefit of the district.

(f) To employ legal counsel to advise the board of directors in all matters pertaining to the business of the district, to perform the functions in respect to the legal affairs of the district as the board may direct, and to call upon the district attorney of the county in which the greater part of the land in the district is situated for legal advice and assistance in all matters concerning the district, except that if that county has a county counsel, the directors may call upon the county counsel for legal advice and assistance.

(g) To employ any officers and employees, including architects and consultants, the board of directors deems necessary to carry on

properly the business of the district.

(h) To prescribe the duties and powers of the hospital administrator, secretary, and other officers and employees of any hospitals of the district, to establish offices as may be appropriate and to appoint board members or employees to those offices, and to determine the number of, and appoint, all officers and employees and to fix their compensation. The officers and employees shall hold their offices or positions at the pleasure of the boards of directors.

(i) To do any and all things which an individual might do which are necessary for, and to the advantage of, a hospital and a nurses' training school.

(j) To establish, maintain and operate one or more health facilities at any location within or without the district for the benefit of the district.

(k) To do any and all other acts and things necessary to carry out this division.

(*l*) To acquire, maintain, and operate ambulances or ambulance services within and without the district.

(m) To establish, maintain, and operate, or provide assistance in the operation of, free clinics, diagnostic and testing centers, health education programs, and any other health care provider groups and organizations which are necessary for the maintenance of good physical and mental health in the communities served by the district.

(n) To establish and operate in cooperation with its medical staff a coinsurance plan between the hospital district and the members of its attending medical staff.

(o) To establish, maintain, and carry on its activities through one or more corporations, joint ventures, or partnerships for the benefit of the hospital district.

(p) (1) To transfer with or without consideration, any part of its assets to one or more nonprofit corporations to operate and maintain the assets for the benefit of the communities served by the district. The initial members of the board of directors of the nonprofit corporation or corporations shall be approved by the board of directors of the hospital district and shall be residents of the district. This subdivision does not invalidate or affect any transfers made prior to March 1, 1985, pursuant to this subdivision.

(2) Nothing in this section, including subdivision (j), shall be construed to permit a local hospital district to obtain or be issued a single consolidated license to operate a separate physical plant as a skilled nursing facility or an intermediate care facility which is not located within the boundaries of the hospital district.

(q) To contract for bond insurance, letters of credit, remarketing services, and other forms of credit enhancement and liquidity support for its bonds, notes, and other indebtedness and to enter into reimbursement agreements, monitoring agreements, remarketing agreements, and similar ancillary contracts in connection therewith.

(r) To impose special taxes pursuant to Article 3.8 (commencing with Section 53730.01) of Chapter 4 of Part 1 of Division 2 of Title 5

of the Government Code.

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## CHAPTER 1346

An act to amend Section 54962 of the Government Code, to amend Sections 32121 and 32126.5 of, to add Section 32205 to, and to add and repeal Chapter 2.5 (commencing with Section 32160) of Division 23 to, the Health and Safety Code, relating to hospital districts, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 24, 1988. Filed with Secretary of State September 26, 1988 ]

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

SECTION 1. Section 54962 of the Government Code is amended to read:

54962. Except as expressly authorized by this chapter, or by Sections 32106 and 32155 of the Health and Safety Code as they apply to hospital districts, no closed session may be held by any legislative body of any local agency.

SEC. 2. Section 32121 of the Health and Safety Code is amended to read:

32121. Each local hospital district shall have and exercise the following powers:

(a) To have and use a corporate seal and alter it at its pleasure.

(b) To sue and be sued in all courts and places and in all actions and proceedings whatever.

(c) To purchase, receive, have, take, hold, lease, use, and enjoy property of every kind and description within and without the limits of the district, and to control, dispose of, convey, and encumber the same and create a leasehold interest in the same for the benefit of the district.

(d) To exercise the right of eminent domain for the purpose of acquiring real or personal property of every kind necessary to the exercise of any of the powers of the district.

(e) To establish one or more trusts for the benefit of the district, to administer any trust declared or created for the benefit of the district, to designate one or more trustees for trusts created by the district, to receive by gift, devise, or bequest, and hold in trust or otherwise, property, including corporate securities of all kinds, situated in this state or elsewhere, and where not otherwise provided, dispose of the same for the benefit of the district.

(f) To employ legal counsel to advise the board of directors in all matters pertaining to the business of the district, to perform the functions in respect to the legal affairs of the district as the board may direct, and to call upon the district attorney of the county in which the greater part of the land in the district is situated for legal advice

and assistance in all matters concerning the district, except that if *that county has a county* counsel, the directors may call upon the county counsel for legal advice and assistance.

(g) To employ any officers and employees, including architects and consultants, the board of directors deems necessary to carry on properly the business of the district.

(h) To prescribe the duties and powers of the hospital administrator, secretary, and other officers and employees of any hospitals of the district, to establish offices as may be appropriate and to appoint board members or employees to those offices, and to determine the number of, and appoint, all officers and employees and to fix their compensation. The officers and employees shall hold their offices or positions at the pleasure of the boards of directors.

(i) To do any and all things which an individual might do which are necessary for, and to the advantage of, a hospital and a nurses' training school.

(j) To establish, maintain and operate one or more health facilities or health services, including, but not limited to, outpatient programs, services and facilities, retirement programs, services and facilities, chemical dependency programs, services and facilities, or other health care programs, services and facilities and activities at any location within or without the district for the benefit of the district and the people served by the district.

"Health facilities," as used in this subdivision, means those facilities defined in either Section 15432 of the Government Code or Section 1250 of this code and specifically includes free standing chemical dependency recovery units.

(k) To do any and all other acts and things necessary to carry out this division.

(*l*) To acquire, maintain, and operate ambulances or ambulance services within and without the district.

(m) To establish, maintain, and operate, or provide assistance in the operation of, free clinics, diagnostic and testing centers, health education programs, wellness and prevention programs, rehabilitation, aftercare, and any other health care services provider groups and organizations which are necessary for the maintenance of good physical and mental health in the communities served by the district.

(n) To establish and operate in cooperation with its medical staff a coinsurance plan between the hospital district and the members of its attending medical staff.

(o) To establish, maintain, and carry on its activities through one or more corporations, joint ventures, or partnerships for the benefit of the hospital district.

(p) (1) To transfer with or without consideration, any part of its assets to one or more nonprofit corporations to operate and maintain the assets for the benefit of the communities served by the district. The initial members of the board of directors of the nonprofit corporation or corporations shall be approved by the board of

directors of the hospital district and shall be residents of the district. This subdivision does not invalidate or affect any transfers made prior to March 1, 1985, pursuant to this subdivision.

(2) Nothing in this section, including subdivision (j), shall be construed to permit a local hospital district to obtain or be issued a single consolidated license to operate a separate physical plant as a skilled nursing facility or an intermediate care facility which is not located within the boundaries of the hospital district.

(q) To contract for bond insurance, letters of credit, remarketing services, and other forms of credit enhancement and liquidity support for its bonds, notes, and other indebtedness and to enter into reimbursement agreements, monitoring agreements, remarketing agreements, and similar ancillary contracts in connection therewith.

SEC. 3. Section 32126.5 of the Health and Safety Code is amended to read:

32126.5. The board of directors may do any of the following when it determines that the action is necessary for the provision of adequate health services within the district:

(a) Enter into contracts with health provider groups, community service groups and independent physicians and surgeons for the provision of health services.

(b) Provide assistance or make grants to nonprofit provider groups and clinics already functioning in the community.

(c) Finance experiments with new methods of providing adequate health care.

(d) Undertake those activities necessary to participate in, or manage, capitated health care plans, health maintenance organizations, preferred provider organizations, and other managed health care systems. However, no such activity shall be deemed to result in or constitute the giving or lending of the district's credit, assets, surpluses, cash, or tangible goods to, or in aid of, any person, association, or corporation in violation of Section 6 of Article XVI of the California Constitution.

This section does not authorize activities which corporations and other artificial legal entities are prohibited from conducting by Section 2400 of the Business and Professions Code.

SEC. 4. Chapter 2.5 (commencing with Section 32160) is added to Division 23 of the Health and Safety Code, to read:

## CHAPTER 2.5. DEVELOPMENT OF HOSPITAL DISTRICT PROPERTY

32160. The Legislature finds that hospital districts are faced with critical revenue shortages and a need for additional revenue sources to provide basic and essential public services.

Therefore, the Legislature finds that the provisions for social or health-related uses of public property owned by hospital districts constitutes a valid public purpose.

32161. (a) After complying with Section 65402 of the Government Code and Article 8 (commencing with Section 54220)

of Chapter 5 of Part 1 of Division 2 of Title 5 of the Government Code, in managing its real property acquired prior to January 1, 1989, a hospital district may do any of the following:

(1) Sell, or lease for a term not to exceed 99 years, any of its real property to any person, partnership, corporation, or governmental entity the board of directors selects for social or health-related use or development, subject to periodic review by the hospital district, upon the terms and conditions determined by the board of directors.

(2) Participate as a principal party in the development of social or health-related uses or development thereof as a public works project.

(3) Contract for the management, marketing, operation, or leasing of its real property for purposes of social or health-related use or development.

(b) Prior to entering into any agreement pursuant to subdivision (a), the board of directors shall determine that the sale, lease, development, or other contract will result in economic benefits to the hospital district. If the proposed agreement is a lease, the board of directors shall also make both of the following determinations:

(1) That the public benefit of the proposed lease agreement is expected to be greater than public benefit which would result from the sale of the property.

(2) That a reasonable expectation exists that future public need justifies retention of the fee ownership of the property.

If the property to be used or developed is adjacent to, or a portion of, real property which is, or will be, used for other governmental activities, the board of directors shall also determine that the agreement will not interfere with the use or development of the remaining public property.

32162. (a) Any sale, lease, development, or other contract relating to real property of the hospital district entered into pursuant to this chapter shall be authorized by a resolution adopted by the board of directors.

(b) Prior to adopting a resolution authorizing a sale lease, development, or other contract pursuant to this chapter, the board of directors shall hold a public hearing. Notice of the time and place of the hearing shall be published pursuant to Section 6066 of the Government Code in one or more newspapers of general circulation within the hospital district and shall be mailed to any person requesting special notice, to any present tenant of the public property, and to all owners of land adjoining the property.

(c) Any sale, lease, development, or other contract entered into pursuant to this chapter, shall be awarded after competitive bidding in the manner determined by the board of directors, or, if approved by a four-fifths vote of the board of directors, after a request for proposals.

(d) Notice inviting the bids shall be published in the same manner as set forth in subdivision (f).

(e) For the purpose of receiving proposals, the board of directors shall, in a regular open meeting, adopt a resolution declaring its

intention to consider the proposals. The resolution shall identify the site, shall specify whether the site is intended to be used for social or health-related development or both, and shall fix a time not less than 60 days thereafter for a public meeting of the board of directors to be held at its regular place of meeting, at which meeting the board of directors shall receive all plans or proposals submitted.

(f) Notice of adoption of the resolution and the time and place of holding the meeting shall be given by publishing the resolution at least once a week for three weeks in a newspaper of general circulation published in the hospital district and in the county in which the property is located. In addition, the board of directors may authorize the purchase of advertising space and may advertise the proposed transaction in those newspapers, magazines, and other periodicals as, in its judgment, will publicize the proposed transaction to those most likely to submit a proposal or bid.

(g) At the time and place fixed in the resolution the board of directors shall meet and open the bids or receive the plans and proposal. The plan or proposal as submitted or as revised by the board of directors shall be incorporated into the lease, development, or contract. The board of directors may reject any and all bids or plans and proposals submitted.

32163. The procedure prescribed by this chapter may be used by a hospital district notwithstanding any other provision of law and without complying with any other provisions in conflict therewith. This procedure, which shall be an alternative to any other procedure provided by law, shall be applicable to public real property regardless of the manner in which the real property was acquired, the purposes for which the real property was acquired, or the uses, if any, previously made of the property. Districts whose hospitals have been reorganized pursuant to subdivision (p) of Section 32121 shall not utilize the procedure prescribed by this chapter, except in situations where the real property in question is contiguous to property on which a reorganized hospital of the district is located.

32164. Nothing in this chapter shall amend, alter, or modify the duties of a hospital district to comply with the provisions of a community redevelopment plan or an agreement with a community redevelopment agency with respect to property owned by a hospital district within the boundaries of a community redevelopment project.

32165. This chapter shall remain in effect only until January 1, 1991, and as of that date is repealed, unless a later enacted statute, which is chaptered before January 1, 1991, deletes or extends that date.

SEC. 5. Section 32205 is added to the Health and Safety Code, to read:

32205. An election on the formation of a hospital district in and around the City of Dos Palos in the County of Merced, may be combined with an election for the adoption of a special tax pursuant to Article XIII A of the California Constitution and Article 3.5

(commencing with Section 50075) of Chapter 1 of Part 1 of Division 1 of Title 5 of the Government Code, consistent with Article 3.7 (commencing with Section 53720) of Chapter 4 of Part 1 of Division 2 of Title 5 of the Government Code, and presented to the voters as a single ballot proposition. If both proposals are presented as a single ballot proposition, the proposed hospital district shall not be created, and the special tax shall not take effect, unless the proposition is approved by two-thirds of the voters voting upon the proposition.

SEC. 6. 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 circumstances posed by the health care needs of the residents in and around the City of Dos Palos in the County of Merced.

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 the intent of provisions pertaining to meetings of hospital district boards imposed by recent legislation, to address the urgent financial and administrative burdens facing hospital districts, to permit district hospitals with projects now planned to implement the powers granted in this act, and to permit the consideration by the electors of a critical proposal to form a hospital district in and around the City of Dos Palos, at the earliest possible time, it is necessary for this act to take effect immediately.

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## CHAPTER 1347

An act to repeal and add Section 1206 of the Business and Professions Code, relating to clinical laboratory technology.

[Approved by Governor September 24, 1988. Filed with Secretary of State September 26, 1988.]

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

SECTION 1. Section 1206 of the Business and Professions Code is repealed.

SEC. 2. Section 1206 is added to the Business and Professions Code, to read:

1206. (a) For the purposes of this chapter the following definitions are applicable:

(1) "Clinical laboratory sciences" means those scientific disciplines which relate to the examination (which includes detection, identification, measurement, or enumeration of any particular entity or substance) of biological specimens; and the evaluation, correlation, monitoring, and reporting of the results of an

examination of biological specimens, for the purpose of obtaining scientific data which may be used as an aid to ascertain the presence, progress, and source of a disease or physiological condition in a human being or used as an aid in the prevention, prognosis, monitoring, or treatment of a physiological or pathological condition in a human being.

(2) "Clinical laboratory practice" means the application of clinical laboratory sciences or the use of any means which applies the clinical laboratory sciences within or outside of a licensed clinical laboratory. Clinical laboratory practice includes consultation, advisory and other activities inherent to the profession.

(3) "Clinical laboratory" means any place used, or any establishment or institution organized or operated, for the practical application of the clinical laboratory sciences. That application may include any means which applies the clinical laboratory sciences.

(b) Nothing in this chapter shall restrict, limit, or prevent any person licensed to provide health care services under the laws of this state, including, but not limited to, licensed physicians and surgeons, and registered nurses, from practicing the profession or occupation for which he or she is licensed.

(c) Nothing in this chapter shall restrict, limit, or prevent the performance of toxicological analyses of biological specimens for legal, regulatory, safety, employment, or other nonmedical purposes by laboratories which are otherwise appropriately licensed to perform those procedures.

(d) Nothing in this chapter shall restrict, limit, or prevent programs of nondiagnostic general health assessment which provide significant public health benefits, as determined by the department, provided that the adequacy and reliability of the testing is determined by personnel licensed under this chapter or a licensed physician or surgeon, and that the purpose of the assessment is to refer individuals to licensed sources of care as indicated.

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## CHAPTER 1348

An act to amend Sections 14087.5, 14087.51, 14088, 14088.5, 14088.6, 14115, and 14304.5 of, to amend the heading of Article 2.8 (commencing with Section 14087.5) of Chapter 7 of Part 3 of Division 9 of, to amend and renumber Section 14088.1 of, and to add Sections 14087.56, 14087.61, 14088.8, 14088.13, 14089.6, and 14162 to, the Welfare and Institutions Code, relating to Medi-Cal.

[Approved by Governor September 24, 1988. Filed with Secretary of State September 26, 1988.]

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

SECTION 1. The heading of Article 2.8 (commencing with Section 14087.5) of Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions Code is amended to read:

Article 2.8. County Health Systems

SEC. 2. Section 14087.5 of the Welfare and Institutions Code is amended to read:

14087.5. (a) The California Medical Assistance Commission may negotiate exclusive contracts with any county which seeks to provide, or arrange for the provision of the health care services provided under this chapter. The California Medical Assistance Commission shall establish regulations concerning the time for submittal of proposed plans for a contract by a county, and for the time by which the California Medical Assistance Commission shall decide whether or not to accept the county's proposal.

(b) The department shall seek all federal waivers necessary to allow for federal financial participation in expenditures under this article. This article shall not be implemented until all necessary waivers have been approved by the federal government.

SEC. 3. Section 14087.51 of the Welfare and Institutions Code is amended to read:

14087.51. It is necessary that a special commission be established in San Mateo County and in any other county designated by the California Medical Assistance Commission in order to meet the problems of the delivery of publicly assisted medical care in the counties and to demonstrate ways of promoting quality care and cost efficiency.

The Board of Supervisors of San Mateo County and of the designated counties may, by ordinance, establish commissions to negotiate the exclusive contracts specified in Section 14087.5 and to arrange for the provision of health care services provided pursuant to this chapter. If the board of supervisors elects to enact this ordinance, all rights, powers, duties, privileges, and immunities vested in a county by this article shall be vested in the county commission. Any reference in this article to "county" shall mean a commission established pursuant to this section.

The enabling ordinance shall specify the membership of the county commission, the qualifications for individual members, and such other matters as the board of supervisors deems necessary or convenient for the conduct of the county commission's activities. All commissioners shall be appointed by majority vote of the board of supervisors and shall serve at the pleasure thereof. The board of supervisors may appoint no more than two of its own members to serve on the commission.

As an alternative to establishing a separate commission, the enabling ordinance may designate the board of supervisors itself as

the commission authorized by this article.

SEC. 4. Section 14087.56 is added to the Welfare and Institutions Code, to read:

14087.56. The Health Facilities Financing Authority may, pursuant to Chapter 7.2 (commencing with Section 15430) of Division 3 of Title 2 of the Government Code, grant up to four hundred thousand dollars ($400,000) to each participating county to match other moneys, including loans, received by the county if needed for the costs of developmental activities approved by the department and the California Medical Assistance Commission.

SEC. 5. Section 14087.61 is added to the Welfare and Institutions Code, to read:

14087.61. (a) The counties contracting pursuant to subdivision (a) of Section 14087.5 may arrange for the delivery of Medi-Cal services to Medi-Cal beneficiaries, except that the counties may exclude all of the following:

(1) Long-term care services rendered by skilled nursing and intermediate care facilities.

(2) Dental services.

(3) Services in any federal or state hospital.

(4) Home- or community-based care waivered services.

(b) Exclusion of these services shall be subject to the approval of the department and the California Medical Assistance Commission.

SEC. 6. Section 14088 of the Welfare and Institutions Code is amended to read:

14088. (a) It is the purpose of this article to ensure that the Medi-Cal program shall be operated in the most cost-effective and efficient manner possible with the optimum number of Medi-Cal providers and shall assure quality of care and known access to services.

(b) For the purposes of this article, the following definitions shall apply:

(1) "Primary care provider" means any internist, general practitioner, obstetrician/gynecologist, pediatrician or family practice physician or any primary care clinic, rural health clinic, community clinic or hospital outpatient clinic holding a valid and current Medi-Cal provider number, which agrees to provide case management to Medi-Cal beneficiaries.

(2) "Primary care case management" means responsibility for the provision of referral, consultation, ordering of therapy, admission to hospitals, followup care, and prepayment approval of referred services.

(3) "Designation form" or "form" means a form supplied by the department to be executed by a Medi-Cal beneficiary and an eligible primary care provider, setting forth the beneficiary's choice of primary care provider and an agreement to be limited by the case management decisions of that primary care provider and the provider's agreement to be responsible for that beneficiary's case management and medical care, as specified in this article.

(4) "Emergency services" means health care services rendered by an eligible Medi-Cal provider to a Medi-Cal beneficiary for those health services required for alleviation of severe pain or immediate diagnosis and treatment of unforeseen medical conditions which if not immediately diagnosed and treated could lead to disability or death.

(5) "Modified primary care case management" means primary care case management wherein capitated services are limited to primary care physician office visits only.

(6) "Service area" means an area designated by either a single federal Postal Zip Code or by two or more Postal Zip Codes that are contiguous.

SEC. 7. Section 14088.1 of the Welfare and Institutions Code is amended and renumbered to read:

14088.16. The department or a county which has contracted for the provision of services pursuant to this article may, within service areas designated by the department, enter into contracts with primary care providers. The contracts shall be on a capitated rate or risk-sharing basis, or a combination of both. The rate of payment for services shall not vary solely according to the category of licensure of the facility in which the services are rendered by providers within each service area. The rate of payment established under the contract shall not exceed the total per capita amount which the department estimates would be payable for all services and requirements covered under the contract if all such services and requirements were to be furnished Medi-Cal beneficiaries under the Medi-Cal fee-for-service program.

Prior to entering into any contract for primary care case management under this chapter, the department shall provide public notice of its intent to enter into such a contract. Furthermore, the department shall develop specific criteria for evaluating potential contractors which ensure that all types of primary care providers are given equal consideration in the contractor selection process.

SEC. 8. Section 14088.5 of the Welfare and Institutions Code is amended to read:

14088.5. The beneficiary shall be permitted to disenroll from any primary care provider upon request.

SEC. 9. Section 14088.6 of the Welfare and Institutions Code is amended to read:

14088.6. In order to achieve maximum cost savings, the Legislature hereby determines that an expedited contract process for contracts under this article is necessary. Therefore, contracts under this article may be on a nonbid basis and 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.

SEC. 10. Section 14088.8 is added to the Welfare and Institutions Code, to read:

14088.8. (a) The department may establish modified primary care case management contracts pursuant to this article. This authority shall be subject to the department seeking and obtaining all necessary federal waivers to implement this section.

(b) Contracts shall not be entered into by the department unless the waivers or revision to any existing waiver are granted by the federal government. The provisions for which appropriate federal waivers cannot be obtained shall not be implemented, but provisions for which waivers are either obtained or found to be unnecessary shall be unaffected by the inability to obtain federal waivers for other provisions.

SEC. 11. Section 14088.13 is added to the Welfare and Institutions Code, to read:

14088.13. The department shall approve those Medi-Cal services for which the contractor is at risk that shall be provided in any contract or contracts for services under the primary care provider case management program. Medi-Cal services provided under any contract or contracts for services under this article shall be subject to review and approval by the department.

SEC. 12. Section 14089.6 is added to the Welfare and Institutions Code, to read:

14089.6. Current prepaid health plan contracts entered into by the department pursuant to Chapter 8 (commencing with Section 14200) shall not be terminated solely due to the implementation of this article in areas served by the prepaid health plans. Upon expiration of these prepaid health plan contracts, the department shall enter into good faith negotiations for one renewal of these contracts. These plans may continue to serve their Medi-Cal enrollees and to enroll new beneficiaries. Upon expiration or final termination of these renewal contracts and subject to compliance with all requirements applicable to contracted prepaid health plans, prepaid health plan contractors in the areas shall be allowed the opportunity to participate as new contractors under this article.

SEC. 14. Section 14304.5 of the Welfare and Institutions Code is amended to read:

14304.5. Each prepaid health plan shall provide directly or through subcontractors, not less than the basic scope of health care benefits as defined in Section 14256. The director shall establish the scope and duration of such services and may require other services listed in Section 14053 be provided on a risk or nonrisk basis. The director shall encourage the prepaid health plan to provide all of the services enumerated in Section 14053 on a prepaid basis. When mutually agreeable to the prepaid health plan, the department, and the hospital involved, and provided that the confidentiality of the selected hospital contracting rates negotiated pursuant to Chapter 7 (commencing with Section 14081) is maintained by all parties, contracts entered into by the department pursuant to this chapter may provide for alternative arrangements in any or all of a prepaid health plan's Medi-Cal service area for the payment of inpatient

hospital services using Medi-Cal hospital inpatient rates.

Subject to prior approval by the director, any additional services other than those listed in Section 14053 may be provided at reasonable cost to Medi-Cal enrollees, provided the enrollees are notified of services for which they will be charged and the amount of the charge prior to rendering such services.

SEC. 15. Section 14162 is added to the Welfare and Institutions Code, to read:

14162. (a) Beginning in 1991, the State Department of Health Services shall include in the November estimate of Medi-Cal expenditures and the Governor's Budget an estimate of savings from the prior year which resulted from implementation of Senate Bill 2174 of the 1987–88 Regular Session of the Legislature.

(b) Beginning in 1992, the Department of Finance shall, by February 1, deposit an amount equal to the savings level identified in the November estimate of Medi-Cal expenditures into the Critical Needs Health Care Fund, which is hereby created. Funds deposited in the Critical Needs Health Care Fund shall be appropriated by the Legislature for high-priority health expenditures.

SEC. 16. No provision of this act shall contradict Section 14087.21 of the Welfare and Institutions Code, addressing the provision of, and payment for, services provided severely handicapped children under the Robert W. Crown 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), and to the extent any provision of this act conflicts with Section 14087.21 of the Welfare and Institutions Code, Section 14087.21 of the Welfare and Institutions Code shall prevail.

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## CHAPTER 1349

An act to amend Section 17054.5 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor September 25, 1988. Filed with Secretary of State September 26, 1988.]

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

SECTION 1. Section 17054.5 of the Revenue and Taxation Code is amended to read:

17054.5. (a) (1) There shall be allowed as a credit against the "net tax" (as defined in Section 17039) of a qualified individual an amount equal to 30 percent of the net tax.

(2) For tax years beginning on or after January 1, 1987, and before January 1, 1988, a qualified individual means a qualified joint custody head of household as defined in subdivision (c).

(3) For tax years beginning on or after January 1, 1988, a qualified

individual means each of the following:

(A) A "qualified joint custody head of household" as defined in subdivision (c).

(B) A "qualified taxpayer" as defined in subdivision (e).

(4) The amount of the credit under this section shall not exceed two hundred dollars ($200) for any taxable year.

(b) For each taxable year beginning on or after January 1, 1988, the Franchise Tax Board shall recompute the maximum credit prescribed in subdivision (a). That computation shall be made as follows:

(1) The California Department of Industrial Relations shall transmit annually to the Franchise Tax Board the percentage change in the California Consumer Price Index as modified for rental equivalent homeownership for all items from June 1987 to June of the current calendar year, no later than August 1 of the current calendar year.

(2) The Franchise Tax Board shall add 100 percent to the percentage change figure which is furnished to them pursuant to paragraph (1) and divide the result by 100.

(3) The Franchise Tax Board shall multiply the 1987 taxable year credit by the inflation adjustment factor provided in paragraph (2), rounded off to the nearest one dollar ($1).

(c) "Qualified joint custody head of household" means an individual who meets all of the following:

(1) Is not married at the close of the taxable year, or files a separate return and does not have his or her spouse as a member of his or her household during the entire taxable year.

(2) Maintains as his or her home a household which constitutes for the taxable year the principal place of abode for a qualifying child, as defined in subdivision (d), for no less than 146 days of the taxable year but no more than 219 days of the taxable year, under a decree of dissolution or separate maintenance, or under a written agreement between the parents prior to the issuance of a decree of dissolution or separate maintenance where the proceedings have been initiated.

(3) Furnishes over one-half the cost of maintaining the household during the taxable year.

(4) Does not qualify as a head of household under Section 17042 or as a surviving spouse under Section 17046.

(d) For purposes of this section, a "qualifying child" means a son, stepson, daughter, or stepdaughter of the taxpayer or a decendant of a son or daughter of the taxpayer, but if that son, stepson, daughter, stepdaughter, or descendant is married at the close of the taxpayer's taxable year, only if the taxpayer is entitled to a credit for the taxable year for that person under Section 17054.

(e) "Qualified taxpayer" means an individual who meets all of the following:

(1) Is married and files a separate return.

(2) During the last six months of the taxable year the taxpayer's

spouse was not a member of the taxpayer's household.

(3) Maintains a household, whether or not the taxpayer's home, which constitutes the principal place of abode of a dependent mother or father of the taxpayer for the taxable year.

(4) Furnishes over one-half of the cost of maintaining the household during the taxable year.

(5) Does not qualify as a head of household under Section 17042 or as a surviving spouse under Section 17046.

SEC. 2. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.

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## CHAPTER 1350

An act to amend Section 54222 of the Government Code, relating to surplus lands.

[Approved by Governor September 25, 1988 Filed with Secretary of State September 26, 1988.]

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

SECTION 1. Section 54222 of the Government Code, as amended by Chapter 83 of the Statutes of 1985, is amended to read:

54222. Any agency of the state and any local agency disposing of surplus land shall, prior to disposing of that property, send a written offer to sell or lease the property as follows:

(a) A written offer to sell or lease for the purpose of developing low- and moderate-income housing shall be sent to any local agencies including, but not limited to, housing authorities or redevelopment agencies within whose jurisdiction the surplus land is located. With respect to any offer to purchase or lease pursuant to this subdivision, priority shall be given to offers for development of the land to provide affordable housing for lower income elderly or disabled persons or households, and other lower income households.

(b) A written offer to sell or lease for park and recreational purposes or open-space purposes shall be sent:

(1) To any park or recreation department of any city within which the land may be situated.

(2) To any park or recreation department of the county within which the land is situated.

(3) To any regional park authority having jurisdiction within the area in which the land is situated.

(4) To the State Resources Agency or any agency which may succeed to its powers.

(c) A written offer to sell or lease for enterprise zone purposes any surplus property in an area designated as an enterprise zone pursuant to Section 7073 shall be sent to the nonprofit neighborhood enterprise association corporation in that zone.

(d) A written offer to sell or lease any surplus property in a designated program area, as defined in subdivision (i) of Section 7082, shall be sent to the program area agent.

(e) A written offer to sell or lease surplus land for school purposes shall be sent to any public school district within whose jurisdiction the surplus land is located.

(f) The entity or association desiring to purchase or lease the surplus land for low- and moderate-income housing purposes, or for park or recreation purposes, or for open-space purposes, or for enterprise zone or program area purposes, shall notify in writing the disposing agency of its intent to purchase or lease the land within 60 days after receipt of the agency's notification of intent to sell the land.

This section shall remain in effect only until January 1, 1991, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1991, deletes or extends that date.

SEC. 1.5. Section 54222 of the Government Code, as amended by Chapter 83 of the Statutes of 1985, is amended to read:

54222. Any agency of the state and any local agency disposing of surplus land shall, prior to disposing of that property, send a written offer to sell or lease the property as follows:

(a) A written offer to sell or lease for the purpose of developing low- and moderate-income housing shall be sent to any local public entity as defined in Section 50079 of the Health and Safety Code, within whose jurisdiction the surplus land is located. Housing sponsors, as defined by Section 50074 of the Health and Safety Code, shall, upon written request, be sent a written offer to sell or lease surplus land for the purpose of developing low- and moderate-income housing. All notices shall be sent by first-class mail and shall include the location and a description of the property. With respect to any offer to purchase or lease pursuant to this subdivision, priority shall be given to offers for development of the land to provide affordable housing for lower income elderly or disabled persons or households, and other lower income households.

(b) A written offer to sell or lease for park and recreational purposes or open-space purposes shall be sent:

(1) To any park or recreation department of any city within which the land may be situated.

(2) To any park or recreation department of the county within which the land is situated.

(3) To any regional park authority having jurisdiction within the area in which the land is situated.

(4) To the State Resources Agency or any agency which may succeed to its powers.

(c) A written offer to sell or lease for enterprise zone purposes any surplus property in an area designated as an enterprise zone pursuant to Section 7073 shall be sent to the nonprofit neighborhood enterprise association corporation in that zone.

(d) A written offer to sell or lease any surplus property in a

designated program area, as defined in subdivision (i) of Section 7082, shall be sent to the program area agent.

(e) A written offer to sell or lease surplus land for school purposes shall be sent to any public school district within whose jurisdiction the surplus land is located.

(f) The entity or association desiring to purchase or lease the surplus land for low- and moderate-income housing purposes, or for park or recreation purposes, or for open-space purposes, or for enterprise zone or program area purposes, shall notify in writing the disposing agency of its intent to purchase or lease the land within 60 days after receipt of the agency's notification of intent to sell the land.

This section shall remain in effect only until January 1, 1991, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1991, deletes or extends that date.

SEC. 2. Section 54222 of the Government Code, as amended by Chapter 45 of the Statutes of 1984, is amended to read:

54222. Any agency of the state and any local agency disposing of surplus land shall, prior to disposing of that property, send a written offer to sell or lease the property as follows:

(a) A written offer to sell or lease for the purpose of developing low- and moderate-income housing shall be sent to any local agencies including, but not limited to, housing authorities or redevelopment agencies within whose jurisdiction the surplus land is located. With respect to any offer to purchase or lease pursuant to this subdivision, priority shall be given to development of the land to provide affordable housing for lower income elderly or disabled persons or households, and other lower income households.

(b) A written offer to sell or lease for park and recreational purposes or open-space purposes shall be sent:

(1) To any park or recreation department of any city within which the land may be situated.

(2) To any park or recreation department of the county within which the land is situated.

(3) To any regional park authority having jurisdiction within the area in which the land is situated.

(4) To the State Resources Agency or any agency which may succeed to its powers.

(c) A written offer to sell or lease for enterprise zone purposes any surplus property in an area designated as an enterprise zone pursuant to Section 7073 shall be sent to the nonprofit neighborhood enterprise association corporation in that zone.

(d) The entity or association desiring to purchase or lease the surplus land for low- and moderate-income housing purposes, or for park or recreation purposes, or for open-space purposes, or for enterprise zone purposes, shall notify in writing the disposing agency of its intent to purchase or lease the land within 60 days after receipt of the agency's notification of intent to sell the land.

This section shall become operative on January 1, 1991.

SEC. 2.5. Section 54222 of the Government Code, as amended by Chapter 45 of the Statutes of 1984, is amended to read:

54222. Any agency of the state and any local agency disposing of surplus land shall, prior to disposing of that property, send a written offer to sell or lease the property as follows:

(a) A written offer to sell or lease for the purpose of developing low- and moderate-income housing shall be sent to any local public entity as defined in Section 50079 of the Health and Safety Code, within whose jurisdiction the surplus land is located. Housing sponsors, as defined by Section 50074 of the Health and Safety Code, shall, upon written request, be sent a written offer to sell or lease surplus land for the purpose of developing low- and moderate-income housing. All notices shall be sent by first-class mail and shall include the location and a description of the property. With respect to any offer to purchase or lease pursuant to this subdivision, priority shall be given to development of the land to provide affordable housing for lower income elderly or disabled persons or households, and other lower income households.

(b) A written offer to sell or lease for park and recreational purposes or open-space purposes shall be sent:

(1) To any park or recreation department of any city within which the land may be situated.

(2) To any park or recreation department of the county within which the land is situated.

(3) To any regional park authority having jurisdiction within the area in which the land is situated.

(4) To the State Resources Agency or any agency which may succeed to its powers.

(c) A written offer to sell or lease for enterprise zone purposes any surplus property in an area designated as an enterprise zone pursuant to Section 7073 shall be sent to the nonprofit neighborhood enterprise association corporation in that zone.

(d) A written offer to sell or lease any surplus property in a designated program area, as defined in subdivision (i) of Section 7082, shall be sent to the program area agent.

(e) The entity or association desiring to purchase or lease the surplus land for low- and moderate-income housing purposes, or for park or recreation purposes, or for open-space purposes, or for enterprise zone purposes, shall notify in writing the disposing agency of its intent to purchase or lease the land within 60 days after receipt of the agency's notification of intent to sell the land.

(f) This section shall become operative on January 1, 1991.

SEC. 3. Section 1.5 of this bill incorporates amendments to Section 54222 of the Government Code, as amended by Chapter 83 of the Statutes of 1985, proposed by both this bill and SB 2860. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1989, (2) each bill amends Section 54222 of the Government Code, as amended by Chapter 83 of the Statutes of 1985, and (3) this bill is enacted after SB 2860, in which case Section 1 of

this bill shall not become operative.

SEC. 4. Section 2.5 of this bill incorporates amendments to Section 54222 of the Government Code, as amended by Chapter 45 of the Statutes of 1984, proposed by both this bill and SB 2860. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1989, (2) each bill amends Section 54222 of the Government Code, as amended by Chapter 45 of the Statutes of 1984, and (3) this bill is enacted after SB 2860, in which case Section 2 of this bill shall not become operative.

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## CHAPTER 1351

An act to amend Section 14505 of, and to add Section 41020.5 to, the Education Code, relating to schools.

[Approved by Governor September 25, 1988. Filed with Secretary of State September 26, 1988.]

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

SECTION 1. Section 14505 of the Education Code is amended to read:

14505. The governing board of each school district and each office of the county superintendent of schools shall include the following two provisions in their contracts for audits:

(a) A provision to withhold 10 percent of the audit fee until the Controller certifies that the audit report conforms to the reporting provisions of the audit guide.

(b) A provision to withold 50 percent of the audit fee for any subsequent year of a multiyear contract if the prior year's audit report was not certified as conforming to reporting provisions of the audit guide. This provision shall include a statement that a multiyear contract will be null and void if a firm or individual is declared ineligible pursuant to subdivision (c) of Section 41020.5. The withheld amount shall not be payable unless payment is ordered by the State Board of Accountancy or the audit report for that subsequent year is certified by the Controller as conforming to reporting provisions of the audit guide.

Within 30 days after receipt of written notification that the Controller refuses to certify an audit report as conforming to reporting provisions of the audit guide, an auditor or audit firm having a portion of an audit fee withheld pursuant to these provisions may file an appeal in writing with the State Board of Accountancy. The board shall complete an investigation of the appeal within 90 days of the filing date and, on the basis of the investigation, do either of the following:

(1) Order the Controller to provide notification that the audit report conforms to reporting provisions of the audit guide.

(2) Schedule the appeal for a hearing, in which case the final action on the appeal shall be completed by the board within one year from the date of filing the appeal.

If the board orders the Controller to provide notification that the audit report conforms to reporting provisions of the audit guide, the Controller shall provide the notification to the contracting school district which shall then release the portion of the audit fee being withheld in accordance with this section.

SEC. 2. Section 41020.5 is added to the Education Code, to read:

41020.5. (a) Whenever the Controller determines by two consecutive quality control reviews pursuant to Section 14504.2 that audits performed by a certified public accountant or public accountant under Section 41020 were not performed in substantial conformity with provisions of the audit guide, or that the audit reports, including amended reports, submitted by February 15 following the close of the fiscal year, audited for two consecutive years do not conform to provisions of the audit guide as required by Section 14504, the Controller shall notify in writing the certified public accountant or public accountant and the State Board of Accountancy.

If the certified public accountant or public accountant does not file an appeal in writing with the State Board of Accountancy within 30 calendar days after receipt of the Controller's notification, the Controller's determination under this section shall be final.

(b) If an appeal is filed with the State Board of Accountancy, the board shall complete an investigation of the appeal within 90 days of the filing date. On the basis of the investigation, the board may do either of the following:

(1) Find that the Controller's determination should not be upheld and has no effect.

(2) Schedule the appeal for a hearing, in which case, the final action on the appeal shall be completed by the board within one year from the date of filing the appeal.

(c) If the Controller's determination under subdivision (a) becomes final, the certified public accountant or public accountant shall be ineligible to conduct audits under Section 41020 for a period of three years, or, in the event of an appeal, for any period, and subject to the conditions, that may be ordered by the State Board of Accountancy. Not later than the first day of March of each year, the Controller shall notify each school district and county office of education of those certified public accountants or public accountants determined to be ineligible under this section. School districts and county offices of education shall not use the audit services of a certified public accountant or public accountant while ineligible under this section.

For the purposes of this section, the term "certified public accountant or public accountant" shall include any person or firm entering into a contract to conduct an audit under Section 41020.

This section shall not preclude the State Board of Accountancy

from taking any disciplinary action it deems appropriate under other provisions of law.

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 five hundred thousand dollars ($500,000), reimbursement shall be made from the State Mandates Claims Fund.

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## CHAPTER 1352

An act relating to earthquake safety.

[Approved by Governor September 25, 1988. Filed with Secretary of State September 26, 1988.]

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

SECTION 1. (a) The State Department of Education shall prepare a report containing recommendations for compliance with the methods for earthquake preparedness mandated by Chapter 1659 of the Statutes of 1984. The report shall be submitted to the Legislature on or before June 30, 1989.

(b) The report shall include, but not necessarily be limited to, findings regarding all of the following:

(1) A determination of the components of a model earthquake emergency procedure system as described in Chapter 1659 of the Statutes of 1984, including, but not limited to, the elements of a school building disaster plan.

(2) The role and operation of public school sites as community shelter locations and disaster centers in the event of a major earthquake or other similar disaster.

(3) An identification of a procedure for earthquake damage assessment prior to the school site being used as a community shelter or disaster center.

(4) An identification of the equipment and supplies that would be needed for a school site when used as a community shelter or disaster center after a 7.0 magnitude or greater earthquake.

(c) In developing the report, the department shall consult with representatives from the Office of Emergency Services, the Southern California Earthquake Preparedness Project, the Bay Area Regional Earthquake Preparedness Project, the American Red Cross, and school districts, and parents, teachers, and pupils.

## CHAPTER 1353

An act to amend Sections 4935, 4938, 4939, and 4945 of the Business and Professions Code, relating to acupuncture.

[Approved by Governor September 25, 1988. Filed with Secretary of State September 26, 1988.]

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

SECTION 1. Section 4935 of the Business and Professions Code is amended to read:

4935. Any person who practices acupuncture or holds himself or herself out as practicing or engaging in the practice of acupuncture, unless he or she possesses an acupuncturist's license, or is participating in a course or tutorial program in acupuncture, as provided for in this chapter, is guilty of a misdemeanor.

A person holds himself or herself out as engaging in the practice of acupuncture by the use of any title or description of services incorporating the words "acupuncture," "acupuncturist," "certified acupuncturist," "licensed acupuncturist," "C.A.," "Lic. Ac.," "oriental medicine," "oriental herbalist," "certified herbalist," or by representing that he or she is trained, experienced, or an expert in the field of acupuncture, oriental medicine, or Chinese medicine.

SEC. 2. Section 4938 of the Business and Professions Code is amended to read:

4938. The committee shall issue a license to practice acupuncture to any person who makes an application and meets the following requirements:

(a) Is at least 18 years of age.

(b) Furnishes satisfactory evidence of completion of one of the following:

(1) An educational and training program approved by the committee pursuant to Section 4939.

(2) Satisfactory completion of a tutorial program in the practice of an acupuncturist which is approved by the committee.

(3) In the case of an applicant who has completed education and training outside the United States and Canada, documented educational training and clinical experience which meets the standards established pursuant to Sections 4939 and 4941.

(c) Passes an examination administered by the committee which tests the applicant's ability, competency, and knowledge in the practice of an acupuncturist. The examination shall include a practical examination of the skills required to competently engage in such practice. Such examination shall be prepared and administered in accordance with regulations adopted by the committee.

(d) Is not subject to denial pursuant to Division 1.5 (commencing with Section 475).

(e) Completes a clinical internship training program approved by

the committee. The clinical internship training program shall not exceed nine months in duration and shall be located in a clinic in this state, which is approved by the committee pursuant to Section 4939. The length of the clinical internship shall depend upon the grades received in the examination and the clinical training already satisfactorily completed by the individual prior to taking the examination. On and after January 1, 1987, individuals with 800 or more hours of documented clinical training shall be deemed to have met this requirement. The purpose of the clinical internship training program shall be to assure a minimum level of clinical competence.

Each applicant who qualifies for a license shall pay, as a condition precedent to its issuance and in addition to other fees required, the initial licensure fee.

SEC. 3. Section 4939 of the Business and Professions Code is amended to read:

4939. (a) The committee shall establish standards for the approval of schools and colleges offering education and training in the practice of an acupuncturist, including standards for the faculty in those schools and colleges, and tutorial programs, completion of which will satisfy the requirements of Section 4938.

(b) On or before September 1, 1990, or within five years of initial approval by the committee, whichever is later, each program so approved by the committee shall receive approval under Section 94310.2 of the Education Code in the field of traditional oriental medicine, or in the case of institutions located outside of this state, approval by the appropriate governmental educational authority using standards equivalent to those of Section 94310.2 of the Education Code, or the committee's approval of the program shall automatically lapse.

SEC. 4. Section 4945 of the Business and Professions Code is amended to read:

4945. (a) The committee shall establish standards for continuing education for acupuncturists.

(b) The committee shall require each acupuncturist to complete 30 hours of continuing education every two years as a condition for renewal of his or her certificate. A provider of continuing education shall apply to the committee for approval to offer continuing education courses for credit toward this requirement on a form developed by the committee, shall pay a fee covering the cost of approval and for the monitoring of the provider by the committee and shall set forth the following information on the application:

(1) Course content.

(2) Test criteria.

(3) Hours of continuing education credit requested for the course.

(4) Experience and training of instructors.

(5) Other information as required by the committee.

(6) That interpreters or bilingual instruction will be made available, when necessary.

(c) Licensees residing out of state or out of the country shall

comply with the continuing education requirements.

(d) Providers of continuing education shall be monitored by the committee as determined by the committee.

(e) If the committee determines that any acupuncturist has not obtained the required number of hours of continuing education, it may renew the acupuncturist's license and require that the deficient hours of continuing education be made up during the following renewal period in addition to the current continuing education required for that period. If any acupuncturist fails to make up the deficient hours and complete the current requirement of hours of continuing education during the subsequent renewal period, then his or her license to practice acupuncture shall not be renewed until all the required hours are completed and documented to the committee.

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## CHAPTER 1354

An act to add Chapter 11 (commencing with Section 9770) to Division 8.5 of the Welfare and Institutions Code, relating to public social services, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 25, 1988. Filed with Secretary of State September 26, 1988.]

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

SECTION 1. The Legislature finds and declares the following:

(a) The Legislature, in recent years, has taken steps to develop a continuum of long-term care services to meet the needs of frail elderly persons and functionally impaired adults.

(b) Adult day care services are an essential component in the continuum providing one option for social services which will allow individuals to remain at home and to avoid expensive institutional placement.

SEC. 2. (a) There are a significant number of persons 60 years of age or older as well as other functionally impaired adults who do not require onsite medical care, but who have all or some of the following needs and requirements:

(1) Supervision in order to live at home or in the home of a relative or a community setting.

(2) Structured, supervised help with activities of daily living.

(3) Intervention in the form of psychosocial services and opportunities for group activities in order to prevent deterioration that would lead to premature institutionalization.

(b) Licensed adult day care and social day care facilities assist caregivers of those persons by providing them with respite from the responsibility of 24-hour care.

(c) These facilities offer an appropriate and cost-effective level of care to respond to the needs of those individuals and their caregivers.

There is, however, no state department responsible for program development, technical assistance, coordination with other community-based long-term care services, and policy development as regards these facilities.

SEC. 3. Chapter 11 (commencing with Section 9770) is added to Division 8.5 of the Welfare and Institutions Code, to read:

## CHAPTER 11. ADULT DAY SERVICES

9770. It is the purpose of this chapter to designate the Department of Aging as the department responsible for the development of programs and policies for the accomplishment of all of the following:

(a) Oversight of the development of adult day service programs for older persons and functionally impaired adults throughout California, and assurance that programs will provide a high quality of psychosocial and supportive services to permit the participants to achieve and maintain their maximum level of independence and functioning.

(b) Coordination of adult day care services with other community-based long-term care programs.

(c) Provision of information and technical assistance to new and existing programs.

(d) Coordination of program development activity with other state departments, including, but not limited to, the State Department of Mental Health, the State Department of Social Services, and the State Department of Developmental Services.

9771. This chapter shall be known and may be cited as the California Adult Day Services Act.

9772. For the purposes of this chapter, the following definitions shall apply:

(a) "Adult day care facility" and "social day care facility" mean a community care facility as defined respectively in paragraph (2) of subdivision (a) of Section 1502 of, and Section 1502.2 of, the Health and Safety Code.

(b) "Department" means the Department of Aging.

(c) "Adult day services" means community-based group programs providing services on less than a 24-hour basis to older disabled persons and functionally impaired adults, including, but not limited to, licensed adult day care and social day care facilities.

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, on a timely basis, a means for improvement of adult day care services, it is necessary that this act take effect immediately.

# CHAPTER 1355

An act to amend Sections 44210, 44212, 44213, 44240, and 44332 of, to amend the heading of Article 2 (commencing with Section 44210) of Chapter 2 of, and to amend the heading of Chapter 2 (commencing with Section 44200) of, Part 25 of, to add Sections 44210.5, 44235.3, 44239, 44239.5, 46300.5, and 84500.6 to, to add Article 4.5 (commencing with Section 44279.2), Article 5.5 (commencing with Section 44300), and Article 10 (commencing with Section 44370) to Chapter 2 of Part 25 of, to repeal and add Sections 44200, 44203, and 44225 of, and to repeal Sections 44201, 44226, 44230, 44232, 44233, 44254, and 44254.5 of, the Education Code, and to repeal Section 67.5 of Chapter 1247 of the Statutes of 1977, relating to education.

[Approved by Governor September 25, 1988. Filed with Secretary of State September 26, 1988.]

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

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

(a) The public has a right to hold its schools accountable, and to expect that any individual licensed to teach young people has met rigorous professional standards in subject matter knowledge and teaching performance.

(b) Teaching standards are based on state law and regulations, local district policies and practice, and professional norms.

(c) The current state system does not ensure sufficient rigor.

(d) When schools cannot attract qualified teachers at a given wage, teaching standards are lowered.

(e) The current system of granting a teaching credential is based primarily on the completion of required coursework. The Legislature finds that this system should be revised to make thorough assessments of individual candidates the primary basis for granting a teaching credential and for entry into the profession, as is the practice in other professions, including medicine, law, nursing, dentistry, and accounting. It is the intent of the Legislature that assessments emphasize skill and knowledge attainment, rather than course credits, and that institutions of higher education be given broad responsibility to determine the nature of coursework and other program elements in a teacher preparation program.

(f) The Legislature also finds that the agency that develops standards and examinations must take responsibility for the quality of the teachers that it credentials and that it must be directly accountable to the public and to elected officials for its methods and decisions.

SEC. 2. The heading of Chapter 2 (commencing with Section 44200) of Part 25 of the Education Code is amended to read:

## CHAPTER 2. TEACHER CREDENTIALING

SEC. 2.5. The heading of Article 2 (commencing with Section 44210) of Chapter 2 of Part 25 of the Education Code is amended to read:

### Article 2. Commission on Teacher Credentialing

SEC. 3. Section 44200 of the Education Code is repealed.

SEC. 3.5. Section 44200 is added to the Education Code, to read:

44200. This chapter shall be known and may be cited as the "Teacher Credentialing Law of 1988" or? "The Bergeson Act."

SEC. 4. Section 44201 of the Education Code is repealed.

SEC. 4.2. Section 44203 of the Education Code is repealed.

SEC. 4.3. Section 44203 is added to the Education Code, to read:

44203. In this chapter the following terms shall be defined as specified in this section:

(a) "Professional teacher certification requirements" means a policy of requiring each beginning teacher to complete a program of planned support and systematic assessment, as determined by the commission, as a condition for earning a professional teaching credential.

(b) "Beginning teacher support" means a combination of assistance, guidance, encouragement, and diagnostic assessment that helps the holders of preliminary teaching credentials to fulfill their professional responsibilities effectively during the first year or two years of classroom teaching, and that satisfies standards of support adopted by the commission.

(c) "Beginning teacher assessment" means a process that has been adopted or approved by the commission for measuring the performances of the holders of preliminary teaching credentials in order to help them improve, and to determine whether their performances satisfy the commission's standards of performance for earning the professional teaching credential.

(d) "Authorization" means the designation that appears on a credential, certificate, or permit that identifies the subjects and circumstances in which the holder of the credential, certificate, or permit may teach, or the services which the holder may render in the public schools of this state.

(e) "Basic teaching credential" means a credential that authorizes the holder to teach the subjects named on the credential, and for which possession of a baccalaureate degree from a regionally accredited institution is a minimum requirement.

SEC. 4.5. Section 44210 of the Education Code is amended to read:

44210. There is hereby established in the state government the Commission on Teacher Credentialing, to consist of 15 voting members, 14 of whom shall be appointed by the Governor with the advice and consent of the Senate, as specified in subdivisions (b) to

(g), inclusive. The commission shall consist of the following members:

(a) The Superintendent of Public Instruction or his or her designee.

(b) Six practicing teachers from public elementary and secondary schools in California.

(c) One person who is employed on the basis of a services credential other than an administrative services credential.

(d) One member of a school district governing board.

(e) Four representatives of the public. None of these persons shall have been employed by an elementary or secondary school district in a position requiring certification, or shall have served as a school district governing board member in the five-year period immediately prior to his or her appointment to the commission.

(f) One school administrator in a public elementary or secondary school in California.

(g) One faculty member from a college or university that grants baccalaureate degrees.

With the exception of the four representatives of the public and the Superintendent of Public Instruction, the appointment of a member shall terminate if he or she is no longer a practicing teacher in a public elementary or secondary school, or a person who is employed on the basis of a valid services credential, or a school administrator, or a faculty member of a college or university that grants baccalaureate degrees, or a school district governing board member, as may be the case, in California.

Not more than one member of the commission is to be appointed from the same school district or college or university campus.

The term of each member appointed to the commission on or prior to June 30, 1989, shall expire on July 1, 1989. It is the intent of the Legislature that as of July 1, 1989, the Governor first appoint to the commission, as feasible, members of the Commission on Teacher Credentialing whose terms, notwithstanding this section, would not have expired, to facilitate the transition to a commission with a reduced membership. Commencing July 1, 1989, four members shall be appointed to the commission for terms of two years, five members for terms of three years, and five members of terms of four years.

(h) Each appointment pursuant to this section shall expire on November 20 of the year of expiration of the applicable term. All appointments made pursuant to this section shall be subject to Section 44213.

SEC. 4.6. Section 44210.5 is added to the Education Code, to read:

44210.5. It is the intent of the Legislature that appointees to the commission reflect the ethnic and cultural diversity of the California public schools.

SEC. 4.7. Section 44212 of the Education Code is amended to read:

44212. The Regents of the University of California, the Trustees of the California State University, the California Postsecondary

Education Commission, and the Association of Independent California Colleges and Universities shall each appoint a representative to serve as member ex officio without vote in proceedings of the commission.

The ex officio members shall not vote in any proceedings of the commission nor in any of its committees or subcommittees, except, by a majority vote of the commission, ex officio members may be permitted to vote in committees or subcommittees in order to establish a quorum or as otherwise determined by majority vote of the commission.

SEC. 4.8. Section 44213 of the Education Code is amended to read:

44213. Except as otherwise provided pursuant to Section 44210, upon the expiration of the term of office of an appointive member of the commission, the member's successor shall be appointed for a term of four years. No person shall be appointed by the Governor to serve more than two consecutive full terms. Prior service on the commission for a term of less than three years resulting from an initial appointment or an appointment for the remainder of an unexpired term shall not be counted as a full term.

SEC. 5. Section 44225 of the Education Code is repealed.

SEC. 6. Section 44225 is added to the Education Code, to read:

44225. The commission shall do all of the following:

(a) Establish professional standards, assessments, and examinations for entry and advancement in the education profession. While the Legislature recognizes that the commission will exercise its prerogative to determine those requirements, it is the intent of the Legislature that standards, assessments, and examinations be developed and implemented for the following:

(1) The preliminary teaching credential, to be granted upon possession of a baccalaureate degree from a regionally accredited institution in a subject other than professional education, completion of an accredited program of professional preparation, and either successful passage of an examination or assessment that has been adopted or approved by the commission in the subject or subjects appropriate to the grade level to be taught, to include college level reading, writing, and mathematics skills, or completion of an accredited program of subject matter preparation and successful passage of the basic skills proficiency test as provided for in Article 6 (commencing with Section 44270). The commission shall uniformly consider the results of the basic skills proficiency test in conjunction with other pertinent information about the qualifications of each candidate for a preliminary credential, and may award the credential on the basis of the overall performance of a candidate as measured by several criteria of professional competence, provided that each candidate meets minimum standards set by the commission on each criterion. Upon application by a regionally accredited institution of higher education, the commission may categorically grant credit to coursework completed in an accredited program of professional

preparation, as specified by this subparagraph, by undergraduates of that institution, where the commission finds there are adequate assurances of the quality of necessary undergraduate instruction in the liberal arts and in the subject area or areas to be taught.

(2) The professional teaching credential, to be granted upon successful passage of a state examination or assessment in the subject or subjects appropriate to the grade level to be taught, to include college level basic reading, writing, and mathematic skills, and completion of a period of beginning teacher support that includes assessments of ability to teach subject matter to students, ability to work well with pupils, classroom management, and instructional skills. A candidate who successfully passes the examination or assessment pursuant to subparagraph (1) of this subdivision shall be deemed to have passed the state examination or assessment in the subject or subjects to be taught pursuant to this subparagraph.

(b) Reduce and streamline the credential system to ensure teacher competence in the subject field or fields, while allowing greater flexibility in staffing local schools. The commission shall award the following types of credentials to applicants whose preparation and competence satisfy its standards:

(1) Basic teaching credentials for teaching in kindergarten, or any of the grades 1 to 12, inclusive, in public schools in this state.

(2) Credentials for teaching adult education classes and vocational education classes.

(3) Credentials for teaching specialties, including, but not necessarily limited to, bilingual education, early childhood education, and special education. The commission may grant credentials to any candidate who concurrently meets the commission's standards of preparation and competence for the preliminary basic teaching credential and the preliminary specialty credential.

(4) Credentials for school services, for positions including, but not limited to, administrators, school counselors, speech-language therapists, audiologists, school psychologists, library media teachers, supervisors of attendance, and school nurses.

The commission may establish standards and requirements for preliminary and professional credentials of each type.

(c) Review and, if necessary, revise the code of ethics for the teaching profession.

(d) Establish standards for the issuance and renewal of credentials, certificates, and permits. In setting standards, the commission shall seek to ensure, through its credentialing of teachers, that public school teachers satisfy all of the following criteria:

(1) Are academically talented.

(2) Are knowledgeable of the subjects to be taught in the classroom.

(3) Are creative and energetic.

(4) Have the human skills to motivate and inspire students to

achieve their goals.

(5) Have the sensitivity to foster self-esteem in pupils through recognition that each pupil has his or her own goals, talents, and levels of development.

(6) Be willing to relate the educational process and their instructional strategies to meet students' needs.

(7) Are able to work effectively with and motivate students from a variety of ethnic, socioeconomic, cultural, academic, and linguistic backgrounds.

(8) Have an understanding of principles and laws related to educational equity, and the equitable practice of the profession of education among all students regardless of their ethnicity, race, gender, age, religious background, primary language, or handicapping condition.

(e) Determine the scope and authorization of credentials, to ensure competence in teaching and other educational services, and establish sanctions for the misuse of credentials and the misassignment of credential holders. The commission may grant an added or supplementary authorization to a credential holder who has met the requirements and standards of the commission for the added or supplementary authorization.

(f) Collect, compile, and disseminate information regarding exemplary practices in supporting and assessing beginning teachers.

(g) Establish alternative methods for entry into the teaching profession, and into other certificated roles in the schools, by persons in varying circumstances, including persons who have been educated outside of California, provided that each applicant satisfies all of the requirements established by the commission. One such alternative method shall be the successful completion of at least two years of classroom instruction under a district intern certificate, pursuant to Article 7.5 (commencing with Section 44325). In establishing alternative methods for entry into the teaching profession, the commission shall develop strategies to encourage classroom aides to become credentialed teachers.

(h) Adopt a framework and general standards for the accreditation of preparation programs for teachers and other certificated educators pursuant to Article 7 (commencing with Section 44300).

(i) Appoint classroom teachers, school administrators, other school services personnel, representatives of the public, and public or private higher education representatives to one or more standing committees, which shall be given authority to recommend to the commission standards relating to examinations, performance assessments, program accreditation, and licensing. The commission shall establish criteria for membership on those committees, and shall determine the terms of committee members. Appointments to standing committees by the commission shall reflect, to the extent feasible, the ethnic and cultural diversity of the California public schools.

(j) Consult with classroom teachers, faculty members from institutions of higher education that maintain accredited programs of professional preparation for teachers, administrators or other school services personnel, and other experts to aid in the development of examinations and assessments, and to study the impact of examinations and assessments on the teaching profession. To increase the fairness of its certification decisions, the commission may uniformly consider the results of tests, subtests, and assessments in conjunction with each other, and in conjunction with other pertinent information about the qualifications of each candidate. The commission may award credentials on the basis of average overall performances by candidates on several criteria of professional competence, provided that each candidate meets minimum standards set by the commission on each criterion.

(k) Adopt standards for all examinations and assessments which shall ensure that all prospective teachers demonstrate an understanding of the history and cultures of the major ethnic populations of this state and of teaching strategies for the acquisition of English language skills by non-English-speaking pupils.

(*l*) Determine the terms of credentials, certificates, and permits, except that no credential, certificate, or permit shall be valid for more than five years from the date of issuance. This article shall govern the issuance of any credential, certificate or permit, except as follows:

(1) A credential, certificate, or permit shall remain in force as long as it is valid and continues to be valid under the laws and regulations that were in effect when it was issued.

(2) The commission shall grant teaching credentials pursuant to statutes that were in effect on December 31, 1988, to candidates who, prior to the effective date of regulations to implement subdivision (a), are in the process of meeting the requirements for teaching credentials that were in effect on December 31, 1988, except that neither enrollment as an undergraduate student nor receipt of a baccalaureate degree from a regionally accredited institution prior to the effective date of the regulations shall, by themselves, exempt a candidate from the requirements of subdivision (a). Enrollment in a preparation program for teachers prior to the effective date of the regulations shall not exempt a candidate from the requirements of paragraph (2) of subdivision (a), if the candidate's preliminary credential was granted after the effective date of the regulations.

(m) Review requests from school districts, private schools, postsecondary institutions, and individual applicants for the waiver of one or more of the provision of this chapter. The commission may grant a waiver upon its finding that professional preparation equivalent to that prescribed under the provision or provisions to be waived will be completed by the credential candidate or candidates affected. No provision in this chapter may be waived under Sections 33050 and 33051, after June 30, 1994, by the State Board of Education.

(n) It is the intent of the Legislature that the commission develop

models for voluntary use by California colleges and universities which do not have these models in place, to assist in the screening of applications for admission to teacher education programs. The models shall give emphasis to the following qualifications of the applicants: academic talent, knowledge of subjects to be taught, basic academic skills, creativity, experience in working with children and adolescents, ability to motivate and inspire students, and willingness to relate education to students with a wide variety of cultural, ethnic, and academic backgrounds. The commission may continue to administer the state basic skills proficiency test, in order (1) to utilize the results of this test in awarding preliminary teaching credentials and emergency permits, and (2) to enable colleges and universities to utilize this test in conjunction with other appropriate sources of information in teacher preparation admission decisions. However, it is the intent of the Legislature that applicants for admission to teacher preparation programs may not be denied admission solely on the basis of state basic skills proficiency test results. The commission may recover the costs of administering and developing the test by charging examinees a fee for taking the test.

(o) It is the intent of the Legislature that the commission encourage colleges and universities to design and implement, by August 1, 1990, concentrated internship programs for persons who have attained a bachelor's degree in the field in which they intend to teach. Those programs would be targeted at subject area shortages, would substitute for conventional training programs, and would include a full summer session of college level coursework, a one-year internship, or the equivalent, a seminar throughout the internship, and a summer session following the internship. Educator preparation through internship programs shall be subject to Article 10 (commencing with Section 44370).

(p) Grant a field placement certificate to any candidate who has been admitted to an accredited program of professional preparation, and who must complete a supervised practicum in public elementary or secondary schools as a condition for completion of the program. The commission shall establish standards for the issuance of field placement certificates.

(q) Propose appropriate rules and regulations to implement the act which enacts this section.

(r) Adopt subject matter assessments for teaching credentials after developing those assessments jointly with the Superintendent of Public Instruction.

SEC. 7. Section 44226 of the Education Code is repealed.

SEC. 8. Section 44230 of the Education Code is repealed.

SEC. 9. Section 44232 of the Education Code is repealed.

SEC. 10. Section 44233 of the Education Code is repealed.

SEC. 11. Section 44235.3 is added to the Education Code, to read:

44235.3. Within the limits set forth in this chapter, the commission may establish and collect fees to recover its costs for the development and administration of any subject matter examination

adopted by the commission to implement the provisions of this chapter, unless the costs are recovered by appropriations from another source of funds.

SEC. 12. Section 44239 is added to the Education Code, to read:

44239. The commission, the State Board of Education, and the Superintendent of Public Instruction shall notify one another regarding proposed and adopted policies and regulations, in order to achieve consistency in state policies concerning the professional preparation of teachers, and curriculum and instruction in the public elementary and secondary schools.

SEC. 13. Section 44239.5 is added to the Education Code, to read:

44239.5. The commission shall continue to administer all regulations that were in effect on December 31, 1988, until the commission amends or repeals those regulations to implement the provisions of this chapter.

SEC. 14. Section 44240 of the Education Code is amended to read:

44240. The commission shall appoint a Committee of Credentials, consisting of seven persons for terms fixed by the commission but not to exceed two years. The committee shall include:

(a) One member who shall be a full-time certified classroom teacher in the public elementary schools with not less than five years' classroom experience.

(b) One member who shall be a full-time certified classroom teacher in the public secondary schools with not less than five years' classroom experience.

(c) One member who shall be a certified administrative employee in the public schools.

(d) One member who shall be a member of the governing board of any school district. No person who is or has been employed in a certificated position in the public schools within the preceding five years shall be appointed as a school board member.

(e) Three members who shall be representatives of the public. No person who is or has been employed in a certificated position in the public schools or who is or has been a member of any governing board of a school district or county board of education within the five years next preceding date of appointment shall be appointed as a public member.

The additional public members of the committee provided for in this section as amended during the 1977–78 Regular Session, shall be appointed by the commission as vacancies in the committee occur, consistent with the requirements of professional representation. Appointments to the Committee of Credentials shall reflect, to the extent feasible, the ethnic and cultural diversity of California public schools.

SEC. 15. Section 44254 of the Education Code is repealed.

SEC. 15.5. Section 44254.5 of the Education Code is repealed.

SEC. 16. Article 4.5 (commencing with Section 44279.2) is added to Chapter 2 of Part 25 of the Education Code, to read:

## Article 4.5. Beginning Teacher Support and Assessment

44279.2. (a) The Legislature finds and declares that the beginning years of a teacher's career are a critical time in which it is necessary that intensive professional development and assessment occur. The Legislature recognizes that the public invests heavily in the preparation of prospective teachers, and that more than half of all new teachers in California public schools leave teaching after one or two years. Intensive professional development and assessment are necessary to build on the preparation that precedes initial certification, to transform academic preparation into practical success in the classroom, to retain greater numbers of capable beginning teachers, and to remove novices who show little promise as teachers. It is the intent of the Legislature that the Commission on Teacher Credentialing and the Superintendent of Public Instruction develop new policies to govern the support and assessment of beginning teachers, as a condition for the professional certification of those teachers in the future.

(b) The commission and the superintendent shall jointly implement alternative methods, in selected school districts on a pilot basis, of locally supporting and assessing beginning teachers, shall jointly evaluate the alternative methods, and shall jointly report the results of the evaluation. Each alternative method shall include support and assessment of teachers during at least the first year of classroom teaching. Participation of school districts pursuant to this subdivision shall be on a voluntary basis. No funds appropriated for the evaluation study may be expended until the commission and the superintendent develop a joint program and expenditure plan, and the expenditure plan is approved by the Director of Finance.

(c) The criteria for evaluating the alternative methods of supporting and assessing beginning teachers shall include, but need not be limited to, the following criteria:

(1) The effectiveness of each method at retaining capable beginning teachers in the profession of education.

(2) The effectiveness of each method at improving the pedagogical content knowledge and skills of the beginning teachers who are retained.

(3) The effectiveness of each method at improving the ability of beginning teachers to teach students who are ethnically, culturally, economically, academically, and linguistically diverse.

(4) The effectiveness of each method at identifying beginning teachers who need additional assistance and, if that additional assistance fails, who should be removed from the profession of education.

(5) The relative costs of the alternative methods in relation to their beneficial effects.

(6) The extent to which alternative methods of supporting and assessing beginning teachers would, if they were added to the other state requirements for teaching credentials, make careers in

education more or less appealing to prospective teachers.

(d) The evaluation shall examine several factors in the development and support of beginning teachers, including, but not limited to, the following factors:

(1) Varying levels of workload and released time for beginning teachers, and alternative methods of assigning beginning teachers to schools and classrooms.

(2) Different kinds of guidance and assistance by various categories of support personnel, including mentor teachers and college advisors.

(3) Appropriate roles for school sites, school districts, postsecondary institutions, county offices of education, and private sector institutions in the professional development of beginning teachers.

(4) Varying levels of state funding for locally implemented programs, and varying levels of reliance on existing local resources.

(e) The evaluation shall examine several methods of assessing the competence and performance of beginning teachers, including, but not limited to, the following methods:

(1) The use of standardized written examinations of subject matter knowledge, and uniform performance assessments of subject matter competence.

(2) The use of onsite assessments of the classroom performances of beginning teachers.

(3) The use of uniform exercises to test the pedagogical content knowledge and skills of beginning teachers in controlled settings.

(4) The use of alternative subject matter examinations or performance assessments, or both, developed by colleges and universities, as alternatives to the statewide examinations or performance assessments, provided that the costs of validating these alternative examinations and assessments are funded by participating colleges and universities. Public colleges and universities may seek state funding for this purpose through the budget process.

(f) In conducting the evaluation that is required by this section, the commission and the superintendent shall jointly field test the assessment instruments and procedures on a representative sample of prospective teachers in this state to ensure that those instruments and procedures are fair, accurate, and unbiased, that they assess appropriate teacher knowledge and skills, and that they are criterion-referenced rather than norm-referenced. The commission and the superintendent shall compare the results of standardized written examinations with those of available examinations or assessments developed by California colleges and universities. The evaluation shall examine the relationship between the assessment results and the backgrounds of the participating beginning teachers, including, but not limited to, their ethnicity, gender, socioeconomic status, and academic backgrounds. In reporting the results of the evaluation, the commission and the superintendent shall estimate

the impact of the alternative assessment methods on the future composition of the education profession. It is the intent of the Legislature that no teacher assessment system be adopted or implemented until it has been thoroughly reviewed and found to be both fair and appropriate to the purposes of this chapter.

(g) During the course of the evaluation, the commission and the superintendent shall be advised by a panel, which shall include representatives of the Chancellor of the California State University, the President of the University of California, the President of the Association of Independent California Colleges and Universities, and of organizations that represent teachers, administrators, school board members, and parents. The representatives shall serve voluntarily, and it is the intent of the Legislature that the costs of each representative's participation be paid by the professional organization or educational institution that appoints that representative.

(h) During the course of the evaluation, the commission and the superintendent shall periodically provide interim reports to the chairs and vice chairs of the policy and fiscal committees of the Legislature, the Legislative Analyst, the office of the Governor, the Director of Finance, and the members of the panel formed pursuant to subdivision (g).

(i) Prior to completing a final report of the results of the evaluation required by this section, the commission and the superintendent shall submit estimates of the costs of alternative professional teacher certification requirements to the Director of Finance and the Legislative Analyst for their comments, which shall be appended to the final report of the evaluation.

(j) On or before March 1, 1992, the commission and the superintendent shall jointly report the results of the evaluation required by this section to the Legislature and the Governor. Prior to submitting their report to the Legislature and the Governor, the commission and the superintendent shall solicit full involvement by the parties identified in subdivision (g) in interpreting the results of the evaluation, and in preparing a policymaking plan based on the results.

(k) It is the intent of the Legislature that the Budget Act shall include funds to pay the costs of the evaluation study.

44279.3. (a) It is the intent of the Legislature that the executive secretary of the commission and the Superintendent of Public Instruction shall recommend to the commission standards of beginning teachers' support and performance, and an assessment process for verifying attainment of the performance standards, which shall be based on the results of the evaluation study required by Section 44279.2.

(b) It is the intent of the Legislature that the commission shall adopt and promulgate standards and requirements for earning the professional teaching credential pursuant to paragraph (2) of subdivision (a) of Section 44225 in accordance with Chapter 3.5

(commencing with Section 11340) of Division 3 of Title 2 of the Government Code. The proposed regulations shall be developed jointly with the Superintendent of Public Instruction, and shall be drafted in consultation with the panel established pursuant to subdivision (f) of Section 44279.2.

It is the intent of the Legislature that the requirements of paragraph (2) of subdivision (a) of Section 44225 be operative within six months of the commission's adoption of standards and requirements for earning the professional credential. First priority shall be given to cost-effective requirements that maximize the use of existing state and local resources. The commission shall consider the use of credential fees and assessment fees to support the cost of implementing the requirements. In adopting professional teacher certification requirements pursuant to this subdivision, the commission shall include the criteria specified in subdivision (d) of Section 44225, and, in addition, shall include the following:

(1) A rigorous program of candidate-centered assessment that relies upon individually evaluating the fitness of each individual candidate for a credential.

(2) Rigorous assessments of each teaching candidate's general knowledge and subject matter knowledge, that are designed to verify reading skills, writing ability, mathematical reasoning, and other elements of a liberal arts education.

(3) Assessments of each teaching candidate's instructional skills and classroom management skills, including an assessment of each teaching candidate's ability to work effectively with students of both sexes and from a variety of ethnic, socioeconomic, cultural, academic, and linguistic backgrounds.

(4) Alternatives for professionally supervising, supporting, and assisting beginning teachers for at least the critical first full teaching year.

(5) Deregulation of the academic training of teachers by shifting the emphasis from granting credentials on the basis of program approval to granting credentials on the basis of comprehensive assessments of individual candidates.

(c) If the professional teacher certification requirements adopted by the commission include passage of a standardized examination, the commission shall establish a procedure for approval by the commission of alternative examinations or assessments whose scope, contents, and level of difficulty are determined by the commission to be equivalent to the scope, contents, and level of difficulty of the standardized examination. In making these determinations, the commission may refer to and utilize, to the extent consistent with this section, accepted national and professional standards governing the use of tests and assessments, and governing the determination of equivalence between alternative tests and assessments. The commission shall recover the costs of administering any standard examination that the commission adopts by collecting examination fees from examinees. An agency or organization that recommends an

alternative examination that is approved by the commission shall pay the costs of developing and administering the alternative examination from any available source of funds, including examination fees, existing budget allocations, and amended budget allocations.

(d) It is the intent of the Legislature that no detailed prescriptive checklists of competencies be adopted at the state level for the assessment of each beginning teacher's classroom performance.

(e) Until the operative date of the regulations that are adopted and promulgated in accordance with subdivision (b), the commission shall continue to administer teacher certification requirements and regulations that were in effect on December 31, 1988. The commission may amend those requirements and regulations, as the need arises.

44279.4. (a) It is the intent of the Legislature that one full year, or the equivalent thereof, of paid, classroom teaching experience and beginning teacher support and assessment shall be a prerequisite to obtaining a professional credential to teach in the California public schools.

Any credential candidate who is eligible for a preliminary credential shall be eligible for a classroom teaching position with beginning teacher support and assessment. The requirements of this article may be waived by the commission for individuals who are pursuing alternative entry programs established pursuant to subdivision (g) of Section 44225.

(b) It is the intent of the Legislature that support and assessment of beginning teachers shall be governed by standards adopted by the commission in consultation with the Superintendent of Public Instruction and the State Board of Education.

(c) A beginning teacher who has been issued a preliminary teaching credential and a preliminary specialty credential pursuant to paragraph (3) of subdivision (b) of Section 44225 shall be eligible for one year of beginning teacher support and assessment that combines classroom teaching and specialty instruction.

44279.5. It is the intent of the Legislature that a beginning teacher who has been issued a preliminary credential shall receive support and assistance from an experienced educator in a manner consistent with the recommendations of the evaluation study conducted pursuant to Section 44279.2.

44279.6. It is the intent of the Legislature that the commission shall establish procedures to assess the teaching performance of beginning teachers on a regular basis by onsite visits of assessment teams or through the use of uniform exercises in a controlled setting, or both, as determined appropriate by the commission based upon the recommendations of the evaluation study conducted pursuant to Section 44279.2. The commission shall ensure that members of the assessment teams have been appropriately trained and demonstrate an understanding of the cultures of the major ethnic populations of this state, teaching strategies for the acquisition of English language

skills by non-English-speaking pupils, and teaching strategies for dealing with at-risk pupils.

SEC. 17. Article 5.5 (commencing with Section 44300) is added to Chapter 2 of Part 25 of the Education Code, to read:

## Article 5.5. Emergency Permits

44300. (a) Commencing January 1, 1990, the commission may issue or renew emergency teaching or specialist permits in accordance with regulations adopted by the commission corresponding to the credential types specified in paragraphs (1), (2), and (3) of subdivision (b) of Section 44225, provided that all of the following conditions are met:

(1) The applicant possesses a baccalaureate degree conferred by a regionally accredited institution of higher education and has fulfilled the subject matter requirements of Section 44301.

(2) Successful passage of the state basic skills proficiency test as provided for in Section 44252.

(3) The commission approves the justification for the emergency permit submitted by the school district in which the applicant is to be employed. The justification shall include all of the following:

(A) Documentation that the district has made a diligent search for, but has been unable to recruit, a sufficient number of certificated teachers, including teacher candidates pursuing full certification through internship, district internship, or other alternative routes established by the commission.

(B) A declaration of insufficiency based on the documentation set forth in subparagraph (A) and made in the form of a motion adopted by the governing board of the district or the county board of education at a regularly scheduled meeting of the governing board or the county board of education. The motion may not be part of the consent agenda and shall be entered in the minutes of the meeting.

(b) The exclusive representative of certificated employees, if any, as provided under Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code, may submit a written statement to the commission agreeing or disagreeing with the justification submitted to the commission pursuant to paragraph (3) of subdivision (a).

(c) Commencing January 1, 1990, the commission may issue and renew emergency permits corresponding to the credential types specified in paragraphs (2), (3), and (4) of subdivision (b) of Section 44225. The commission shall establish appropriate standards for each type of emergency permit.

(d) Commencing January 1, 1990, a person holding an emergency teaching or specialist permit shall attend an orientation to the curriculum and to techniques of instruction and classroom management, and shall teach only with the assistance and guidance of a certificated employee of the district who has completed at least four years of full-time teaching experience, or the equivalent thereof.

It is the intent of the Legislature to encourage districts to provide directed teaching experience to new emergency permit holders with no prior teaching experience.

(e) The holder of an emergency permit shall participate in ongoing training, coursework, or seminars designed to prepare the individual to become a fully credentialed teacher or other educator in the subject area or areas in which he or she is assigned to teach or serve. The employing agency shall verify that employees applying to renew their emergency permits are meeting these ongoing training requirements.

(f) Emergency permits for pupil personnel services shall not be valid for the purpose of determining pupil eligibility for placement in any special education class or program.

(g) This section shall not apply to the issuance of an emergency substitute teaching permit, or of an emergency permit to a teacher who has consented to teach temporarily outside of his or her field of certification, for which the commission shall establish minimum requirements.

(h) This article is repealed on July 1, 1994, or on the date that the commission certifies to the Legislature, whichever occurs later, that the alternative methods of teacher certification established by the commission under subdivision (g) of Section 44225, when combined with the supply of fully certificated teachers who did not pursue alternative paths to certification, are adequate to meet the needs of school districts.

44301. (a) Any person who does not hold a valid California teaching credential that requires a baccalaureate degree shall be required to pass the appropriate subject matter competency examination or examinations, as determined by the commission, before he or she may be initially issued an emergency multiple- or single-subject teaching permit, except an emergency substitute teaching permit, authorizing him or her to teach a subject that is specified by the commission.

(b) The commission may issue an emergency multiple- or single-subject teaching permit to an applicant who has not taken the appropriate subject matter competency test, provided the employing agency certifies all of the following to the commission:

(1) The applicant has not had the opportunity to take the test.

(2) The applicant will take the appropriate subject matter competency test at its next regularly scheduled administration.

(3) The employing agency will discontinue employment of the person eight weeks after the date on which the test is administered if he or she does not give the employing agency evidence of having passed the required subject matter competency test on that date.

(c) The emergency teaching permit issued pursuant to subdivision (b) shall expire on the next regular expiration date for emergency permits, or on a date that is eight weeks after the date on which the required subject matter competency test was administered, whichever date comes first.

(d) The commission shall waive the requirements of this section for each applicant for each of the following:

(1) An emergency single-subject teaching permit, if the applicant has successfully completed at least 18 semester units, or nine semester units of upper division or graduate coursework, at a regionally accredited institution of postsecondary education, in the subject area to be taught.

(2) An emergency multiple-subjects permit, if the applicant has successfully completed at least 40 semester units, or the equivalent, at a regionally accredited institution of postsecondary education, in the subjects that are commonly taught in elementary schools, as determined by the commission.

(e) On or before December 1, 1990, the commission shall submit a written report to the Legislature on the anticipated effect on the ability of school districts to staff classrooms by requiring successful passage of the subject matter examination as a condition for the renewal of emergency permits.

SEC. 18. Section 44332 of the Education Code is amended to read:

44332. Except where that service is provided by a school district authorized to register certification documents pursuant to Section 44332.5, each county or city and county board of education may issue temporary certificates for the purpose of authorizing salary payments to certified employees whose credential applications are being processed or to personnel employed in children's centers or other preschool educational programs whose permit applications are being processed. However, the individual must have demonstrated proficiency in basic reading, writing, and mathematic skills pursuant to the requirements of Section 44252.5. The applicant for the temporary certificate shall make a statement under oath that he or she has duly filed an application for a credential or permit together with the required fee and that, to the best of his or her knowledge, no reason exists why a certificate or permit should not be issued. The certificate or permit shall be valid for not more than 120 schooldays.

The period of 120 schooldays may be extended once for a period of not more than 80 schooldays due to delays in processing a credential application, except when the commission certifies in writing to the county or city and county board of education before the end of the period of 120 schooldays that the applicant apparently does not possess adequate academic qualifications or apparently has a criminal record which would disqualify the application, in either of which cases no extension shall be granted. Failure of the commission to so certify before the end of the 120-schoolday extension period shall be construed to mean that the applicant possesses adequate academic qualifications and does not have a criminal record that would disqualify the application.

In no event shall a temporary certificate or permit be valid beyond the time that the commission either issues or denies the originally requested credential or permit.

SEC. 19. Article 10 (commencing with Section 44370) is added to

Chapter 2 of Part 25 of the Education Code, to read:

Article 10. Accreditation in Educator Preparation

44370. The Legislature finds and declares that the competence and performance of professional educators depends in part on the quality of their academic and professional preparation. The Legislature recognizes that standards of quality in collegiate preparation complement standards of candidate competence and performance, and that general standards and criteria regarding the overall quality of a candidate's preparation are as essential as the assessment of the candidate's competence and performance. It is the intent of the Legislature that the commission shall replace program approval with an accreditation process that concentrates on the overall quality of educator preparation, and that holds professional elementary, secondary, and postsecondary educators responsible for the quality of preparation.

44371. The commission shall be advised by an accreditation advisory council. The membership of the advisory council shall be as follows:

(a) Three representatives of the California State University nominated by the Chancellor of the California State University. The commission shall appoint the nominees of the chancellor to the advisory council. At least one of these representatives shall be a faculty member involved in educator preparation.

(b) Three representatives of the University of California nominated by the president of the university with authorization by the Regents of the University of California. The commission shall appoint the nominees of the president to the advisory council. At least one of these representatives shall be a faculty member involved in educator preparation.

(c) Three representatives of the Association of Independent California Colleges and Universities nominated by that association. The commission shall appoint the nominees of the association to the advisory council. At least one of these representatives shall be a faculty member involved in educator preparation.

(d) Nine representatives appointed by the commission from the following categories: classroom teachers, school administrators, other certificated school personnel, and school district governing boards. These representatives shall be nominated by organizations designated by the commission. Members of the council shall serve voluntarily.

(e) It is the intent of the Legislature that the costs of each representative's participation shall be paid by the professional organization or education institution that nominates that representative.

44372. (a) On or before September 15, 1990, the commission shall adopt an accreditation framework, after consideration of the recommendations of the accreditation advisory council, which shall

set forth the policies of the commission regarding the accreditation of preparation programs for teachers and other certificated educators. The framework shall include criteria for the selection of nongovernmental accreditation entities, and may include general standards for the overall accreditation of education units and appropriate standards that apply to professional specialties. This framework shall be developed on the basis of the overall quality of preparation programs, rather than on the basis of the inclusion of specific courses or a specific number of courses.

(b) On or before February 15, 1991, the commission shall disseminate a request for proposals to carry out accreditation reviews and make accreditation decisions on the basis of the accreditation framework adopted pursuant to subdivision (a). The commission may accept or reject each proposal after considering the recommendations of the executive secretary of the commission, who shall review all proposals in consultation with the accreditation advisory council. It is the intent of the Legislature that the commission select at least one nongovernmental accrediting entity on or before September 15, 1991, subject to the provisions of Section 44375. It is the further intent of the Legislature that the selected entity or entities shall include California elementary, secondary, and postsecondary educators.

(c) Prior to September 15, 1991, or the selection of an accrediting agency, whichever occurs first, the commission shall approve programs in accordance with the statutes in effect prior to January 1, 1989.

(d) The commission and each selected accrediting entity shall sign an agreement that shall include, but need not be limited to, the procedures and fees for accreditation reviews, consistent with the accreditation framework adopted pursuant to subdivision (a).

(e) The executive secretary shall monitor and evaluate the performance of each accrediting entity, in consultation with the accreditation advisory council and the affected institutions, and shall report his or her findings periodically to the commission.

44373. A postsecondary institution shall have the right to appeal to the commission if the procedures or decisions of an accrediting entity are arbitrary, unfair, or inconsistent with the policies of the commission. An institution shall also have the right to recommend changes in the accreditation policies of the commission, which shall be considered by the commission in consultation with the executive secretary and the accreditation advisory council.

44374. The commission may establish and collect fees from postsecondary education institutions to recover any additional costs resulting from the replacement of program approval with program accreditation pursuant to this article. An accrediting entity shall not collect payments from any source except the commission for carrying out the purposes of this article.

44375. The commission and the accreditation advisory council shall periodically report to the education policy committees of the

Legislature regarding the implementation of this article.

44376. Should no nongovernmental accrediting entity be selected by the commission pursuant to this article, or should a previously selected accrediting entity fail to satisfactorily implement the commission's adopted framework for accreditation, the commission shall assume responsibility for verifying the quality and status of educator preparation by implementing the adopted framework. In either of these cases, the commission shall continue to actively seek an accrediting entity by disseminating additional requests for proposals until the time which the commission, in consultation with the advisory council, determines that no entity satisfies the criteria for the selection of accrediting agencies adopted pursuant to subdivision (a) of Section 44372. However, if at a subsequent time an entity wishes to apply for selection by the commission as the accrediting entity, the entity may submit an application for consideration by the commission in the absence of an applicable request for proposal.

SEC. 20. Section 46300.5 is added to the Education Code, to read:

46300.5. For the purposes of educational programs sponsored by the California Firefighter Joint Apprenticeship Program, the term "immediate supervision" as used in Section 46300 means, in the context of classes conducted at the workplace, pupil participation in classes instructed by a person who is qualified, by means of education or experience, as a journeyman, and shares the responsibility for supervision of the pupils participating in the classes with certificated personnel of the district.

SEC. 21. Section 84500.6 is added to the Education Code, to read:

84500.6. For the purposes of educational programs sponsored by the California Firefighter Joint Apprenticeship Program, the term "immediate supervision" as used in Section 84500 means, in the context of classes conducted at the workplace, pupil participation in classes instructed by a person who is qualified, by means of education or experience, as a journeyman, and shares the responsibility for supervision of the pupils participating in the classes with certificated personnel of the district.

SEC. 22. Section 67.5 of Chapter 1247 of the Statutes of 1977 is repealed.

## CHAPTER 1356

An act to amend Sections 20203, 21235, 21236, and 21237 of, and to add Section 21238 to, the Government Code, relating to the Public Employees' Retirement System, and making an appropriation therefor.

[Approved by Governor September 25, 1988. Filed with Secretary of State September 26, 1988.]

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

SECTION 1. Section 20203 of the Government Code is amended to read:

20203. Interest earned on any cash deposit in a bank by the Treasurer and income on other assets constituting a part of the fund shall be credited to the fund as received. Income, of whatever nature, earned on the Retirement Fund during any fiscal year, in excess of the interest credited to contributions during that year shall be retained in the fund as a reserve against deficiencies in interest earned in other years, losses under investments, court-mandated costs, and actuarial losses resulting from terminations, mergers, and dissolutions of contracting agencies.

Unless specifically authorized by this part, no funds in the reserve against deficiencies shall be available for the payment of benefits. The board, however, may apply to reduce the book value of securities purchased all or part of the excess of the proceeds of the sale or the redemption prior to maturity of securities over the book value of the securities sold (a) if the purchase of securities is made with those proceeds and (b) if the terms of both securities from the date of sale, redemption prior to maturity, or purchase, as the case may be, to the respective dates of maturity do not differ by more than five years. All applications of these excess proceeds, even with greater differences in terms, heretofore made by the board are hereby validated and confirmed.

At the end of each fiscal year, the amount in the reserve against deficiencies which exceeds 0.30 percent of the total assets of the system shall be credited to other accounts as prescribed by this part.

SEC. 2. Section 21235 of the Government Code is amended to read:

21235. (a) The board shall establish an Investment Dividend Disbursement Account in the retirement fund consisting of that amount of the earnings of the retirement fund which remains after the sequential application of Sections 20202.5, 20203, 20131.1, and 20131. The board shall establish in the retirement fund such Purchasing Power Accounts, based on relative purchasing power, as the board deems necessary, which Purchasing Power Accounts shall consist of the amount of earnings of the retirement fund determined pursuant to Section 21237.

(b) The Investment Dividend Disbursement Account may be utilized, as specified in subdivision (e), to increase all monthly allowances paid by the system to an amount equal to a maximum of 75 percent of the purchasing power, as determined by the board, of the initial monthly allowances that were received by every retired person or survivor or beneficiary of a state, school or local member or retired person who was eligible to receive any allowance at the end of each fiscal year. If sufficient funds are not available within a Purchasing Power Account to adjust allowances to a maximum of 75 percent of purchasing power, the board may transfer funds maintained in the Investment Dividend Disbursement Account to the Purchasing Power Account to provide for the increases authorized by this section. If sufficient funds are not available in any particular Purchasing Power Accounts to adjust allowances to a maximum of 75 percent of purchasing power, the board may adjust allowances to eligible recipients by a lesser amount. The board may, for reasons of insufficient funds, determine that no increase under this section shall be made.

(c) The amount specified in subdivision (a) is hereby appropriated from the Investment Dividend Disbursement Account and from such Purchasing Power Accounts as have been established to the board without regard to fiscal years. Whenever the board determines that there are sufficient funds the board shall apply those funds to the increases authorized by this section.

(d) The board shall inform each recipient of benefits under subdivision (b) that the increases are not cumulative, not part of the base retirement allowance, and may be available for only a limited period of time and that the board may discontinue the increases.

(e) The board, on January 1, 1984, and, upon the commencement of each quarter thereafter, shall pay the benefit provided by this section for the succeeding quarter.

SEC. 3. Section 21236 of the Government Code is amended to read:

21236. (a) The board shall pay, on October 1, 1984, and at the beginning of each succeeding calendar year, from any funds in a Purchasing Power Account not then needed for the purposes of Section 21235, the amount required for the purposes of this section, which is appropriated to the board without regard to fiscal years, for use for the sole purpose of providing quarterly increases as specified in subdivision (d) in the monthly allowance of every person who was eligible to receive the 10 percent quarterly increase provided by Section 21232 on September 30, 1984.

(b) Whenever the board determines that there are sufficient funds in a Purchasing Power Account, the board shall apply those funds to the increases authorized by this section. If the funds in a Purchasing Power Account are not sufficient to pay the increases prescribed in subdivision (d), the board shall proportionately reduce all payments.

(c) The board shall inform each recipient of benefits under

subdivision (a) that the increases are not cumulative and shall not be included in their base allowance and may be available for only a limited time.

(d) The total quarterly increases payable shall be the difference between the July 1, 1984, 10 percent quarterly payment under Section 21232 and the amount payable under Section 21235 at the time a payment under this section would be made. Whenever the amount payable under Section 21235 is equal to or greater than the amount payable under Section 21232 on July 1, 1984, there shall be no amount payable under this section.

SEC. 4. Section 21237 of the Government Code is amended to read:

21237. (a) Notwithstanding any other provision of this part, effective January 1, 1986, the Investment Dividend Disbursement Account shall consist of an amount not to exceed the amount of the funds transferred from the Reserve for Deficiencies to the Investment Dividend Disbursement Account on June 30, 1983, less the amount of investment earnings attributable to member accounts for fiscal year 1982–83, plus future account earnings. The board shall annually credit interest to the account at the same crediting rate used to credit retired member reserves. The board may utilize the earnings on the account attributable to the period from June 30, 1983, through June 30, 1985, to credit contributions of members in the retirement fund. That additional interest crediting shall not exceed one percent of the balances in member accounts. Transfers authorized by the board pursuant to subdivision (b) of Section 21235 shall reduce the maximum allowable account balance by the amount transferred.

(b) All other funds available pursuant to Section 21235 shall be retained in Purchasing Power Accounts. The board shall annually transfer from the Purchasing Power Accounts any funds in excess of the amounts disbursed pursuant to Sections 21235 and 21236 in the four previous fiscal years, as provided in subdivision (c). Of the amount so transferred, an amount not to exceed the amount disbursed from the Purchasing Power Accounts in the immediately preceding fiscal year shall be transferred to the appropriate retired member accounts, as determined by the board; and the residual amount shall be transferred to the Extraordinary Performance Dividend Account.

(c) The board shall annually determine, pursuant to subdivision (c) of Section 21221, the extent to which the purchasing power of benefits provided by the system have decreased. The board shall annually transfer from the Purchasing Power Accounts, as provided in subdivision (b), any funds in excess of those disbursed pursuant to Sections 21235 and 21236 for the four previous fiscal years.

SEC. 5. Section 21238 is added to the Government Code, to read:

21238. (a) The board shall establish an Extraordinary Performance Dividend Account in the Retirement Fund consisting of the amount of earnings of the Retirement Fund transferred from

the Purchasing Power Accounts pursuant to Section 21237.

(b) The board shall from time to time on or after January 1, 1991, but only in a fiscal year in which the purchasing power of all persons receiving payments from the Purchasing Power Accounts is 75 percent, disburse, not more frequently than quarterly, extraordinary performance dividend payments to those retired persons and those survivors and beneficiaries of state, school, and local members and retired persons whose allowances, after applying the annual cost-of-living adjustments and all other increases in allowances required or authorized by this part, have the lowest purchasing power percentage, based on the amount that would be paid had the original allowance been increased by increases in the index then being used by the Department of Finance to measure changes in the cost of living, increasing those allowances to a common minimum purchasing power level. The payments shall be paid by a separate identifiable warrant.

(c) The amount specified in subdivision (a) is hereby appropriated from the Extraordinary Performance Dividend Account to the board without regard to fiscal years. Whenever the board determines that there are sufficient funds in the Extraordinary Performance Dividend Account, the board shall apply that portion of those funds deemed prudent by the board to any payments authorized by this section.

(d) The board shall inform each recipient of benefits under subdivision (b) that the payments are not cumulative, not part of the base retirement allowance, and may be available only as a result of extraordinary investment returns to the system.

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## CHAPTER 1357

An act to amend Section 3001 of the Penal Code, relating to parole, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 25, 1988. Filed with Secretary of State September 26, 1988.]

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

SECTION 1. Section 3001 of the Penal Code is amended to read:

3001. (a) Notwithstanding any other provision of law, when any person referred to in subdivision (a) of Section 3000 who was not imprisoned for committing a violent felony, as defined in subdivision (c) of Section 667.5, has been released on parole from the state prison, and has been on parole continuously for one year since release from confinement, within 30 days, that person shall be discharged from parole, unless the Department of Corrections recommends to the Board of Prison Terms that the person be retained on parole and the Board of Prison Terms acts by

determining, for good cause, that the person will be retained on parole. Notwithstanding any other provision of law, when any person referred to in subdivision (a) of Section 3000 who was imprisoned for committing a violent felony, as defined in subdivision (c) of Section 667.5, has been released on parole from the state prison, and has been on parole continuously for two years since release from confinement, the board shall, within 30 days, discharge that person from parole, unless the board for good cause, determines that the person will be retained on parole. The board shall make a written record of its determination and transmit a copy thereof to the parolee.

(b) Notwithstanding any other provision of law, when any person referred to in subdivision (b) of Section 3000 has been released on parole from the state prison, and has been on parole continuously for three years since release from confinement, the board shall, within 30 days, discharge such person from parole, unless the board, for good cause, determines that such person will be retained on parole. The board shall make a written record of its determination and transmit a copy thereof to the parolee.

(c) In the event of a retention on parole, the parolee shall be entitled to a review by the board each year thereafter until the maximum statutory period of parole has expired.

(d) The amendments to this section made during the 1987–88 Regular Session of the Legislature shall only be applied prospectively and shall not extend the parole period for any person whose eligibility for discharge from parole was fixed as of the effective date of those amendments.

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:

It is essential that immediate action be taken to ensure that violent offenders are retained on parole.

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## CHAPTER 1358

An act to add Section 11470.3 to the Health and Safety Code, relating to controlled substances.

[Approved by Governor September 25, 1988. Filed with Secretary of State September 26, 1988.]

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

SECTION 1. Section 11470.3 is added to the Health and Safety Code, to read:

11470.3. Section 11470 shall be applicable to property owned by, or in the possession of, minors. The procedures for the forfeiture of property that comes within Section 11470 shall be applicable to

minors. Where a minor has been adjudged a ward of the juvenile court on the basis that he or she is a person described in Section 602 of the Welfare and Institutions Code because of a violation of Section 11351, 11351.5, 11352, 11355, 11359, 11360, 11366, 11366.5, 11366.6, 11378.5, 11379, 11379.5, 11379.6, or 11382, the provisions of this chapter applicable to the forfeiture of property of an adult defendant in a criminal proceeding shall be applicable to the juvenile court proceedings. Where there is a conflict between the procedures in this chapter and Chapter 2 (commencing with Section 200) of Part 1 of Division 2 of the Welfare and Institutions Code, the provisions of Chapter 2 shall apply.

SEC. 2. Section 11470.3 is added to the Health and Safety Code, to read:

11470.3. (a) Section 11470 shall be applicable to property owned by, or in the possession of, minors.

(b) The procedures for the forfeiture of property that comes within Section 11470 shall be applicable to minors.

(c) Notwithstanding the provisions of this chapter, if a petition has been filed alleging that the minor is a person described in Section 602 of the Welfare and Institutions Code because of a violation which is the basis for the seizure and forfeiture of property under this chapter, any related forfeiture hearing shall be continued until the adjudication of the petition. The forfeiture hearing shall not be conducted in juvenile court.

SEC. 3. Section 2 of this act shall become operative only if Assembly Bill 4162 of the 1987–88 Regular Session of the Legislature is enacted, in which case, Section 1 of this act shall not become operative.

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## CHAPTER 1359

An act to amend Sections 1105, 1201, and 9113 of, to add Division 13 (commencing with Section 13101), Division 14 (commencing with Section 14101), and Division 15 (commencing with Section 15101) to, to repeal and add Division 10 (commencing with Section 10101) of, and to repeal Division 11 (commencing with Section 11101) and Division 12 (commencing with Section 12101) of, the Commercial Code, relating to personal property leases.

[Approved by Governor September 25, 1988. Filed with Secretary of State September 26, 1988 ]

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

SECTION 1. Section 1105 of the Commercial Code is amended to read:

1105. (1) Except as provided hereafter in this section, when a transaction bears a reasonable relation to this state and also to

another state or nation the parties may agree that the law either of this state or of such other state or nation shall govern their rights and duties. Failing such agreement this code applies to transactions bearing an appropriate relation to this state.

(2) Where one of the following provisions of this code specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law (including the conflict of laws rules) so specified:

Rights of creditors against sold goods. Section 2402.

Applicability of the division on leases. Sections 10105 and 10106.

Applicability of the division on bank deposits and collections. Section 4102.

Bulk transfers subject to the division on bulk transfers. Section 6102.

Applicability of the division on investment securities. Section 8106.

Perfection provisions of the division on secured transactions. Section 9103.

SEC. 2. Section 1201 of the Commercial Code is amended to read:

1201. Subject to additional definitions contained in the subsequent divisions of this code which are applicable to specific divisions or chapters thereof, and unless the context otherwise requires, in this code:

(1) "Action" in the sense of a judicial proceeding includes recoupment, counterclaim, setoff, suit in equity, and any other proceedings in which rights are determined.

(2) "Aggrieved party" means a party entitled to resort to a remedy.

(3) "Agreement" means the bargain of the parties in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in this code (Sections 1205 and 2208). Whether an agreement has legal consequences is determined by the provisions of this code, if applicable; otherwise by the law of contracts (Section 1103). (Compare "contract.")

(4) "Bank" means any person engaged in the business of banking.

(5) "Bearer" means the person in possession of an instrument, document of title, or certificated security payable to bearer or indorsed in blank.

(6) "Bill of lading" means a document evidencing the receipt of goods for shipment issued by a person engaged in the business of transporting or forwarding goods, and which, by its terms, evidences the intention of the issuer that the person entitled under the document (Section 7403(4)) has the right to receive, hold and dispose of the document and the goods it covers. Designation of a document by the issuer as a "bill of lading" is conclusive evidence of such intention. "Bill of lading" includes an airbill. "Airbill" means a document serving for air transportation as a bill of lading does for marine or rail transportation, and includes an air consignment note or air waybill.

(7) "Branch" includes a separately incorporated foreign branch of a bank.

(8) "Burden of establishing" a fact means the burden of persuading the triers of fact that the existence of the fact is more probable than its nonexistence.

(9) "Buyer in ordinary course of business" means a person who in good faith and without knowledge that the sale to him or her is in violation of the ownership rights or security interest of a third party in the goods buys in ordinary course from a person in the business of selling goods of that kind but does not include a pawnbroker. All persons who sell minerals or the like (including oil and gas) at wellhead or mineralhead shall be deemed to be persons in the business of selling goods of that kind. "Buying" may be for cash or by exchange of other property or on secured or unsecured credit and includes receiving goods or documents of title under a preexisting contract for sale but does not include a transfer in bulk or as security for, or in total or partial satisfaction of, a money debt.

(10) "Conspicuous." A term or clause is conspicuous when it is so written that a reasonable person against whom it is to operate ought to have noticed it. A printed heading in capitals (as: NONNEGOTIABLE BILL OF LADING) is conspicuous. Language in the body of a form is "conspicuous" if it is in larger or other contrasting type or color. But in a telegram any stated term is "conspicuous." Whether a term or clause is "conspicuous" or not is for decision by the court.

(11) "Contract" means the total legal obligation which results from the parties' agreement as affected by this code and any other applicable rules of law. (Compare "agreement.")

(12) "Creditor" includes a general creditor, a secured creditor, a lien creditor and any representative of creditors, including an assignee for the benefit of creditors, a trustee in bankruptcy, a receiver in equity and an executor or administrator of an insolvent debtor's or assignor's estate.

(13) "Defendant" includes a person in the position of defendant in a cross-action or counterclaim.

(14) "Delivery" with respect to instruments, documents of title, chattel paper or certificated securities means voluntary transfer of possession.

(15) "Document of title" includes bill of lading, dock warrant, dock receipt, warehouse receipt, gin ticket, compress receipt, and also any other document which in the regular course of business or financing is treated as adequately evidencing that the person entitled under the document (Section 7403(4)) has the right to receive, hold and dispose of the document and the goods it covers. To be a document of title, a document must purport to be issued by a bailee and purport to cover goods in the bailee's possession which are either identified or are fungible portions of an identified mass.

(16) "Fault" means wrongful act, omission or breach.

(17) "Fungible" with respect to goods or securities means goods

or securities of which any unit is, by nature or usage of trade, the equivalent of any other like unit. Goods which are not fungible shall be deemed fungible for the purposes of this code to the extent that under a particular agreement or document unlike units are treated as equivalents.

(18) "Genuine" means free of forgery or counterfeiting.

(19) "Good faith" means honesty in fact in the conduct or transaction concerned.

(20) "Holder" means a person who is in possession of a document of title or an instrument or a certificated investment security drawn, issued or indorsed to him or her or to his or her order or to bearer or in blank.

(21) To "honor" is to pay or to accept and pay, or where a credit so engages to purchase or discount a draft complying with the terms of the credit.

(22) "Insolvency proceedings" includes any assignment for the benefit of creditors or other proceedings intended to liquidate or rehabilitate the estate of the person involved.

(23) A person is "insolvent" who either has ceased to pay his or her debts in the ordinary course of business or cannot pay his or her debts as they become due or is insolvent within the meaning of the federal bankruptcy law.

(24) "Money" means a medium of exchange authorized or adopted by a domestic or foreign government as a part of its currency.

(25) A person has "notice" of a fact when any of the following occurs:

(a) He or she has actual knowledge of it.

(b) He or she has received a notice or notification of it.

(c) From all the facts and circumstances known to him or her at the time in question, he or she has reason to know that it exists.

A person "knows" or has "knowledge" of a fact when he or she has actual knowledge of it. "Discover" or "learn" or a word or phrase of similar import refers to knowledge rather than to reason to know. The time and circumstances under which a notice or notification may cease to be effective are not determined by this code.

(26) A person "notifies" or "gives" a notice or notification to another by taking such steps as may be reasonably required to inform the other in ordinary course whether or not the other actually comes to know of it. A person "receives" a notice or notification when any of the following occurs:

(a) It comes to his or her attention.

(b) It is duly delivered at the place of business through which the contract was made or at any other place held out by him or her as the place for receipt of such communications.

(27) Notice, knowledge or a notice or notification received by an organization is effective for a particular transaction from the time when it is brought to the attention of the individual conducting that transaction, and in any event from the time when it would have been

brought to his or her attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless the communication is part of his or her regular duties or unless he or she has reason to know of the transaction and that the transaction would be materially affected by the information.

(28) "Organization" includes a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal or commercial entity.

(29) "Party," as distinct from "third party," means a person who has engaged in a transaction or made an agreement within this division.

(30) "Person" includes an individual or an organization. (See Section 1102.)

(32) "Purchase" includes taking by sale, discount, negotiation, mortgage, pledge, lien, issue or reissue, gift or any other voluntary transaction creating an interest in property.

(33) "Purchaser" means a person who takes by purchase.

(34) "Remedy" means any remedial right to which an aggrieved party is entitled with or without resort to a tribunal.

(35) "Representative" includes an agent, an officer of a corporation or association, and a trustee, executor or administrator of an estate, or any other person empowered to act for another.

(36) "Rights" includes remedies.

(37) (a) "Security interest" means an interest in personal property or fixtures which secures payment or performance of an obligation. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer (Section 2401) is limited in effect to a reservation of a "security interest." The term also includes any interest of a buyer of accounts or chattel paper which is subject to Division 9 (commencing with Section 9101). The special property interest of a buyer of goods on identification of the goods to a contract for sale under Section 2501 is not a "security interest," but a buyer may also acquire a "security interest" by complying with Division 9 (commencing with Section 9101). Unless a consignment is intended as security, reservation of title thereunder is not a "security interest," but a consignment is in any event subject to the provisions on consignment sales (Section 2326).

(b) Whether a transaction creates a lease or security interest is determined by the facts of each case; however, a transaction creates a security interest if the consideration the lessee is to pay the lessor for the right to possession and use of the goods is an obligation for the term of the lease not subject to termination by the lessee, and

(i) The original term of the lease is equal to or greater than the remaining economic life of the goods,

(ii) The lessee is bound to renew the lease for the remaining economic life of the goods or is bound to become the owner of the goods,

(iii) The lessee has an option to renew the lease for the remaining economic life of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement, or

(iv) The lessee has an option to become the owner of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement.

(c) A transaction does not create a security interest merely because it provides that

(i) The present value of the consideration the lessee is obligated to pay the lessor for the right to possession and use of the goods is substantially equal to or is greater than the fair market value of the goods at the time the lease is entered into,

(ii) The lessee assumes risk of loss of the goods, or agrees to pay taxes, insurance, filing, recording, or registration fees, or service or maintenance costs with respect to the goods,

(iii) The lessee has an option to renew the lease or to become the owner of the goods,

(iv) The lessee has an option to renew the lease for a fixed rent that is equal to or greater than the reasonably predictable fair market rent for the use of the goods for the term of the renewal at the time the option is to be performed, or

(v) The lessee has an option to become the owner of the goods for a fixed price that is equal to or greater than the reasonably predictable fair market value of the goods at the time the option is to be performed.

(d) For purposes of this subdivision (37):

(i) Additional consideration is not nominal if (A) when the option to renew the lease is granted to the lessee, the rent is stated to be the fair market rent for the use of the goods for the term of the renewal determined at the time the option is to be performed, or (B) when the option to become the owner of the goods is granted to the lessee, the price is stated to be the fair market value of the goods determined at the time the option is to be performed. Additional consideration is nominal if it is less than the lessee's reasonably predictable cost of performing under the lease agreement if the option is not exercised;

(ii) "Reasonably predictable" and "remaining economic life of the goods" are to be determined with reference to the facts and circumstances at the time the transaction is entered into; and

(iii) "Present value" means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate is not manifestly unreasonable at the time the transaction is entered into; otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and

circumstances of each case at the time the transaction was entered into.

(38) "Send" in connection with any writing or notice means to deposit in the mail or deliver for transmission by any other usual means of communication with postage or cost of transmission provided for and properly addressed and in the case of an instrument to an address specified thereon or otherwise agreed, or if there be none to any address reasonable under the circumstances. The receipt of any writing or notice within the time at which it would have arrived if properly sent has the effect of a proper sending. When a writing or notice is required to be sent by registered or certified mail, proof of mailing is sufficient, and proof of receipt by the addressee is not required unless the words "with return receipt requested" are also used.

(39) "Signed" includes any symbol executed or adopted by a party with present intention to authenticate a writing.

(40) "Surety" includes guarantor.

(41) "Telegram" includes a message transmitted by radio, teletype, cable, any mechanical method of transmission, or the like.

(42) "Term" means that portion of an agreement which relates to a particular matter.

(43) "Unauthorized" signature or indorsement means one made without actual, implied or apparent authority and includes a forgery.

(44) "Value." Except as otherwise provided with respect to negotiable instruments and bank collections (Sections 3303, 4208 and 4209), a person gives "value" for rights if he or she acquires them in any of the following ways:

(a) In return for a binding commitment to extend credit or for the extension of immediately available credit whether or not drawn upon and whether or not a chargeback is provided for in the event of difficulties in collection.

(b) As security for, or in total or partial satisfaction of, a preexisting claim.

(c) By accepting delivery pursuant to a preexisting contract for purchase.

(d) Generally, in return for any consideration sufficient to support a simple contract.

(45) "Warehouse receipt" means a document evidencing the receipt of goods for storage issued by a warehouseman (Section 7102), and which, by its terms, evidences the intention of the issuer that the person entitled under the document (Section 7403(4)) has the right to receive, hold and dispose of the document and the goods it covers. Designation of a document by the issuer as a "warehouse receipt" is conclusive evidence of such intention.

(46) "Written" or "writing" includes printing, typewriting or any other intentional reduction to tangible form.

SEC. 3. Section 9113 of the Commercial Code is amended to read:

9113. A security interest arising solely under the division on sales (Division 2) or the division on leases (Division 10) is subject to the

provisions of this division except that to the extent that and so long as the debtor does not have or does not lawfully obtain possession of the goods

(a) No security agreement is necessary to make the security interest enforceable; and

(b) No filing is required to perfect the security interest; and

(c) The rights of the secured party on default by the debtor are governed (i) by the division on sales (Division 2) in the case of a security interest arising solely under that division or (ii) by the division on leases ( Division 10) in the case of a security interest arising solely under that division.

SEC. 4. Division 10 (commencing with Section 10101) of the Commercial Code is repealed.

SEC. 5. Division 10 (commencing with Section 10101) is added to the Commercial Code, to read:

## DIVISION 10. PERSONAL PROPERTY LEASES

### CHAPTER 1. GENERAL PROVISIONS

10101. This division shall be known and may be cited as the Uniform Commercial Code - Leases.

10102. This division applies to any transaction, regardless of form, that creates a lease.

10103. (1) In this division, unless the context otherwise requires:

(a) "Buyer in ordinary course of business" means a person who in good faith and without knowledge that the sale to him or her is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods buys in ordinary course from a person in the business of selling goods of that kind, but does not include a pawnbroker. "Buying" may be for cash or by exchange of other property or on secured or unsecured credit and includes receiving goods or documents of title under a preexisting contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(b) "Cancellation" occurs when either party puts an end to the lease contract for default by the other party.

(c) "Commercial unit" means such a unit of goods as by commercial usage is a single whole for purposes of lease and division of which materially impairs its character or value on the market or in use. A commercial unit may be a single article, as a machine, or a set of articles, as a suite of furniture or a line of machinery, or a quantity, as a gross or carload, or any other unit treated in use or in the relevant market as a single whole.

(d) "Conforming" goods or performance under a lease contract means goods or performance that are in accordance with the obligations under the lease contract.

(e) "Consumer lease" means a lease that a lessor regularly engaged in the business of leasing or selling makes to a lessee, except

an organization, who takes under the lease primarily for a personal, family, or household purpose.

(f) "Fault" means wrongful act, omission, breach, or default.

(g) "Finance lease" means a lease in which (i) the lessor does not select, manufacture, or supply the goods, (ii) the lessor acquires the goods or the right to possession and use of the goods in connection with the lease, and (iii) either (A) the lessee receives a copy of the contract evidencing the lessor's purchase of the goods on or before signing the lease contract, (B) the lessee's approval of the contract evidencing the lessor's purchase of the goods is a condition to effectiveness of the lease contract, (C) the lessor (aa) informs the lessee in writing of the identity of the supplier unless the lessee has selected the supplier and directed the lessor to purchase the goods from the supplier, (bb) informs the lessee in writing that the lessee may have rights under the contract evidencing the lessor's purchase of the goods, and (cc) advises the lessee in writing to contact the supplier for a description of any such rights, or (D) the lease contract discloses all warranties and other rights provided to the lessee by the lessor and supplier in connection with the lease contract and informs the lessee that there are no warranties or other rights provided to the lessee by the lessor and supplier other than those disclosed in the lease contract.

(h) "Goods" means all things that are movable at the time of identification to the lease contract, or are fixtures (Section 10309), but the term does not include money, documents, instruments, accounts, chattel paper, general intangibles, or minerals or the like, including oil and gas, before extraction. The term also includes the unborn young of animals.

(i) "Installment lease contract" means a lease contract that authorizes or requires the delivery of goods in separate lots to be separately accepted, even though the lease contract contains a clause "each delivery is a separate lease" or its equivalent.

(j) "Lease" means a transfer of the right to possession and use of goods for a term in return for consideration, but a sale, including a sale on approval or a sale or return, or retention or creation of a security interest is not a lease. Unless the context clearly indicates otherwise, the term includes a sublease.

(k) "Lease agreement" means the bargain, with respect to the lease, of the lessor and the lessee in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in this division. Unless the context clearly indicates otherwise, the term includes a sublease agreement.

(*l*) "Lease contract" means the total legal obligation that results from the lease agreement as affected by this division and any other applicable rules of law. Unless the context clearly indicates otherwise, the term includes a sublease contract.

(m) "Leasehold interest" means the interest of the lessor or the lessee under a lease contract.

(n) "Lessee" means a person who acquires the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublessee.

(o) "Lessee in ordinary course of business" means a person who in good faith and without knowledge that the lease to him or her is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods leases in ordinary course from a person in the business of selling or leasing goods of that kind, but does not include a pawnbroker. "Leasing" may be for cash or by exchange of other property or on secured or unsecured credit and includes receiving goods or documents of title under a preexisting lease contract but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(p) "Lessor" means a person who transfers the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublessor.

(q) "Lessor's residual interest" means the lessor's interest in the goods after expiration, termination, or cancellation of the lease contract.

(r) "Lien" means a charge against or interest in goods to secure payment of a debt or performance of an obligation, but the term does not include a security interest.

(s) "Lot" means a parcel or a single article that is the subject matter of a separate lease or delivery, whether or not it is sufficient to perform the lease contract.

(t) "Merchant lessee" means a lessee that is a merchant with respect to goods of the kind subject to the lease.

(u) "Present value" means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate was not manifestly unreasonable at the time the transaction was entered into; otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into.

(v) "Purchase" includes taking by sale, lease, mortgage, security interest, pledge, gift, or any other voluntary transaction creating an interest in goods.

(w) "Sublease" means a lease of goods the right to possession and use of which was acquired by the lessor as a lessee under an existing lease.

(x) "Supplier" means a person from whom a lessor buys or leases goods to be leased under a finance lease.

(y) "Supply contract" means a contract under which a lessor buys or leases goods to be leased.

(z) "Termination" occurs when either party pursuant to a power created by agreement or law puts an end to the lease contract otherwise than for default.

(2) Other definitions applying to this division and the sections in

which they appear are:

"Accessions." Subdivision (1) of Section 10310.

"Construction mortgage." Paragraph (d) of subdivision (1) of Section 10309.

"Encumbrance." Paragraph (e) of subdivision (1) of Section 10309.

"Fixtures." Paragraph (a) of subdivision 1 of Section 10309.

"Fixture filing." Paragraph (b) of subdivision (1) of Section 10309.

"Purchase money lease." Paragraph (c) of subdivision (1) of Section 10309.

(3) The following definitions in other divisions apply to this division:

"Account." Section 9106.

"Between merchants." Subdivision (3) of Section 2104.

"Buyer." Paragraph (a) of subdivision (1) of Section 2103.

"Chattel paper." Paragraph (b) of subdivision (1) of Section 9105.

"Consumer goods." Subdivision (1) of Section 9109.

"Document." Paragraph (f) of subdivision (1) of Section 9105.

"Entrusting." Subdivision (3) of Section 2403.

"General intangibles." Section 9106.

"Good faith." Paragraph (b) of subdivision (1) of Section 2103.

"Instrument." Paragraph (i) of subdivision (1) of Section 9105.

"Merchant." Subdivision (1) of Section 2104.

"Mortgage." Paragraph (j) of subdivision (1) of Section 9105.

"Pursuant to commitment." Paragraph (k) of subdivision (1) of Section 9105.

"Receipt." Paragraph (c) of subdivision (1) of Section 2103.

"Sale." Subdivision (1) of Section 2106.

"Sale on approval." Section 2326.

"Sale or return." Section 2326.

"Seller." Paragraph (d) of subdivision (1) of Section 2103.

(4) In addition, Division 1 contains general definitions and principles of construction and interpretation applicable throughout this division.

10104. (1) A lease, although subject to this division, is also subject to any applicable:

(a) Statute of the United States.

(b) Certificate of title statute of this state, including the provisions of the Vehicle Code that require registration of a vehicle or boat and provisions of the Health and Safety Code that require registration of a mobilehome or commercial coach.

(c) Certificate of title statute of another jurisdiction (Section 10105).

(d) Consumer law of this state, both decisional and statutory, including, to the extent that they apply to a consumer lease transaction, Chapter 5 (commencing with Section 17200) of Part 2 of Division 7 of the Business and Professions Code, Chapter 1 (commencing with Section 17500) of Part 3 of Division 7 of the Business and Professions Code, and Part 4 (commencing with

Section 1725) of Division 3 of the Civil Code.

(2) In case of conflict between the provisions of this division, other than Section 10105, subdivision (3) of Section 10304, and subdivision (3) of Section 10305, and any statute referred to in subdivision (1), the provisions of that statute control.

(3) Failure to comply with any applicable statute has only the effect specified therein.

10105. Subject to the provisions of subdivision (3) of Section 10304 and subdivision (3) of Section 10305, with respect to goods covered by a certificate of title issued under a statute of this state or of another jurisdiction, compliance and the effect of compliance or noncompliance with a certificate of title statute are governed by the law (including the conflict of laws rules) of the jurisdiction issuing the certificate until the earlier of (a) surrender of the certificate or (b) four months after the goods are removed from that jurisdiction and thereafter until a new certificate of title is issued by another jurisdiction.

10106. (1) If the law chosen by the parties to a consumer lease is that of a jurisdiction other than a jurisdiction in which the lessee resides at the time the lease agreement becomes enforceable or within 30 days thereafter or in which the goods are to be used, the choice is not enforceable.

(2) If the judicial forum chosen by the parties to a consumer lease is in a county other than the county in which the lessee in fact signed the lease, the county in which the lessee resides at the commencement of the action, the county in which the lessee resided at the time the lease contract became enforceable, or the county in which the goods are permanently stored, the choice is not enforceable.

10107. Any claim or right arising out of an alleged default or breach of warranty may be discharged in whole or in part without consideration by a written waiver or renunciation signed and delivered by the aggrieved party.

## CHAPTER 2. FORMATION AND CONSTRUCTION OF LEASE CONTRACT

10201. (1) A lease contract is not enforceable by way of action or defense unless:

(a) In a lease contract that is not a consumer lease, the total payments to be made under the lease contract, excluding payments for options to renew or buy, is less than one thousand dollars ($1,000); or

(b) There is a writing, signed by the party against whom enforcement is sought or by that party's authorized agent, sufficient to indicate that a lease contract has been made between the parties and to describe the goods leased and the lease term.

(2) Any description of leased goods or of the lease term is sufficient and satisfies paragraph (b) of subdivision (1), whether or

not it is specific, if it reasonably identifies what is described.

(3) A writing is not insufficient because it omits or incorrectly states a term agreed upon, but the lease contract is not enforceable under paragraph (b) of subdivision (1) beyond the lease term and the quantity of goods shown in the writing.

(4) A lease contract that does not satisfy the requirements of subdivision (1), but which is valid in other respects, is enforceable:

(a) If the goods are to be specially manufactured or obtained for the lessee and are not suitable for lease or sale to others in the ordinary course of the lessor's business, and the lessor, before notice of repudiation is received and under circumstances that reasonably indicate that the goods are for the lessee, has made either a substantial beginning of their manufacture or commitments for their procurement;

(b) If the party against whom enforcement is sought admits in that party's pleading, testimony, or otherwise in court that a lease contract was made, but the lease contract is not enforceable under this provision beyond the quantity of goods admitted; or

(c) With respect to goods that have been received and accepted by the lessee.

(5) The lease term under a lease contract referred to in subdivision (4) is:

(a) If there is a writing signed by the party against whom enforcement is sought or by that party's authorized agent specifying the lease term, the term so specified;

(b) If the party against whom enforcement is sought admits in that party's pleading, testimony, or otherwise in court a lease term, the term so admitted; or

(c) A reasonable lease term.

10202. Terms with respect to which the confirmatory memoranda of the parties agree or which are otherwise set forth in a writing intended by the parties as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement but may be explained or supplemented:

(a) By course of dealing or usage of trade or by course of performance; and

(b) By evidence of consistent additional terms unless the court finds the writing to have been intended also as a complete and exclusive statement of the terms of the agreement.

10204. (1) A lease contract may be made in any manner sufficient to show agreement, including conduct by both parties which recognizes the existence of a lease contract.

(2) An agreement sufficient to constitute a lease contract may be found although the moment of its making is undetermined.

(3) Although one or more terms are left open, a lease contract does not fail for indefiniteness if the parties have intended to make a lease contract and there is a reasonably certain basis for giving an

appropriate remedy.

10205. An offer by a merchant to lease goods to or from another person is a signed writing that by its terms gives assurance it will be held open is not revocable, for lack of consideration, during the time stated or, if no time is stated, for a reasonable time, but in no event may the period of irrevocability exceed three months. Any such term of assurance on a form supplied by the offeree must be separately signed by the offeror.

10206. (1) Unless otherwise unambiguously indicated by the language or circumstances, an offer to make a lease contract must be construed as inviting acceptance in any manner and by any medium reasonable in the circumstances.

(2) If the beginning of a requested performance is a reasonable mode of acceptance, an offeror who is not notified of acceptance within a reasonable time may treat the offer as having lapsed before acceptance.

10207. (1) If a lease contract involves repeated occasions for performance by either party with knowledge of the nature of the performance and opportunity for objection to it by the other, any course of performance accepted or acquiesced in without objection is relevant to determine the meaning of the lease agreement.

(2) The express terms of a lease agreement and any course of performance, as well as any course of dealing and usage of trade, must be construed whenever reasonable as consistent with each other, but if that construction is unreasonable, express terms control course of performance, course of performance controls both course of dealing and usage of trade, and course of dealing controls usage of trade.

(3) Subject to the provisions of Section 10208 on modification and waiver, course of performance is relevant to show a waiver or modification of any term inconsistent with the course of performance.

10208. (1) An agreement modifying a lease contract needs no consideration to be binding.

(2) A signed lease agreement that excludes modification or rescission except by a signed writing may not be otherwise modified or rescinded, but, except as between merchants, such a requirement on a form supplied by a merchant must be separately signed by the other party.

(3) Although an attempt at modification or rescission does not satisfy the requirements of subdivision (2), it may operate as a waiver.

(4) A party who has made a waiver affecting an executory portion of a lease contract may retract the waiver by reasonable notification received by the other party that strict performance will be required of any term waived, unless the retraction would be unjust in view of a material change of position in reliance on the waiver.

10209. (1) The benefit of the supplier's promises to the lessor under the supply contract and of all warranties, whether express or

implied, under the supply contract, extends to the lessee to the extent of the lessee's leasehold interest under a finance lease related to the supply contract, but subject to the terms of the supply contract and all of the supplier's defenses or claims arising therefrom.

(2) The extension of the benefit of the supplier's promises and warranties to the lessee (subdivision (1) of Section 10209) does not: (a) modify the rights and obligations of the parties to the supply contract, whether arising therefrom or otherwise, or (b) impose any duty or liability under the supply contract on the lessee.

(3) Any modification or rescission of the supply contract by the supplier and the lessor is effective against the lessee unless, prior to the modification or rescission, the supplier has received notice that the lessee has entered into a finance lease related to the supply contract. If the supply contract is modified or rescinded after the lessee enters the finance lease, the lessee has a cause of action against the lessor. The lessee's recovery from such action shall put the lessee in as good a position as if the modification or rescission had not occurred.

10210. (1) Express warranties by the lessor are created as follows:

(a) Any affirmation of fact or promise made by the lessor to the lessee which relates to the goods and becomes part of the basis of the bargain creates an express warranty that the goods will conform to the affirmation or promise.

(b) Any description of the goods which is made part of the basis of the bargain creates an express warranty that the goods will conform to the description.

(c) Any sample or model that is made part of the basis of the bargain creates an express warranty that the whole of the goods will conform to the sample or model.

(2) It is not necessary to the creation of an express warranty that the lessor use formal words, such as "warrant" or "guarantee," or that the lessor have a specific intention to make a warranty, but an affirmation merely of the value of the goods or a statement purporting to be merely the lessor's opinion or commendation of the goods does not create a warranty.

10211. (1) There is in a lease contract a warranty that for the lease term no person holds a claim to or interest in the goods that arose from an act or omission of the lessor, other than a claim by way of infringement or the like, which will interfere with the lessee's enjoyment of its leasehold interest.

(2) Except in a finance lease, there is in a lease contract by a lessor who is a merchant regularly dealing in goods of the kind a warranty that the goods are delivered free of the rightful claim of any person by way of infringement or the like.

(3) A lessee who furnishes specifications to a lessor or a supplier shall hold the lessor and the supplier harmless against any claim by the way of infringement or the like that arises out of compliance with the specifications.

10212. (1) Except in a finance lease, a warranty that the goods will be merchantable is implied in a lease contract if the lessor is a merchant with respect to goods of that kind.

(2) Goods to be merchantable must be at least such as:

(a) Pass without objection in the trade under the description in the lease agreement;

(b) In the case of fungible goods, are of fair average quality within the description;

(c) Are fit for the ordinary purposes for which goods of that type are used;

(d) Run, within the variation permitted by the lease agreement, of even kind, quality, and quantity within each unit and among all units involved;

(e) Are adequately contained, packaged, and labeled as the lease agreement may require; and

(f) Conform to any promises or affirmations of fact made on the container or label.

(3) Other implied warranties may arise from course of dealing or usage of trade.

10213. Except in a finance lease, if the lessor at the time the lease contract is made has reason to know of any particular purpose for which the goods are required and that the lessee is relying on the lessor's skill or judgment to select or furnish suitable goods, there is in the lease contract an implied warranty that the goods will be fit for that purpose.

10214. (1) Words or conduct relevant to the creation of an express warranty and words or conduct tending to negate or limit a warranty must be construed wherever reasonable as consistent with each other; but, subject to the provisions of Section 10202 on parol or extrinsic evidence, negation or limitation is inoperative to the extent that the construction is unreasonable.

(2) Subject to subdivision (3), to exclude or modify the implied warranty of merchantability or any part of it the language must mention "merchantability," be by a writing, and be conspicuous. Subject to subdivision (3), to exclude or modify any implied warranty of fitness the exclusion must be by a writing and be conspicuous. Language to exclude all implied warranties of fitness is sufficient if it is in writing, is conspicuous and states, for example, "There is no warranty that the goods will be fit for a particular purpose."

(3) Notwithstanding subdivision (2), but subject to subdivision (4),

(a) Unless the circumstances indicate otherwise, all implied warranties are excluded by expressions like "as is," or "with all faults," or by other language that in common understanding calls the lessee's attention to the exclusion of warranties and makes plain that there is no implied warranty, if in writing and conspicuous;

(b) If the lessee before entering into the lease contract has examined the goods or the sample or model as fully as desired or has

refused to examine the goods, there is no implied warranty with regard to defects that an examination ought in the circumstances to have revealed; and

(c) An implied warranty may also be excluded or modified by course of dealing, course of performance, or usage of trade.

(4) To exclude or modify a warranty against interference or against infringement (Section 10211) or part of it, the language must be specific, be by a writing, and be conspicuous, unless the circumstances, including course of performance, course of dealing, or usage of trade, give the lessee reason to know that the goods are being leased subject to a claim or interest of any person.

10215. Warranties, whether express or implied, must be construed as consistent with each other and as cumulative, but if that construction is unreasonable, the intention of the parties determines which warranty is dominant. In ascertaining that intention the following rules apply:

(a) Exact or technical specifications displace an inconsistent sample or model or general language of description.

(b) A sample from an existing bulk displaces inconsistent general language of description.

(c) Express warranties displace inconsistent implied warranties other than an implied warranty of fitness for a particular purpose.

10217. Identification of goods as goods to which a lease contract refers may be made at any time and in any manner explicitly agreed to by the parties. In the absence of explicit agreement, identification occurs:

(a) When the lease contract is made if the lease contract is for a lease of goods that are existing and identified;

(b) When the goods are shipped, marked, or otherwise designated by the lessor as goods to which the lease contract refers, if the lease contract is for a lease of goods that are not existing and identified; and

(c) When the young are conceived, if the lease contract is for a lease of unborn young of animals.

10218. (1) A lessee obtains an insurable interest when existing goods are identified to the lease contract even though the goods identified are nonconforming and the lessee has an option to reject them.

(2) If a lessee has an insurable interest only by reason of the lessor's identification of the goods, the lessor, until default or insolvency or notification to the lessee that identification is final, may substitute other goods for those identified.

(3) Notwithstanding a lessee's insurable interest under subdivisions (1) and (2), the lessor retains an insurable interest until an option to buy has been exercised by the lessee and risk of loss has passed to the lessee.

(4) Nothing in this section impairs any insurable interest recognized under any other statute or rule of law.

(5) The parties by agreement may determine that one or more parties have an obligation to obtain and pay for insurance covering

the goods and by agreement may determine the beneficiary of the proceeds of the insurance.

10219. (1) Except in the case of a finance lease, risk of loss is retained by the lessor and does not pass to the lessee. In the case of a finance lease, risk of loss passes to the lessee.

(2) Subject to the provisions of this division on the effect of default on risks of loss (Section 10220), if risk of loss is to pass to the lessee and the time of passage is not stated, the following rules apply:

(a) If the lease contract requires or authorizes the goods to be shipped by carrier

(i) And it does not require delivery at a particular destination, the risk of loss passes to the lessee when the goods are duly delivered to the carrier; but

(ii) If it does require delivery at a particular destination and the goods are there duly tendered while in the possession of the carrier, the risk of loss passes to the lessee when the goods are there duly so tendered as to enable the lessee to take delivery.

(b) If the goods are held by a bailee to be delivered without being moved, the risk of loss passes to the lessee on acknowledgment by the bailee of the lessee's right to possession of the goods.

(c) In any case not within subdivision (a) or (b), the risk of loss passes to the lessee on the lessee's receipt of the goods if the lessor, or, in the case of a finance lease, the supplier, is a merchant; otherwise the risk passes to the lessee on tender of delivery.

10220. (1) Where risk of loss is to pass to the lessee and the time of passage is not stated:

(a) If a tender or delivery of goods so fails to conform to the lease contract as to give a right of rejection, the risk of their loss remains with the lessor, or, in the case of a finance lease, the supplier, until cure or acceptance.

(b) If the lessee rightfully revokes acceptance, he or she, to the extent of any deficiency in his or her effective insurance coverage, may treat the risk of loss as having remained with the lessor from the beginning.

(2) Whether or not risk of loss is to pass to the lessee, if the lessee as to conforming goods already identified to a lease contract repudiates or is otherwise in default under the lease contract, the lessor, or, in the case of a finance lease, the supplier, to the extent of any deficiency in his or her effective insurance coverage may treat the risk of loss as resting on the lessee for a commercially reasonable time.

10221. If a lease contract requires goods identified when the lease contract is made, and the goods suffer casualty without fault of the lessee, the lessor, or the supplier before delivery, or the goods suffer casualty before risk of loss passes to the lessee pursuant to the lease agreement or Section 10219, then:

(a) If the loss is total, the lease contract is avoided; and

(b) If the loss is partial or the goods have so deteriorated as to no longer conform to the lease contract, the lessee may nevertheless

demand inspection and at his or her option either treat the lease contract as avoided or, except in a finance lease, accept the goods with due allowance from the rent payable for the balance of the lease term for the deterioration or the deficiency in quantity but without further right against the lessor.

## CHAPTER 3. EFFECT OF LEASE CONTRACT

10301. Except as otherwise provided in this division, a lease contract is effective and enforceable according to its terms between the parties, against purchasers of the goods and against creditors of the parties.

10302. Except as otherwise provided in this division, each provision of this division applies whether the lessor or a third party has title to the goods, and whether the lessor, the lessee, or a third party has possession of the goods, notwithstanding any statute or rule of law that possession or the absence of possession is fraudulent.

10303. (1) Any interest of a party under a lease contract and the lessor's residual interest in the goods may be transferred unless:

(a) Except as provided in paragraph (a) of subdivision (3), the transfer is voluntary and the lease contract prohibits the transfer; or

(b) Except as provided in paragraph (c) or (d) of subdivision (3), the transfer materially changes the duty of or materially increases the burden or risk imposed on the other party to the lease contract, and within a reasonable time after notice of the transfer the other party demands that the transferee comply with subdivision (2) and the transferee fails to comply.

(2) Within a reasonable time after demand pursuant to paragraph (b) of subdivision (1), the transferee shall:

(a) Cure or provide adequate assurance that he or she will promptly cure any default other than one arising from the transfer;

(b) Compensate or provide adequate assurance that he or she will promptly compensate the other party to the lease contract and any other person holding an interest in the lease contract, except the party whose interest is being transferred, for any loss to that party resulting from the transfer;

(c) Provide adequate assurance of future due performance under the lease contract; and

(d) Assume the lease contract.

(3) (a) No prohibition upon transfer of any interest of a party under a lease contract or the lessor's residual interest in the goods shall invalidate the creation or enforcement of a security interest in any interest of the lessor under a lease contract or the lessor's residual interest in the goods.

(b) Demand pursuant to paragraph (b) of subdivision (1) is without prejudice to the other party's rights against the transferee and the party whose interest is transferred.

(c) Paragraph (b) of subdivision (1) shall not apply to (i) the creation of a security interest in (A) the interest of the lessor under

the lease contract or (B) the lessor's residual interest in the goods, or (ii) the exercise of rights as a secured party pursuant to the security interest other than a transfer of the interest of the lessor under the lease contract or the lessor's residual interest in the goods pursuant to Section 9504 or 9505.

(d) Paragraph (b) of subdivision (1) shall not affect the validity of a provision in a lease contract obligating the lessee to keep the lessee's interest in the lease contract or the goods free from liens or encumbrances.

(4) An assignment of "the lease" or of "all my rights under the lease" or an assignment in similar general terms is a transfer of rights, and unless the language or the circumstances, as in an assignment for security, indicate the contrary, the assignment is a delegation of duties by the assignor to the assignee and acceptance by the assignee constitutes a promise by him or her to perform those duties. This promise is enforceable by either the assignor or the other party to the lease contract.

(5) Unless otherwise agreed by the lessor and the lessee, no delegation of performance relieves the assignor as against the other party of any duty to perform or any liability for default.

(6) A right to damages for default with respect to the whole lease contract or a right arising out of the assignor's due performance of his or her entire obligation can be assigned despite agreement otherwise.

(7) To prohibit the transfer of an interest of a party under a lease contract, the language of prohibition must be specific, by a writing, and conspicuous.

10304. (1) Subject to the provisions of Section 10303, a subsequent lessee from a lessor of goods under an existing lease contract obtains, to the extent of the leasehold interest transferred, the leasehold interest in the goods that the lessor had or had power to transfer and, except as provided in subdivision (2) of this section and subdivision (4) of Section 10527, takes subject to the existing lease contract. A lessor with voidable title has power to transfer a good leasehold interest to a good faith subsequent lessee for value, but only to the extent set forth in the preceding sentence. When goods have been delivered under a transaction of purchase the lessor has that power even though:

(a) The lessor's transferor was deceived as to the identity of the lessor;

(b) The delivery was in exchange for a check which is later dishonored;

(c) It was agreed that the transaction was to be a "cash sale;" or

(d) The delivery was procured through fraud punishable as larcenous under the criminal law.

(2) A subsequent lessee in the ordinary course of business from a lessor who is a merchant dealing in goods of that kind to whom the goods were entrusted by the existing lessee of that lessor before the interest of the subsequent lessee became enforceable against that

lessor obtains, to the extent of the leasehold interest transferred, all of that lessor's and the existing lessee's rights to the goods and takes free of the existing lease contract.

(3) A subsequent lessee from the lessor of goods that are subject to an existing lease contract and are covered by a certificate of title issued under a statute of this state or of another jurisdiction takes no greater rights than those provided both by this section and by the certificate-of-title statute.

10305. (1) Subject to the provisions of Section 10303, a buyer or sublessee from the lessee of goods under an existing lease contract obtains, to the extent of the interest transferred, the leasehold interest in the goods that the lessee had or had power to transfer and, except as provided in subdivision (2) of this section and subdivision (4) of Section 10511, takes subject to the existing lease contract. A lessee with a voidable leasehold interest has power to transfer a good leasehold interest to a good faith buyer for value or a good faith sublessee for value, but only to the extent set forth in the preceding sentence. When goods have been delivered under a transaction of lease the lessee has that power even though:

(a) The lessor was deceived as to the identity of the lessee;

(b) The delivery was in exchange for a check which is later dishonored; or

(c) The delivery was procured through fraud punishable as larcenous under the criminal law.

(2) A buyer in the ordinary course of business or a sublessee in the ordinary course of business from a lessee who is a merchant dealing in goods of that kind to whom the goods were entrusted by the lessor obtains, to the extent of the interest transferred, all of the lessor's and lessee's rights to the goods, and takes free of the existing lease contract.

(3) A buyer or sublessee from the lessee of goods that are subject to an existing lease contract and are covered by a certificate of title issued under a statute of this state or of another jurisdiction takes no greater rights than those provided both by this section and by the certificate-of-title statute.

10306. If a person in the ordinary course of his or her business furnishes services or materials with respect to goods subject to a lease contract, a lien upon those goods in the possession of that person given by statute or rule of law for those materials or services takes priority over any interest of the lessor or lessee under the lease contract or this division unless the lien is created by statute and the statute provides otherwise or unless the lien is created by rule of law and the rule of law provides otherwise.

10307. (1) Except as otherwise provided in Section 10306, a creditor of a lessee takes subject to the lease contract.

(2) Except as otherwise provided in subdivisions (3) and (4) of this section and in Sections 10306 and 10308, a creditor of a lessor takes subject to the lease contract:

(a) Unless the creditor holds a lien that attached to the goods

before the lease contract became enforceable;

(b) Unless the creditor holds a security interest in the goods and the lessee did not give value and receive delivery of the goods without knowledge of the security interest; or

(c) Unless the creditor holds a security interest in the goods that attached and was perfected before (i) the lease contract became enforceable , (ii) the lessee gave value and received delivery of the goods, or (iii) in the case of a purchase money security interest, the date that is 20 days after either the lessor or the lessee received possession of the goods.

(3) A lessee in the ordinary course of business takes the leasehold interest free of a security interest in the goods created by the lessor even though the security interest is perfected and the lessee knows of its existence.

(4) A lessee other than a lessee in the ordinary course of business takes the leasehold interest free of a security interest to the extent that it secures future advances made after the secured party acquires knowledge of the lease unless the future advances are made pursuant to a commitment entered into without knowledge of the lease.

10308. (1) A creditor of a lessor in possession of goods subject to a lease contract may treat the lease contract as void if as against the creditor retention of possession by the lessor is fraudulent or void under any statute or rule of law, but retention of possession in good faith and current course of trade by the lessor for a commercially reasonable time after the lease contract becomes enforceable is not fraudulent or void.

(2) Nothing in this division impairs the rights of creditors of a lessor if the lease contract is made under circumstances which under any statute or rule of law apart from this division would constitute the transaction a fraudulent transfer or voidable preference.

(3) A creditor of a seller may treat a sale or an identification of goods to a contract for sale as void if as against the creditor retention of possession by the seller is fraudulent under any statute or rule of law, but retention of possession of the goods pursuant to a lease contract entered into by the seller as lessee and the buyer as lessor in connection with the sale or identification of the goods is not fraudulent if the buyer bought for value and in good faith.

10309. (1) In this section:

(a) Goods are "fixtures" when they become so related to particular real estate that an interest in them arises under real estate law.

(b) A "fixture filing" is the filing, in the office where a mortgage on the real estate would be recorded, of a financing statement covering goods that are or are to become fixtures and conforming to the requirements of subdivision (5) of Section 9402.

(c) A lease is a "purchase money lease" unless the lessee has possession or use of the goods or the right to possession or use of the goods before the lease agreement is enforceable.

(d) A mortgage is a "construction mortgage" to the extent it

secures an obligation incurred for the construction of an improvement on land including the acquisition cost of the land, if the recorded writing so indicates.

(e) "Encumbrance" includes real estate mortgages and other liens on real estate and all other rights in real estate that are not ownership interests.

(2) Under this division a lease may be of goods that are fixtures or may continue in goods that become fixtures, but no lease exists under this division of ordinary building materials incorporated into an improvement on land.

(3) This division does not prevent creation of a lease of fixtures pursuant to real estate law.

(4) The interest of a lessor of fixtures has priority over a conflicting interest of an encumbrancer or owner of the real estate if:

(a) The lease is a purchase money lease, the conflicting interest of the encumbrancer or owner arises before the goods become fixtures, a fixture filing covering the fixtures is filed before the goods become fixtures or within 20 days thereafter, and the lessee has an interest of record in the real estate or is in possession of the real estate;

(b) A fixture filing covering the fixtures is filed before the interest of the encumbrancer or owner is of record, the lessor's interest has priority over any conflicting interest of a predecessor in title of the encumbrancer or owner, and the lessee has an interest of record in the real estate or is in possession of the real estate;

(c) The fixtures are readily removable factory or office machines, readily removable equipment that is not primarily used or leased for use in the operation of the real estate, or readily removable replacements of domestic appliances that are goods subject to a consumer lease;

(d) The conflicting interest is a lien on the real estate obtained by legal or equitable proceedings after the lease contract is enforceable;

(e) The encumbrancer or owner has consented in writing to the lease or has disclaimed an interest in the goods as fixtures; or

(f) The lessee has a right to remove the goods as against the encumbrancer or owner. If the lessee's right to remove terminates, the priority of the interest of the lessor continues for a reasonable time.

(5) Notwithstanding paragraph (a) of subdivision (4) but otherwise subject to subdivision (4), the interest of a lessor of fixtures is subordinate to the conflicting interest of an encumbrancer of the real estate under a construction mortgage recorded before the goods become fixtures if the goods become fixtures before the completion of the construction. To the extent given to refinance a construction mortgage, the conflicting interest of an encumbrancer of the real estate under a mortgage has this priority to the same extent as the encumbrancer of the real estate under the construction mortgage.

(6) In cases not within the preceding subdivisions, priority

between the interest of a lessor of fixtures and the conflicting interest of an encumbrancer or owner of the real estate who is not the lessee is determined by the priority rules governing conflicting interests in real estate.

(7) If the interest of a lessor has priority over all conflicting interests of all owners and encumbrancers of the real estate, the lessor or the lessee may (a) on default, expiration, termination, or cancellation of the lease agreement by the other party but subject to the provisions of the lease agreement and this division, or (b) if necessary to enforce his or her other rights and remedies under this division, remove the goods from the real estate, free and clear of all conflicting interests of all owners and encumbrancers of the real estate, but he or she must reimburse any encumbrancer or owner of the real estate who is not the lessee and who has not otherwise agreed for the cost of repair of any physical injury, but not for any diminution in value of the real estate caused by the absence of the goods removed or by any necessity of replacing them. A person entitled to reimbursement may refuse permission to remove until the party seeking removal gives adequate security for the performance of this obligation.

10310. (1) Goods are "accessions" when they are installed in or affixed to other goods.

(2) The interest of a lessor or a lessee under a lease contract entered into before the goods became accessions is superior to all interests in the whole except as stated in subdivision (4).

(3) The interest of a lessor or a lessee under a lease contract entered into at the time or after the goods became accessions is superior to all subsequently acquired interests in the whole except as stated in subdivision (4) but is subordinate to interests in the whole existing at the time the lease contract was made unless the holders of such interests in the whole have in writing consented to the lease or disclaimed an interest in the goods as part of the whole.

(4) The interest of a lessor or a lessee under a lease contract described in subdivision (2) or (3) is subordinate to the interest of:

(a) A buyer in the ordinary course of business or a lessee in the ordinary course of business of any interest in the whole acquired after the goods became accessions; or

(b) A creditor with a security interest in the whole perfected before the lease contract was made to the extent that the creditor makes subsequent advances without knowledge of the lease contract.

(5) When under subdivision (2) or (3) and (4) a lessor or a lessee of accessions holds an interest that is superior to all interests in the whole, the lessor or the lessee may (a) on default, expiration, termination, or cancellation of the lease contract by the other party but subject to the provisions of the lease contract and this division, or (b) if necessary to enforce his or her other rights and remedies under this division, remove the goods from the whole, free and clear of all interests in the whole, but he or she must reimburse any holder

of an interest in the whole who is not the lessee and who has not otherwise agreed for the cost of repair of any physical injury but not for any diminution in value of the whole caused by the absence of the goods removed or by any necessity for replacing them. A person entitled to reimbursement may refuse permission to remove until the party seeking removal gives adequate security for the performance of this obligation.

## CHAPTER 4. PERFORMANCE OF LEASED CONTRACT: REPUDIATED, SUBSTITUTED, AND EXCUSED

10401. (1) A lease contract imposes an obligation on each party that the other's expectation of receiving due performance will not be impaired.

(2) If reasonable grounds for insecurity arise with respect to the performance of either party, the insecure party may demand in writing adequate assurance of due performance. Until the insecure party receives that assurance, if commercially reasonable the insecure party may suspend any performance for which he or she has not already received the agreed return.

(3) A repudiation of the lease contract occurs if assurance of due performance adequate under the circumstances of the particular case is not provided to the insecure party within a reasonable time, not to exceed 30 days after receipt of a demand by the other party.

(4) Between merchants, the reasonableness of grounds for insecurity and the adequacy of any assurance offered must be determined according to commercial standards.

(5) Acceptance of any nonconforming delivery or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance.

10402. (1) If either party repudiates a lease contract with respect to a performance not yet due under the lease contract, the loss of which performance will substantially impair the value of the lease contract to the other, the aggrieved party may:

(a) For a commercially reasonable time, await retraction of repudiation and performance by the repudiating party;

(b) Make demand pursuant to Section 10401 and await assurance of future performance adequate under the circumstances of the particular case; or

(c) Resort to any right or remedy upon default under the lease contract or this division, even though the aggrieved party has notified the repudiating party that the aggrieved party would await the repudiating party's performance and assurance and has urged retraction. In addition, whether or not the aggrieved party is pursuing one of the foregoing remedies, the aggrieved party may suspend performance or, if the aggrieved party is the lessor, proceed in accordance with the provisions of this division on the lessor's right to identify goods to the lease contract notwithstanding default or to salvage unfinished goods (Section 10524).

(2) In the case of a consumer lease, the aggrieved party shall have the burden of establishing that the other party repudiated the lease contract and that the repudiation substantially impaired the value of the lease contract.

10403. (1) Until the repudiating party's next performance is due, the repudiating party can retract the repudiation unless, since the repudiation, the aggrieved party has canceled the lease contract or materially changed the aggrieved party's position or otherwise indicated that the aggrieved party considers the repudiation final.

(2) Retraction may be by any method that clearly indicates to the aggrieved party that the repudiating party intends to perform under the lease contract and includes any assurance demanded under Section 10401.

(3) Retraction reinstates a repudiating party's rights under a lease contract with due excuse and allowance to the aggrieved party for any delay occasioned by the repudiation.

10404. (1) If without fault of the lessee, the lessor, and the supplier, the agreed berthing, loading, or unloading facilities fail or the agreed type of carrier becomes unavailable or the agreed manner of delivery otherwise becomes commercially impracticable, but a commercially reasonable substitute is available, the substitute performance must be tendered and accepted.

(2) If the agreed means or manner of payment fails because of domestic or foreign governmental regulation:

(a) The lessor may withhold or stop delivery or cause the supplier to withhold or stop delivery unless the lessee provides a means or manner of payment that is commercially a substantial equivalent; or

(b) If delivery has already been taken, payment by the means or in the manner provided by the regulation discharges the lessee's obligation unless the regulation is discriminatory, oppressive, or predatory.

10405. Subject to Section 10404 on substituted performance, the following rules apply:

(a) Delay in delivery or nondelivery in whole or in part by a lessor or a supplier who complies with paragraphs (b) and (c) is not a default under the lease contract if performance as agreed has been made impracticable by the occurrence of a contingency the nonoccurrence of which was a basic assumption on which the lease contract was made or by compliance in good faith with any applicable foreign or domestic governmental regulation or order, whether or not the regulation or order later proves to be invalid.

(b) If the causes mentioned in paragraph (a) affect only part of the lessor's or the supplier's capacity to perform, he or she shall allocate production and deliveries among his or her customers but at his or her option may include regular customers not then under contract for sale or lease as well as his or her own requirements for further manufacture. He or she may so allocate in any manner that is fair and reasonable.

(c) The lessor seasonably shall notify the lessee and in the case of

a finance lease the supplier seasonably shall notify the lessor and the lessee, if known, that there will be delay or nondelivery and, if allocation is required under paragraph (b), of the estimated quota thus made available for the lessee.

10406. (1) If the lessee receives notification of a material or indefinite delay or an allocation justified under Section 10405, the lessee may by written notification to the lessor as to any goods involved, and with respect to all of the goods if under an installment lease contract the value of the whole lease contract is substantially impaired (Section 10510):

(a) Terminate the lease contract (subdivision (2) of Section 10505); or

(b) Except in a finance lease, modify the lease contract by accepting the available quota in substitution, with due allowance from the rent payable for the balance of the lease term for the deficiency but without further right against the lessor.

(2) If, after receipt of a notification from the lessor under Section 10405, the lessee fails so to modify the lease agreement within a reasonable time not exceeding 30 days, the lease contract lapses with respect to any deliveries affected.

10407. (1) In the case of a finance lease that is not a consumer lease, the lessee's promises under the lease contract become irrevocable and independent upon the lessee's acceptance of the goods.

(2) A promise that has become irrevocable and independent under subdivision (1):

(a) Is effective and enforceable between the parties, and by or against third parties including assignees of the parties, and

(b) Is not subject to cancellation, termination, modification, repudiation, excuse, or substitution without the consent of the party to whom the promise runs.

(3) This section shall not affect the validity under any other law of a covenant in any lease contract making the lessee's promises irrevocable and independent upon the lessee's acceptance of the goods.

## CHAPTER 5. DEFAULT

### Article 1. In General

10501. (1) Whether the lessor or the lessee is in default under a lease contract is determined by the lease agreement and this division.

(2) If the lessor or the lessee is in default under the lease contract, the party seeking enforcement has rights and remedies as provided in this division and, except as limited by this division, as provided in the lease agreement.

(3) If the lessor or the lessee is in default under the lease contract, the party seeking enforcement may reduce the party's claim to

judgment, or otherwise enforce the lease contract by self-help or any available judicial procedure or nonjudicial procedure, including administrative proceedings, arbitration, or the like, in accordance with this division.

(4) Except as otherwise provided in this division or the lease agreement, the rights and remedies referred to in subdivisions (2) and (3) are cumulative.

(5) If the lease agreement covers both real property and goods, the party seeking enforcement may proceed under this chapter as to the goods, or under other applicable law as to both the real property and the goods in accordance with his or her rights and remedies in respect of the real property, in which case this chapter does not apply.

10502. Except as otherwise provided in this division or the lease agreement, the lessor or lessee in default under the lease contract is not entitled to notice of default or notice of enforcement from the other party to the lease agreement.

10503. (1) Except as otherwise provided in this division, the lease agreement may include rights and remedies for default in addition to or in substitution for those provided in this division and may limit or alter the measure of damages recoverable under this division.

(2) Resort to a remedy provided under this division or in the lease agreement is optional unless the remedy is expressly agreed to be exclusive. If circumstances cause an exclusive or limited remedy to fail of its essential purpose, or provision for an exclusive remedy is unconscionable, remedy may be had as provided in this division.

(3) Consequential damages may be liquidated under Section 10504, or may otherwise be limited, altered, or excluded unless the limitation, alteration, or exclusion is unconscionable. Limitation of consequential damages for injury to the person in the case of consumer goods is invalid unless it is proved that the limitation is not unconscionable. Limitation of consequential damages where the loss is commercial is valid unless it is proved that the limitation is unconscionable.

(4) Rights and remedies on default by the lessor or the lessee with respect to any obligation or promise collateral or ancillary to the lease contract are not impaired by this division.

10504. (1) Damages payable by either party for default, or any other act or omission, including indemnity for loss or diminution of anticipated tax benefits or loss or damage to the lessor's residual interest, may be liquidated in the lease agreement subject to and in compliance with Section 1671 of the Civil Code.

(2) If the lease agreement provides for liquidation of damages, and such provision does not comply with Section 1671 of the Civil Code, remedy may be had as provided in this division.

(3) If the lessor justifiably withholds or stops delivery of goods because of the lessee's default or insolvency (Section 10525 or 10526), the lessee is entitled to restitution of any amount by which the sum

of his or her payments exceeds:

(a) The amount to which the lessor is entitled by virtue of terms liquidating the lessor's damages in accordance with subdivision (1); or

(b) In the absence of those terms, 20 percent of the then present value of the total rent the lessee was obligated to pay for the balance of the lease term, or, in the case of a consumer lease, the lesser of such amount or five hundred dollars ($500).

(4) A lessee's right to restitution under subdivision (3) is subject to offset to the extent the lessor establishes:

(a) A right to recover damages under the provisions of this division other than subdivision (1); and

(b) The amount or value of any benefits received by the lessee directly or indirectly by reason of the lease contract.

10505. (1) On cancellation of the lease contract, all obligations that are still executory on both sides are discharged, but any right based on prior default or performance survives, and the canceling party also retains any remedy for default of the whole lease contract or any unperformed balance.

(2) On termination of the lease contract, all obligations that are still executory on both sides are discharged but any right based on prior default or performance survives.

(3) Unless the contrary intention clearly appears, expressions of "cancellation," "rescission," or the like of the lease contract may not be construed as a renunciation or discharge of any claim in damages for an antecedent default.

(4) Rights and remedies for material misrepresentation or fraud include all rights and remedies available under this division for default.

(5) Neither rescission nor a claim for rescission of the lease contract nor rejection or return of the goods may bar or be deemed inconsistent with a claim for damages or other right or remedy.

10506. (1) An action for default under a lease contract, including breach of warranty or indemnity, must be commenced within four years after the cause of action accrued. In a lease contract that is not a consumer lease, by the original lease contract the parties may reduce the period of limitation to not less than one year.

(2) A cause of action for default accrues when the act or omission on which the default or breach of warranty is based is or should have been discovered by the aggrieved party, or when the default occurs, whichever is later. A cause of action for indemnity accrues (a) in the case of an indemnity against liability, when the act or omission on which the claim for indemnity is based is or should have been discovered by the indemnified party, whichever is later, or (b) in the case of an indemnity against loss or damage, when the person indemnified makes payment thereof.

(3) If an action commenced within the time limited by subdivision (1) is so terminated as to leave available a remedy by another action for the same default or breach of warranty or

indemnity, the other action may be commenced after the expiration of the time limit and within six months after the termination of the first action unless the termination resulted from voluntary discontinuance or from dismissal for failure or neglect to prosecute.

(4) This section does not alter the law on tolling of the statute of limitations nor does it apply to causes of action that have accrued before the operative date of this division.

10507. (1) Damages based on market rent (Section 10519 or 10528) are determined according to the rent for the use of the goods concerned for a lease term identical to the remaining lease term of the original lease agreement and prevailing at the time of the default.

(2) If evidence of rent for the use of the goods concerned for a lease term identical to the remaining lease term of the original lease agreement and prevailing at the times or places described in this division is not readily available, the rent prevailing within any reasonable time before or after the time described or at any other place or for a different lease term which in commercial judgment or under usage of trade would serve as a reasonable substitute for the one described may be used, making any proper allowance for the difference, including the cost of transporting the goods to or from the other place.

(3) Evidence of a relevant rent prevailing at a time or place or for a lease term other than the one described in this division offered by one party is not admissible unless and until he or she has given the other party notice the court finds sufficient to prevent unfair surprise.

(4) If the prevailing rent or value of any goods regularly leased in any established market is in issue, reports in official publications or trade journals or in newspapers or periodicals of general circulation published as the reports of that market are admissible in evidence. The circumstances of the preparation of the report may be shown to affect its weight but not its admissibility.

## Article 2. Default by Lessor

10508. (1) If a lessor fails to deliver the goods in conformity to the lease contract (Section 10509) or repudiates the lease contract (Section 10402), or a lessee rightfully rejects the goods (Section 10509) or justifiably revokes acceptance of the goods (Section 10517), then with respect to any goods involved, and with respect to all of the goods if under an installment lease contract the value of the whole lease contract is substantially impaired (Section 10510), the lessor is in default under the lease contract and the lessee may:

(a) Cancel the lease contract (subdivision (1) of Section 10505);

(b) Recover so much of the rent and security as has been paid, but in the case of an installment lease contract the recovery is that which is just under the circumstances;

(c) Cover and recover damages as to all goods affected whether

or not they have been identified to the lease contract (Sections 10518 and 10520), or recover damages for nondelivery (Sections 10519 and 10520).

(2) If a lessor fails to deliver the goods in conformity to the lease contract or repudiates the lease contract, the lessee may also:

(a) If the goods have been identified, recover them (Section 10522); or

(b) In a proper case, obtain specific performance or replevy the goods (Section 10521).

(3) If a lessor is otherwise in default under a lease contract, the lessee may exercise any right or remedy provided in this division except to the extent that this division makes the right or remedy available only upon the occurrence of a default described in subdivision (1) or (2).

(4) If a lessor has breached a warranty, whether express or implied, the lessee may recover damages (subdivision (4) of Section 10519).

(5) On rightful rejection or justifiable revocation of acceptance, a lessee has a security interest in goods in the lessee's possession or control for any rent and security that has been paid and any expenses reasonably incurred in their inspection, receipt, transportation, and care and custody, and may hold those goods and dispose of them in good faith and in a commercially reasonable manner, subject to the provisions of subdivision (5) of Section 10527.

(6) Subject to the provisions of Section 10407, a lessee, on notifying the lessor of the lessee's intention to do so, may deduct all or any part of the damages resulting from any default under the lease contract from any part of the rent still due under the same lease contract.

10509. (1) Subject to the provisions of Section 10510 on default in installment lease contracts, if the goods or the tender or delivery fail in any respect to conform to the lease contract, the lessee may reject or accept the goods or accept any commercial unit or units and reject the rest of the goods.

(2) Rejection of goods is ineffective unless it is within a reasonable time after tender or delivery of the goods and the lessee seasonably notifies the lessor.

10510. (1) Under an installment lease contract, a lessee may reject any delivery that is nonconforming if the nonconformity substantially impairs the value of that delivery and cannot be cured or the nonconformity is a defect in the required documents; but if the nonconformity does not fall within subdivision (2) and the lessor or the supplier gives adequate assurance of its cure, the lessee must accept that delivery.

(2) Whenever nonconformity or default with respect to one or more deliveries substantially impairs the value of the installment lease contract as a whole there is a default with respect to the whole. But, the aggrieved party reinstates the installment lease contract as a whole if the aggrieved party accepts a nonconforming delivery without seasonably notifying of cancellation or brings an action with

respect only to past deliveries or demands performance as to future deliveries.

10511. (1) Subject to any security interest of a lessee (subdivision (5) of Section 10508), if a lessor or a supplier has no agent or place of business at the market of rejection, a merchant lessee, after rejection of goods in his or her possession or control, shall follow any reasonable instructions received from the lessor or the supplier with respect to the goods. In the absence of those instructions, a merchant lessee shall make reasonable efforts to sell, lease, or otherwise dispose of the goods for the lessor's account if they threaten to decline in value speedily. Instructions are not reasonable if on demand indemnity for expenses is not forthcoming.

(2) If a merchant lessee (subdivision (1)) or any other lessee (Section 10512) disposes of goods, he or she is entitled to reimbursement either from the lessor or the supplier or out of the proceeds for reasonable expenses of caring for and disposing of the goods and, if the expenses include no disposition commission, to such commission as is usual in the trade or, if there is none, to a reasonable sum not exceeding 10 percent of the gross proceeds.

(3) In complying with this section or Section 10512, the lessee is held only to good faith. Good faith conduct hereunder is neither acceptance or conversion nor the basis of an action for damages.

(4) A purchaser who purchases in good faith from a lessee pursuant to this section or Section 10512 takes the goods free of any rights of the lessor and the supplier even though the lessee fails to comply with one or more of the requirements of this division.

10512. (1) Except as otherwise provided with respect to goods that threaten to decline in value speedily (Section 10511) and subject to any security interest of a lessee (subdivision (5) of Section 10508):

(a) The lessee, after rejection of goods in the lessee's possession, shall hold them with reasonable care at the lessor's or the supplier's disposition for a reasonable time after the lessee's seasonable notification of rejection;

(b) If the lessor or the supplier gives no instructions within a reasonable time after notification of rejection, the lessee may store the rejected goods for the lessor's or the supplier's account or ship them to the lessor or the supplier or dispose of them for the lessor's or the supplier's account with reimbursement in the manner provided in Section 10511; but

(c) The lessee has no further obligations with regard to goods rightfully rejected.

(2) Action by the lessee pursuant to subdivision (1) is not acceptance or conversion.

10513. (1) If any tender or delivery by the lessor or the supplier is rejected because it is nonconforming and the time for performance has not yet expired, the lessor or the supplier may seasonably notify the lessee of the lessor's or the supplier's intention to cure and may then make a conforming delivery within the time provided in the lease contract.

(2) If the lessee rejects a nonconforming tender that the lessor or the supplier had reasonable grounds to believe would be acceptable with or without money allowance, the lessor or the supplier may have a further reasonable time to substitute a conforming tender if he or she seasonably notifies the lessee.

10514. (1) In rejecting goods, a lessee's failure to state a particular defect that is ascertainable by reasonable inspection precludes the lessee from relying on the defect to justify rejection or to establish default:

(a) If, stated seasonably, the lessor or the supplier could have cured it (Section 10513); or

(b) Between merchants if the lessor or the supplier after rejection has made a request in writing for a full and final written statement of all defects on which the lessee proposes to rely.

(2) A lessee's failure to reserve rights when paying rent or other consideration against documents precludes recovery of the payment for defects apparent on the face of the documents.

10515. (1) Acceptance of goods occurs after the lessee has had a reasonable opportunity to inspect the goods and

(a) The lessee signifies or acts with respect to the goods in a manner that signifies to the lessor or the supplier that the goods are conforming or that the lessee will take or retain them in spite of their nonconformity; or

(b) The lessee fails to make an effective rejection of the goods (subdivision (2) of Section 10509).

(2) Acceptance of a part of any commercial unit is acceptance of that entire unit.

10516. (1) A lessee must pay rent for any goods accepted in accordance with the lease contract, with due allowance for goods rightfully rejected or not delivered.

(2) A lessee's acceptance of goods precludes rejection of the goods accepted. In the case of a finance lease, other than a consumer lease in which the supplier assisted in the preparation of the lease contract or participated in negotiating the terms of the lease contract with the lessor, if made with knowledge of a nonconformity, acceptance cannot be revoked because of it. In any other case, if made with knowledge of a nonconformity, acceptance cannot be revoked because of it unless the acceptance was on the reasonable assumption that the nonconformity would be seasonably cured. Acceptance does not of itself impair any other remedy provided by this division or the lease agreement for nonconformity.

(3) If a tender has been accepted:

(a) Within a reasonable time after the lessee discovers or, except in the case of consumer lease, should have discovered any default, (i) the lessee shall notify the lessor, or be barred from any remedy against the lessor, and, in addition, (ii) in the case of a finance lease, the lessee shall notify the supplier or be barred from any remedy against the supplier;

(b) Except in the case of a consumer lease, within a reasonable

time after the lessee receives notice of litigation for infringement or the like (Section 10211) the lessee shall notify the lessor or be barred from any remedy over for liability established by the litigation; and

(c) The burden is on the lessee to establish any default.

(4) If a lessee is sued for breach of a warranty or other obligation for which a lessor or a supplier is answerable over:

(a) The lessee may give the lessor or the supplier written notice of the litigation. If the notice states that the lessor or the supplier may come in and defend and that if the lessor or the supplier does not do so he or she will be bound in any action against him or her by the lessee by any determination of fact common to the two litigations, then unless the lessor or the supplier after seasonable receipt of the notice does come in and defend he or she is so bound.

(b) The lessor or the supplier may demand in writing that the lessee turn over control of the litigation including settlement if the claim is one for infringement or the like (Section 10211) or else be barred from any remedy over. If the demand states that the lessor or the supplier agrees to bear all expense and to satisfy any adverse judgment, then unless the lessee after seasonable receipt of the demand does turn over the control the lessee is so barred.

(5) The provisions of subdivision (3) and (4) apply to any obligation of a lessee to hold the lessor or the supplier harmless against infringement or the like (Section 10211).

10517. (1) A lessee may revoke acceptance of a lot or commercial unit whose nonconformity substantially impairs its value to the lessee if he or she has accepted it:

(a) Except in the case of a finance lease, on the reasonable assumption that its nonconformity would be cured and it has not been seasonably cured; or

(b) Without discovery of the nonconformity if the lessee's acceptance was reasonably induced either by the lessor's assurances or, except in the case of a finance lease, by the difficulty or discovery before acceptance.

(2) Revocation of acceptance must occur within a reasonable time after the lessee discovers or should have discovered the ground for it and before any substantial change in condition of the goods which is not caused by the nonconformity. Revocation is not effective until the lessee notifies the lessor.

(3) A lessee who so revokes has the same rights and duties with regard to the goods involved as if the lessee had rejected them.

10518. (1) After default by a lessor under the lease contract (subdivision (1) of Section 10508), the lessee may cover by making any purchase or lease of or contract to purchase or lease goods in substitution for those due from the lessor.

(2) Except as otherwise provided with respect to damages liquidated in the lease agreement (Section 10504) or determined by agreement of the parties (subdivision (3) of Section 1102), if a lessee's cover is by lease agreement substantially similar to the original lease agreement and the lease agreement is made in good

faith and in a commercially reasonable manner, the lessee may recover from the lessor as damages (a) the present value, as of the date of default, of the difference between the total rent for the lease term of the new lease agreement and the total rent for the remaining lease term of the original lease agreement and (b) any incidental or consequential damages less expenses saved in consequence of the lessor's default.

(3) If a lessee's cover is by lease agreement that for any reason does not qualify for treatment under subdivision (2), or is by purchase or otherwise, the lessee may recover from the lessor as if the lessee had elected not to cover and Section 10519 governs.

10519. (1) Except as otherwise provided with respect to damages liquidated in the lease agreement (Section 10504) or determined by agreement of the parties (Section 10503 and subdivision (3) of Section 1102), if a lessee elects not to cover or a lessee elects to cover and the cover is by lease agreement that for any reason does not qualify for treatment under subdivision (2) of Section 10518, or is by purchase or otherwise, the measure of damages for nondelivery or repudiation by the lessor or for rejection or revocation of acceptance by the lessee is the present value as of the date of the default of the difference between the then market rent and the original rent, computed for the remaining lease term of the original lease agreement together with incidental and consequential damages, less expenses saved in consequence of the lessor's default.

(2) Market rent is to be determined as of the place for tender or, in cases of rejection after arrival or revocation of acceptance, as of the place of arrival.

(3) If the lessee has accepted goods and given notification (subdivision (3) of Section 10516), the measure of damages for nonconforming tender or delivery by a lessor is the loss resulting in the ordinary course of events from the lessor's default as determined in any manner that is reasonable together with incidental and consequential damages, less expenses saved in consequence of the lessor's default.

(4) The measure of damages for breach of warranty is the present value at the time and place of acceptance of the difference between the value of the use of the goods accepted and the value if they had been as warranted for the lease term, unless special circumstances show proximate damages of a different amount, together with incidental and consequential damages, less expenses saved in consequence of the lessor's default or breach of warranty.

10520. (1) Incidental damages resulting from a lessor's default include expenses reasonably incurred in inspection, receipt, transportation, and care and custody of goods rightfully rejected or goods the acceptance of which is justifiably revoked, any commercially reasonable charges, expenses, or commissions in connection with effecting cover, and any other reasonable expense incident to the default.

(2) Consequential damages resulting from a lessor's default include:

(a) Any loss resulting from general or particular requirements and needs of which the lessor at the time of contracting had reason to know and which could not reasonably be prevented by cover or otherwise; and

(b) Injury to person or property proximately resulting from any breach of warranty.

10521. (1) Specific performance may be decreed if the goods are unique or in other proper circumstances.

(2) A decree for specific performance may include any terms and conditions as to payment of the rent, damages, or other relief that the court deems just.

(3) A lessee has a right of replevin, detinue, sequestration, claim and delivery, or the like for goods identified to the lease contract if after reasonable effort the lessee is unable to effect cover for those goods or the circumstances reasonably indicate that the effort will be unavailing.

10522. (1) Subject to subdivision (2) and even though the goods have not been shipped, a lessee who has paid a part or all of the rent and security for goods identified to a lease contract (Section 10217) on making and keeping good a tender of any unpaid portion of the rent and security due under the lease contract may recover the goods identified from the lessor if the lessor becomes insolvent within 10 days after receipt of the first installment of rent and security.

(2) A lessee acquires the right to recover goods identified to a lease contract only if they conform to the lease contract.

## Article 3. Default by Lessee

10523. (1) If a lessee wrongfully rejects or revokes acceptance of goods or fails to make a payment when due or repudiates with respect to a part or the whole, then, with respect to any goods involved, and with respect to all of the goods if under an installment lease contract the value of the whole lease contract is substantially impaired (Section 10510), the lessee is in default under the lease contract and the lessor may:

(a) Cancel the lease contract (subdivision (1) of Section 10505);

(b) Proceed respecting goods not identified to the lease contract (Section 10524);

(c) Withhold delivery of the goods and take possession of goods previously delivered (Section 10525);

(d) Stop delivery of the goods by any bailee (Section 10526);

(e) Dispose of the goods and recover damages (Section 10527), or retain the goods and recover damages (Section 10528), or in a proper case recover rent (Section 10529).

(2) If a lessee is otherwise in default under a lease contract, the lessor may exercise any right or remedy provided in this division

except to the extent that this division makes the right or remedy available only upon the occurrence of a default described in subdivision (1).

10524. (1) A lessor aggrieved under subdivision (1) of Section 10523 may:

(a) Identify to the lease contract conforming goods not already identified if at the time the lessor learned of the default they were in the lessor's or the supplier's possession or control; and

(b) Dispose of goods (subdivision (1) of Section 10527) that demonstrably have been intended for the particular lease contract even though those goods are unfinished.

(2) If the goods are unfinished, in the exercise of reasonable commercial judgment for the purposes of avoiding loss and of effective realization, an aggrieved lessor or the supplier may either complete manufacture and wholly identify the goods to the lease contract or cease manufacture and lease, sell, or otherwise dispose of the goods for scrap or salvage value or proceed in any other reasonable manner.

10525. (1) If a lessor discovers the lessee to be insolvent, the lessor may refuse to deliver the goods.

(2) The lessor has on default by the lessee under the lease contract the right to take possession of the goods. If the lease contract so provides, the lessor may require the lessee to assemble the goods and make them available to the lessor at a place to be designated by the lessor which is reasonably convenient to both parties. Without removal, the lessor may render unusable any goods employed in trade or business, and may dispose of goods on the lessee's premises (Section 10527).

(3) The lessor may proceed under subdivision (2) without judicial process if that can be done without breach of the peace or the lessor may proceed by action.

10526. (1) A lessor may stop delivery of goods in the possession of a carrier or other bailee if the lessor discovers the lessee to be insolvent and may stop delivery of carload, truckload, planeload, or larger shipments of express or freight if the lessee repudiates or fails to make a payment due before delivery, whether for rent, security, or otherwise under the lease contract, or for any other reason the lessor has a right to withhold or take possession of the goods.

(2) In pursuing its remedies under subdivision (1), the lessor may stop delivery until:

(a) Receipt of the goods by the lessee;

(b) Acknowledgment to the lessee by any bailee of the goods, except a carrier, that the bailee holds the goods for the lessee; or

(c) Such an acknowledgment to the lessee by a carrier via reshipment or as warehouseman.

(3) (a) To stop delivery, a lessor shall so notify as to enable the bailee by reasonable diligence to prevent delivery of the goods.

(b) After notification, the bailee shall hold and deliver the goods according to the directions of the lessor, but the lessor is liable to the

bailee for any ensuing charges or damages.

(c) A carrier who has issued a nonnegotiable bill of lading is not obliged to obey a notification to stop received from a person other than the consignor.

10527. (1) After a default by a lessee under the lease contract (subdivision (1) of Section 10523) or after the lessor refuses to deliver or takes possession of goods (Section 10525 or 10526), the lessor may dispose of the goods concerned or the undelivered balance thereof by lease, sale, or otherwise.

(2) Except as otherwise provided with respect to damages liquidated in the lease agreement (Section 10504) or determined by agreement of the parties (Section 10503 and subdivision (3) of Section 1102), if the disposition is by lease agreement substantially similar to the original lease agreement and the lease agreement is made in good faith and in a commercially reasonable manner, the lessor may recover from the lessee as damages (a) accrued and unpaid rent as of the date of the commencement of the term of the new lease agreement, (b) the present value as of the date of the commencement of the term of the new lease agreement of the difference between the total rent for the then remaining lease term of the original lease agreement and the total rent for the lease term of the new lease agreement, and (c) any incidental damages allowed under Section 10530, less expenses saved in consequence of the lessee's default.

(3) If the lessor's disposition is by lease agreement that qualifies for treatment under subdivision (2), the lessor may elect to proceed under subdivision (2) or Section 10528. If the lessor's disposition is by lease agreement that for any reason does not qualify for treatment under subdivision (2), or is by sale or otherwise, the lessor may recover from the lessee under Section 10528 as if the lessor had elected not to dispose of the goods.

(4) A subsequent buyer or lessee who buys or leases from the lessor in good faith for value as a result of a disposition under this section takes the goods free of the original lease contract and any rights of the original lessee even though the lessor fails to comply with one or more of the requirements of this division.

(5) The lessor is not accountable to the lessee for any profit made on any disposition. A lessee who has rightfully rejected or justifiably revoked acceptance shall account to the lessor for any excess over the amount of the lessee's security interest (subdivision (5) of Section 10508).

10528. (1) Except as otherwise provided with respect to damages liquidated in the lease agreement (Section 10504) or determined by agreement of the parties (Section 10503 and subdivision (3) of Section 1102), if a lessor elects to retain the goods or a lessor elects to dispose of the goods and disposition is by lease agreement, whether or not the lease agreement qualifies for treatment under subdivision (2) of Section 10527, or is by sale or otherwise, the lessor may recover from the lessee as damages for

default by the lessee (subdivision (1) of Section 10523) (a) accrued and unpaid rent as of the date the lessor obtained possession of the goods or such earlier date as the lessee has made an effective tender of possession of the goods back to the lessor, (b) the present value as of the date determined under paragraph (a) of the difference between the total rent for the then remaining lease term of the original lease agreement and the market rent at the time determined under paragraph (a) and at the place where the goods were located on that date computed for the same lease term, and (c) any incidental damages allowed under Section 10530, less expenses saved in consequence of the lessee's default.

(2) If the measure of damages provided in subdivision (1) is inadequate to put a lessor in as good a position as performance would have, the measure of damages is the present value of the profit, including reasonable overhead, the lessor would have made from full performance by the lessee, together with any incidental damages allowed under Section 10530, due allowance for costs reasonably incurred and due credit for payments or proceeds of disposition.

10529. (1) After default by the lessee under the lease contract (subdivision (1) of Section 10523), if the lessor complies with subdivision (2), the lessor may recover from the lessee as damages:

(a) For goods accepted by the lessee and not repossessed by or effectively tendered back to the lessor and for conforming goods lost or damaged after risk of loss passes to the lessee (Section 10219), (i) accrued and unpaid rent as of the date of entry of judgment in favor of the lessor, (ii) the present value as of the date determined under subparagraph (i) of the rent for the then remaining lease term of the lease agreement, and (iii) any incidental damages allowed under Section 10530, less expenses saved in consequence of the lessee's default; and

(b) For goods identified to the lease contract where the lessor has never delivered the goods or has taken possession of them or the lessee has effectively tendered them back to the lessor, if the lessor is unable after reasonable effort to dispose of them at a reasonable price or the circumstances reasonably indicate that such an effort will be unavailing, (i) accrued and unpaid rent as of the date of entry of judgment in favor of the lessor, (ii) the present value as of the date determined under subparagraph (i) of the rent for the then remaining lease term of the lease agreement, and (iii) any incidental damages allowed under Section 10530, less expenses saved in consequence of the lessee's default.

(2) Except as provided in subdivision (3), the lessor shall hold for the lessee for the remaining lease term of the lease agreement any goods that have been identified to the lease contract and are in the lessor's control.

(3) The lessor may dispose of the goods at any time before collection of the judgment for damages obtained pursuant to subdivision (1). If the disposition is before the end of the remaining lease term of the lease agreement, the lessors' recovery against the

lessee for damages will be governed by Section 10527 or 10528, and the lessor will cause an appropriate credit to be provided against any judgment for damages to the extent that the amount of the judgment exceeds the recovery available pursuant to Section 10527 or 10528.

(4) Payment of the judgment for damages obtained pursuant to subdivision (1) entitles the lessee to use and possession of the goods not then disposed of for the remaining lease term of the lease agreement, provided that the lessee complies with all other terms and conditions of the lease agreement.

(5) After a lessee has wrongfully rejected or revoked acceptance of goods, has failed to pay rent then due, or has repudiated (Section 10402), a lessor who is held not entitled to rent under this section must nevertheless be awarded damages for nonacceptance under Sections 10527 and 10528.

10530. Incidental damages to an aggrieved lessor include any commercially reasonable charges, expenses, or commissions incurred in stopping delivery, in the transportation, care and custody of goods after the lessee's default, in connection with return or disposition of the goods, or otherwise resulting from the default.

10531. (1) If a third party so deals with goods that have been identified to a lease contract as to cause actionable injury to a party to the lease contract (a) the lessor has a right of action against the third party, and (b) the lessee also has a right of action against the third party if the lessee:

(i) Has a security interest in the goods;

(ii) Has an insurable interest in the goods; or

(iii) Bears the risk of loss under the lease contract or has since the injury assumed that risk as against the lessor and the goods have been converted or destroyed.

(2) If at the time of the injury the party plaintiff did not bear the risk of loss as against the other party to the lease contract and there is no arrangement between them for disposition of the recovery, his or her suit or settlement, subject to his or her own interest, is as a fiduciary for the other party to the lease contract.

(3) Either party with the consent of the other may sue for the benefit of whom it may concern.

10532. In addition to any other recovery permitted by this division, the lessor shall be entitled to recover from the lessee an amount that will fully compensate the lessor for any loss of or damage to the lessor's residual interest in the goods caused by the default of the lessee.

## CHAPTER 6. TRANSITION PROVISIONS

10600. This division shall apply to all lease contracts that are first made or that first become effective between the parties on or after January 1, 1990. This division shall not apply to any lease contract first made or that first became effective between the parties prior to January 1, 1990, or to any extension, amendment, modification,

renewal, or supplement of or to the lease contract, unless the parties thereto specifically agree in writing that the lease contract, as extended, amended, modified, renewed, or supplemented, shall be governed by this division.

SEC. 6. Division 11 (commencing with Section 11101) of the Commercial Code is repealed.

SEC. 7. Division 12 (commencing with Section 12101) of the Commercial Code is repealed.

SEC. 8. Division 13 (commencing with Section 13101) is added to the Commercial Code, to read:

## DIVISION 13. EFFECTIVE DATE AND REPEALER

13101. This code shall become effective on January 1, 1965. It applies to transactions entered into and events occurring after that date.

13102. Transactions validly entered into before January 1, 1965, and the rights, duties, and interests flowing from them remain valid thereafter and may be terminated, completed, consummated, or enforced as required or permitted by any statute or other law amended or repealed by this act as though such repeal or amendment had not occurred; provided, however, that the perfection of a security interest (other than a security interest (i) in a motor vehicle or vessel required to be registered under the Vehicle Code unless such vehicle or vessel is inventory or (ii) in personal property, including fixtures, which constitutes a portion of the properties included in an agreement which is a mortgage or deed of trust of both real and personal property made to secure the payment of bonds or other evidences of indebtedness authorized or permitted to be issued by the Commissioner of Corporations, or made by a public utility as defined in the Public Utilities Code), as defined in this code (Section 1201), and however denominated in any law repealed by this act,

(a) Which was perfected on or before January 1, 1965, by a filing or recording under a law repealed by this act and requiring a further filing or recording to continue its perfection, continues until and will lapse on the date provided by the law so repealed for such further filing or recording.

(b) Which was perfected on or before January 1, 1965, by a filing or recording under a law repealed by this act and requiring no further filing or recording to continue its perfection, continues until and will lapse 12 months after January 1, 1965.

(c) Which was perfected on or before January 1, 1965, without any filing or recording, but with respect to which a financing statement is required to be filed in order for it to be perfected under this code, continues until and will lapse 12 months after January 1, 1965;

unless, in each case, a continuation statement is filed by the secured party within 12 months before the perfection of the security interest

would otherwise lapse. Any such continuation statement must be signed by the secured party, identify the original security agreement, however denominated, state the office where and the date when last filed or refiled, or recorded or rerecorded, and the filing number or recordation data and further state that the original security agreement is still effective. Subdivision (1) of Section 9401 determines the proper place to file such a continuation statement. Except as herein specified the provisions of subdivision (3) of Section 9403 apply to such a continuation statement.

13103. Except as provided in the following section, all acts and parts of acts inconsistent with this act are hereby repealed.

13104. The division on documents of title (Division 7) does not repeal or modify any laws prescribing the form or contents of documents of title or the services or facilities to be afforded by bailees, or otherwise regulating bailees' businesses in respects not specifically dealt with herein; but the fact that such laws are violated does not affect the status of a document of title which otherwise complies with the definition of a document of title (Section 1201).

13105. (1) A financing statement or a continuation thereof, properly filed and effective pursuant to Section 9401 as it existed prior to January 1, 1971, remains valid and effective after January 1, 1971, until expiration of the usual five-year period from date of filing. Any termination, release, assignment, or amendment of the financing statement prior to expiration of the five-year period of effectiveness shall be filed, as previously required, with the county recorder who has filed the financing statement.

(2) After January 1, 1971, any continuation of a financing statement which had been properly filed with a county recorder prior to January 1, 1971, and which now would be required to be filed with the Secretary of State, shall be filed with the Secretary of State in accordance with Section 9403. The continuation statement shall be accompanied by a certified copy of the entire record of the county recorder related to the financing statement. After filing of the continuation statement with the Secretary of State, any termination, release, assignment, amendment, or continuation of the financing statement shall also be filed with the Secretary of State and any documents affecting the financing statement that are not filed with the Secretary of State shall not be effective.

SEC. 9. Division 14 (commencing with Section 14101) is added to the Commercial Code, to read:

## DIVISION 14. EFFECTIVE DATE AND TRANSITION PROVISIONS

14101. The amendments to this code, as adopted by the Legislature at the 1973–74 Regular Session, shall become effective at 12:01 a.m. on January 1, 1976.

14102. The provisions of Division 13 shall continue to apply to this code, as amended by the Legislature at the 1973–74 Regular Session,

and for this purpose this code as it existed prior to January 1, 1976, and this code, as amended by the Legislature at the 1973–74 Regular Session, shall be considered one continuous statute.

14103. Transactions validly entered into after January 1, 1965, and before January 1, 1976, and which were subject to the provisions of this code and which would be subject to this code as amended by the Legislature at the 1973–74 Regular Session if they had been entered into after January 1, 1976, and the rights, duties, and interests flowing from the transactions remain valid after January 1, 1976, and may be terminated, completed, consummated, or enforced as required or permitted by this code as amended by the Legislature at the 1972 Regular Session. Security interests arising out of these transactions which are perfected on January 1, 1976, shall remain perfected until they lapse as provided in this code as amended by the Legislature at the 1973–74 Regular Session, and may be continued as permitted by this code as amended by the Legislature at the 1973–74 Regular Session, except as stated in Section 14105.

14104. A security interest for the perfection of which filing or the taking of possession was required under this code and which attached prior to January 1, 1976, but was not perfected shall be deemed perfected on January 1, 1975, if this code as amended by the Legislature at the 1973–74 Regular Session permits perfection without filing or authorizes filing in the office or offices where a prior ineffective filing was made.

14105. (1) A financing statement or continuation statement filed prior to January 1, 1976, which shall not have lapsed prior to January 1, 1976, shall remain effective for the period provided in this code as it existed prior to January 1, 1976, but not less than five years after the filing.

(2) With respect to any collateral acquired by the debtor subsequent to January 1, 1976, any effective financing statement or continuation statement described in this section shall apply only if the filing or filings are in the office or offices that would be appropriate to perfect the security interests in the new collateral under this code as amended by the Legislature at the 1973–74 Regular Session.

(3) The effectiveness of any financing statement or continuation statement filed prior to January 1, 1976, may be continued by a continuation statement as permitted by this code as amended by the Legislature at the 1973–74 Regular Session, except that if this code, as amended by the Legislature at the 1973–74 Regular Session, requires a filing in an office where there was no previous financing statement, a new financing statement conforming to Section 14106 shall be filed in that office.

14106. (1) If a security interest is perfected or has priority on January 1, 1976, as to all persons or as to certain persons without any filing or recording, and if the filing of a financing statement would be required for the perfection or priority of the security interest against those persons under this code, as amended by the Legislature

at the 1973–74 Regular Session, the perfection and priority rights of the security interest continue until January 1, 1979. The perfection will then lapse unless a financing statement is filed as provided in subdivision (4) or unless the security interest is perfected otherwise than by filing.

(2) If a security interest is perfected on January 1, 1976, under a law other than this code which requires no further filing, refiling or recording to continue its perfection, perfection continues until and will lapse January 1, 1979, unless a financing statement is filed as provided in subdivision (4) or unless the security interest is perfected otherwise than by filing, or unless under subdivision (3) of Section 9302 the other law continues to govern filing.

(3) If a security interest is perfected by a filing, refiling or recording under a law repealed by this code as amended by the Legislature at the 1973–74 Regular Session which required further filing, refiling or recording to continue its perfection, perfection continues and will lapse on the date provided by the law so repealed for a further filing, refiling, or recording unless a financing statement is filed as provided in subdivision (4) or unless the security interest is perfected otherwise than by filing.

(4) A financing statement may be filed within six months before the perfection of a security interest would otherwise lapse. Any such financing statement may be signed by either the debtor or the secured party. It must identify the security agreement, statement, or notice (however denominated in any statute or other law repealed or modified by this code as amended by the Legislature at the 1973–74 Regular Session), state the office where and the date when the last filing, refiling, or recording, if any, was made with respect thereto, and the filing number, if any, was made with respect thereto, and the filing number, if any, or book and page, if any, of recording and further state that the security agreement, statement, or notice, however denominated, in another filing office under this code or under any statute or other law repealed or modified by this code as amended by the Legislature at the 1973–74 Regular Session is still effective. Section 9401 and Section 9103 determine the proper place to file such a financing statement. Except as specified in this subdivision, the provisions of Section 9403(3) for continuation statements apply to such a financing statement.

14107. Except as otherwise provided in this division, this code as it existed prior to January 1, 1976, shall apply to any questions of priority if the positions of the parties were fixed prior to January 1, 1976. In other cases questions of priority shall be determined by this code as amended by the Legislature at the 1973–74 Regular Session.

14108. Unless a change in law has clearly been made, the provisions of this code as amended by the Legislature at the 1973–74 Regular Session shall be deemed declaratory of the meaning of this code as it existed prior to January 1, 1976. The amendments to subdivision (38) of Section 1201 and to subdivision (j) of Section 9104 of this code as amended by the Legislature at the 1973–74 Regular

Session shall be deemed declaratory of the meaning of this code as it existed prior to January 1, 1976.

14109. (1) The amendments to this code relating to fixtures adopted by the Legislature at the 1979–1980 Regular Session shall apply to security interests which attach on or after January 1, 1981, in goods which become fixtures on or after January 1, 1981.

(2) If the record of a mortgage of real estate would have been effective as a fixture filing of goods described therein if the amendments to this code relating to fixtures adopted by the Legislature at the 1979–1980 Regular Session had been in effect on the date of recording the mortgage, the mortgage shall be deemed effective as a fixture filing as to such goods under subdivision (6) of Section 9402 as of January 1, 1981.

SEC. 10. Division 15 (commencing with Section 15101) is added to the Commercial Code, to read:

## DIVISION 15. EFFECTIVE DATE AND TRANSITION PROVISIONS

15101. The repeal and addition of Division 8 (commencing with Section 8101) made at the 1984 portion of the 1983–84 Regular Session shall become effective on January 1, 1985.

15102. The provisions of Division 13 (commencing with Section 13101) and Division 14 (commencing with Section 14101) shall continue to apply to this code, as revised by the Legislature at the 1983–84 Regular Session, and for this purpose, this code as it existed prior to January 1, 1985, and this code, as revised by the Legislature at the 1984 portion of the 1983–84 Regular Session, shall be considered one continuous statute.

15103. The owner of an interest (other than a security interest) in an uncertificated security (paragraph (b) of subdivision (1) of Section 8102) whose interest was acquired prior to January 1, 1985, or was acquired after January 1, 1985, in an uncertificated security issued in respect of a security in which the owner had such an interest, shall not be required to take any action under Section 8313 or otherwise to preserve or protect that ownership interest, which shall remain effective and enforceable to the same extent it was prior to January 1, 1985, in the absence of that action. However, if a security interest first attaches to the security or any other interest in the security first becomes effective after that date, the provisions of Division 8 (commencing with Section 8101) as revised shall govern the rights and obligations of all persons with respect to those interests. Except as otherwise provided in this division, the rights and obligations of all persons with respect to uncertificated securities issued prior to January 1, 1985, shall be governed by Division 8 (commencing with Section 8101) as revised by the Legislature in the 1984 portion of the 1983–84 Regular Session.

15104. A secured party who has a security interest in an uncertificated security (paragraph (b) of subdivision (1) of Section

8102), which security interest attached to that uncertificated security (a) prior to January 1, 1985, or (b) after that date in an uncertificated security issued in respect of a security in which the secured party had the pre-January 1, 1985, security interest, shall not be required to take any action under Division 8 (commencing with Section 8101) to protect, preserve, or perfect that security interest, which shall remain attached and perfected to the same extent it was prior to that date in the absence of any such action. The priority and perfection of those security interests shall continue to be governed by Division 9 (commencing with Section 9101) as it existed prior to that date. However, on or before the last date on which any action is required under Division 9 (commencing with Section 9101) (as it existed prior to that date) to continue the perfection of the security interest, in order to continue the perfection of the security interest the secured party, rather than complying with Division 9 (commencing with Section 9101), shall furnish to a party described in subparagraph (i), (iii), or (iv) of paragraph (h) of subdivision (1) of Section 8313, or if none of those is applicable, then to the issuer of the uncertificated security, either (x) a copy of either the financing statement previously filed to perfect the security interest or the security agreement that created the security interest, in either case bearing a copy or an original of the debtor's signature, or (y) a written notification from the registered owner under paragraph (b) of subdivision (7) of Section 8403. Any such notice to an issuer shall be deemed a written notification under paragraph (b) of subdivision (7) of Section 8403, subject to the limitation that there can be no more than one registered pledge of an uncertificated security at any time (Section 8108). Except as otherwise provided in this division, the provisions of Division 8 (commencing with Section 8101) as revised shall govern the rights and obligations of all persons with respect to a security interest in an uncertificated security that first attaches after January 1, 1985.

SEC. 11. This act shall become operative on January 1, 1990.

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## CHAPTER 1360

An act to add Section 711 to the Corporations Code, relating to corporations.

[Approved by Governor September 25, 1988. Filed with Secretary of State September 26, 1988.]

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

SECTION 1. Section 711 is added to the Corporations Code, to read:

711. (a) The Legislature finds and declares that:

Many of the residents of this state are the legal and beneficial

owners or otherwise the ultimate beneficiaries of shares of stock of domestic and foreign corporations, title to which may be held by a variety of intermediate owners as defined in subdivision (b). The informed and active involvement of such beneficial owners and beneficiaries in holding legal owners and, through them, management, accountable in their exercise of corporate power is essential to the interest of those beneficiaries and beneficial owners and to the economy and well-being of this state.

The purpose of this section is to serve the public interest by ensuring that voting records are maintained and disclosed as provided in this section. In the event that by statute or regulation pursuant to the federal Employee Retirement Income Security Act of 1974 (29 U.S.C. Sec. 1001 et seq.), there are imposed upon investment managers as defined in Sec. 2(38) thereof, duties substantially the same as those set forth in this section, compliance with those statutory or regulatory requirements by persons subject to this section shall be deemed to fulfill the obligations contained in this section.

This section shall be construed liberally to achieve that purpose.

(b) For purposes of this section, a person on whose behalf shares are voted includes, but is not limited to:

(1) A participant or beneficiary of an employee benefit plan with regard to shares held for the benefit of the participant or beneficiary.

(2) A shareholder, beneficiary, or contract owner of any entity (or of any portfolio of any entity) as defined in Section 3(a) of the federal Investment Company Act of 1940 (15 U.S.C. Sec. 80a-1 et seq.), as amended, to the extent the entity (or portfolio) holds the shares for which the record is requested.

(c) For the purposes of this section, a person on whose behalf shares are voted does not include:

(1) A person who possesses the right to terminate or withdraw from the shareholder, contract owner, participant, or beneficiary relationship with any entity (or any portfolio of any entity) defined in subdivision (b). This exclusion does not apply in the event the right of termination or withdrawal cannot be exercised without automatic imposition of a tax penalty. The right to substitute a relationship with an entity or portfolio, the shares of which are voted by or subject to the direction of the investment adviser (as defined in Section 2 of the federal Investment Company Act of 1940 (15 U.S.C. Sec. 80a-1 et seq.), as amended), of the prior entity or portfolio, or an affiliate of the investment adviser, shall not be deemed to be a right of termination or withdrawal within the meaning of this subdivision.

(2) A person entitled to receive information about a trust pursuant to Section 16061 of the Probate Code.

(3) A beneficiary, participant, contract owner, or shareholder whose interest is funded through the general assets of a life insurance company authorized to conduct business in this state.

(d) Every person possessing the power to vote shares of stock on

behalf of another shall maintain a record of the manner in which the shares were voted. The record shall be maintained for a period of 12 consecutive months from the effective date of the vote.

(e) Upon a reasonable written request, the person possessing the power to vote shares of stock on behalf of another, or a designated agent, shall disclose the voting record with respect to any matter involving a specific security or securities in accordance with the following procedures:

(1) Except as set forth in paragraph (2), disclosure shall be made to the person making the request. The person making the disclosure may require identification sufficient to identify the person making the request as a person on whose behalf the shares were voted. A request for identification, if made, shall be reasonable, shall be made promptly, and may include a request for the person's social security number.

(2) If the person possessing the power to vote shares on behalf of another holds that power pursuant to an agreement entered into with a party other than the person making the request for disclosure, the person maintaining and disclosing the record pursuant to this section may, instead, make the requested disclosure to that party. Disclosure to that party shall be deemed compliance with the disclosure requirement of this section. If disclosure is made to that party and not to the person making the request, subdivision (i) shall not apply. However, nothing herein shall prohibit that party and the person possessing the power to vote on shares from entering into an agreement between themselves for the payment or assessment of a reasonable charge to defray expenses of disclosing the record.

(f) Where the entity subject to the requirements of this section is organized as a unit investment trust as defined in Section 4(2) of the federal Investment Company Act of 1940 (15 U.S.C. Sec. 80a-1 et seq.), the open-ended investment companies underlying the unit investment trust shall promptly make available their proxy voting records to the unit investment trust upon evidence of a bona fide request for voting record information pursuant to subdivision (e).

(g) Signing a proxy on another's behalf and forwarding it for disposition or receiving voting instructions does not constitute the power to vote. A person forwarding proxies or receiving voting instructions shall disclose the identity of the person having the power to vote shares upon reasonable written request by a person entitled to request a voting record under subdivision (c).

(h) For purposes of this section, if one or more persons has the power to vote shares on behalf of another, unless a governing instrument provides otherwise, the person or persons may designate an agent who shall maintain and disclose the record in accordance with subdivisions (b) and (c).

(i) Except as provided in paragraph (2) of subdivision (e), or as otherwise provided by law or a governing instrument, a person maintaining and disclosing a record pursuant to this section may assess a reasonable charge to the requesting person in order to defray

expenses of disclosing the record in accordance with subdivision (e). Disclosure shall be made within a reasonable period after payment is received.

(j) Upon the petition of any person who successfully brings an action pursuant to or to enforce this section, the court may award costs and reasonable attorney's fees if the court finds that the defendant willfully violated this section.

(k) The obligation to maintain and disclose a voting record in accordance with subdivisions (b) and (c) shall commence January 1, 1990.

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## CHAPTER 1361

An act to amend Section 18512 of the Revenue and Taxation Code, relating to seniors, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 25, 1988. Filed with Secretary of State September 26, 1988 ]

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

SECTION 1. Section 18512 of the Revenue and Taxation Code is amended to read:

18512. (a) Notwithstanding Section 13340 of the Government Code, all money transferred to the California Fund for Senior Citizens pursuant to Section 18511 is hereby continuously appropriated, without regard to fiscal years, for annual allocation 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 its duties under this article.

(2) 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.

SEC. 2. Money allocated pursuant to subparagraph (A) of paragraph (2) of subdivision (a) of Section 18512 of the Government Code for that portion of the 1988 calendar year immediately preceding the commencement of the 1988–89 fiscal year shall be allocated in an amount which is proportionate to that part of the calendar year preceding the 1988–89 fiscal year.

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 fund the California Senior Legislature in the 1988–89 fiscal year on a state fiscal basis and to provide support for the next election and annual session of the California Senior Legislature, it is necessary that this act take effect immediately.

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## CHAPTER 1362

An act to amend Sections 44670.1, 44670.3, 44670.4, 44670.5, 44670.6, 44670.7, 44670.9, 44671, 44671.1, 44671.2, 44671.3, and 44671.4 of, to add Section 44671.5 to, to add Chapter 5 (commencing with Section 99200) to Part 65 of, to repeal and add Article 2 (commencing with Section 44680) of Chapter 3.1 of Part 25 of, and to repeal Section 44670 of, the Education Code, relating to education.

[Approved by Governor September 25, 1988. Filed with Secretary of State September 26, 1988.]

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

SECTION 1. (a) The Legislature finds that staff development for California's classroom teachers and administrators is an important investment in human resources, one which if pursued in a systematic, sustained, and coherent manner, will provide long-term benefits to

the pupils of this state.

(b) The Legislature further finds that a year-long study commissioned by the Governor and the Legislature has concluded that:

(1) California teachers and administrators demonstrate a firm commitment to improving their own knowledge and practice.

(2) Selected staff development activities have sound prospects for improving pupil performance and the quality of school programs.

(3) The current array of staff development activities and incentives has grown by accretion, without a clear vision, remains largely unevaluated, and is unlikely to yield substantial improvement.

(c) The Legislature intends to foster, by this act, a comprehensive, consistent policy toward staff development to the end that each level of the elementary and secondary educational system has an effective staff development component tied directly to an organization improvement plan. The Legislature intends to assist educators in doing all of the following:

(1) Motivating and inspiring California pupils to become capable, responsible citizens in a multicultural democracy.

(2) Being sensitive to the diversity of pupil needs, learning styles, talents, and levels of development.

(3) Fostering self-esteem in all pupils through a willingness to assist every pupil in meeting rigorous academic standards by relating the educational process and instructional strategies to diverse pupil needs.

SEC. 1.5. Section 44670 of the Education Code is repealed.

SEC. 2. Section 44670.1 of the Education Code is amended to read:

44670.1. The Legislature recognizes the necessity for school development which results in direct improvement of instruction to pupils. The Legislature, by the provisions of this article, intends to give all those who work with pupils ongoing opportunities to strengthen subject matter knowledge, instruction, and support through locally designed school development plans.

SEC. 3. Section 44670.3 of the Education Code is amended to read:

44670.3. School development plans authorized by this article shall include staff development activities directly related to the annual school improvement objectives developed in accordance with Section 44670.4, and shall assist personnel at the local school site to do the following:

(a) Improve instructional practices in each subject, strengthen subject matter knowledge, and improve support services based on a continuing examination of instruction and learning in the subject areas offered by the school.

(b) Ensure that subject matter requirements, instructional strategies, and instructional materials meet uniformly high academic standards and are responsive to the diversity among pupil learning

needs and styles in a multicultural society, including underachieving pupils and pupils with exceptional abilities or needs.

(c) Review, select, and learn to utilize curricula and instructional materials in a wide variety of subject areas, giving consideration to the state-recommended curriculum framework and model curriculum standards in each subject matter area.

(d) Address ways in which educational technology can support the instructional program.

(e) Improve the school and classroom environments, including working relationships with parents and other community members.

(f) Improve pupil attendance.

SEC. 4. Section 44670.4 of the Education Code is amended to read:

44670.4. At each school that establishes a school development plan authorized by this chapter, annual school improvement objectives shall be developed by a process that involves classroom teachers selected by teachers; other school personnel, including instructional paraprofessionals; the principal; parents; other community members; and, in secondary schools, pupils. The improvement objectives shall address, but need not be limited to, the objectives specified in Section 44670.3 and the capacity of school personnel to provide the services required of them. At the secondary school level, the process shall include teacher representation from each of the major academic subject areas provided by the school.

SEC. 5. Section 44670.5 of the Education Code is amended to read:

44670.5. Each school that is receiving funds for the purposes of this article or that chooses to utilize the provisions of this article shall have a single plan to strengthen subject matter and instruction, consistent with rules and regulations adopted by the school district governing board. If a school develops or has developed a school plan pursuant to Article 3 (commencing with Section 52850) of Chapter 12 of Part 28 of the School-Based Program Coordination Act, the planning requirements of this article shall be met by including within that plan the requirements specified in Section 44670.9 and by meeting the requirements of Sections 44670.3 and 44670.5.

If a school develops or has developed a school plan pursuant to the School-Based Pupil Motivation and Maintenance Program and Dropout Recovery Act, Article 7 (commencing with Section 54720) of Chapter 9 of Part 29, or any other state or federal categorical education program, the provision of that school plan shall be included within the plan to strengthen subject matter and instruction, developed pursuant to this article and, in so doing, the school shall be deemed to have complied with the requirements of those programs. The plans shall include professional development of the personnel employed at the school necessary to meet the requirements of the plan. Professional development programs shall:

(a) Provide opportunities for all school personnel to participate in ongoing development activities pursuant to the objectives specified

in Section 44670.3.

(b) Be designed and implemented under the direction of classroom teachers and other participating school personnel, including the school principal and one or more mentor teachers, and, as appropriate, in consultation with resource agencies or consortia established pursuant to Article 2 (commencing with Section 44680), institutions of higher education, and subject matter projects established pursuant to this code. Classroom teachers selected by teachers shall comprise the majority of any group designated to design professional development activities for instructional personnel.

(c) Allow for diversity in professional development activities, including, but not limited to, study of theory and rationale, observation of demonstration lessons, practice opportunities for peer coaching, consultation, and feedback in the classroom setting, and systematic observation during visits to other classrooms or schools.

(d) Be conducted during time that is set aside for such purpose throughout the year, including, but not limited to, time on a continuing basis when participating school personnel are released from their regular duties.

(e) Be evaluated and modified on a continuing basis by participating school personnel in consultation and, as appropriate, with regional resource consortia personnel and subject matter project personnel, based upon benefits to staff and pupils.

(f) Include the school principal and other administrative personnel as active continuing participants in one or more professional development activities implemented pursuant to a school development plan.

(g) Make available followup activities to assist participating staff in using newly acquired skills on the job.

(h) Promote the professional development of instructional paraprofessionals in the schools, including activities that will encourage instructional paraprofessionals to pursue the education and training necessary to become classroom teachers.

SEC. 6. Section 44670.6 of the Education Code is amended to read:

44670.6. (a) Schools may include as part of their school development plan, the provision of time during the regular school year to conduct professional development activities pursuant to a school development plan and shall receive full average daily attendance reimbursement under the provisions of Section 46300. The time shall not exceed eight days each year.

(b) It is the intent of the Legislature that school districts revise salary schedules to allow for and give priority to salary increments related to continuing professional development on the basis of time spent in high quality professional development, including subject matter coursework, pursuant to school development plans created under this article, and school improvement plans created pursuant to Chapter 6 (commencing with Section 52000) of Part 28. The salary

schedule revision should include incentives for instructional paraprofessionals to pursue education and training to improve instructional skills and to obtain teaching credentials.

(c) It is the intent of the Legislature that school districts revise procedures related to professional growth activities required by Section 44277 to ensure that activities consistent with school and school district development plans created pursuant to this article, and school improvement plans created pursuant to Chapter 6 (commencing with Section 52000) of Part 28 satisfy the requirements.

SEC. 7. Section 44670.7 of the Education Code is amended to read:

44670.7. Any school district governing board, upon petition by a committee created pursuant to subdivision (b) of Section 44670.5, may request the State Board of Education to grant a waiver of any provision of this code (except Article 3 (commencing with Section 44930) of Chapter 4 and Part 26 (commencing with Section 46000)); or Title 5 of the California Code of Regulations (except regulations adopted pursuant to Article 3 (commencing with Section 44930) of Chapter 4) if the waiver is necessary or beneficial to the successful implementation of a school development plan. The State Board of Education may grant the request when the facts indicate the failure to do so would hinder the implementation plan. The action shall be taken not later than the second regular meeting of the State Board of Education following receipt of a waiver request or the request for a waiver shall be deemed approved. In the event the request for a waiver is denied, the reasons for the denial shall be communicated without delay to the requesting school district and school. The waiver shall apply only to the requesting school or schools, and shall be effective for no more than two years. The State Board of Education may renew a waiver request.

SEC. 8. Section 44670.9 of the Education Code is amended to read:

44670.9. A committee created pursuant to subdivision (b) of Section 44670.5 may request of the school district governing board funding to implement a school development plan. The request shall consist of a three-year school development plan to meet school improvement objectives established pursuant to Section 44670.4 and Section 44670.5. School development plans shall describe all of the following: (a) the specific subject matter areas addressed by the plan; (b) professional development objectives and steps necessary to achieve such objectives including intended outcomes; (c) how any state development activities, regardless of funding source, are incorporated into the plan; (d) how the school development plan is articulated with the school district development plan; (e) a budget directly related to proposed school development activities that identifies, coordinates, and makes efficient use of existing resources which will be directed to support the school development plan; and (f) procedures for ongoing evaluation and modification of the school

development activities, including evaluation of the long-term impact of school development activities on pupil learning and professional growth of staff; (g) how any professional development days made available to school staff pursuant to Section 44670.6 may be used to further the professional development goals and objectives of the school.

The request shall include evidence that all of the activities in the proposed professional development plan meet the requirements for professional growth activities as described in Section 44277.

School development plans required by this article shall be updated annually and approved every two years, consistent with improvement objectives established annually pursuant to Sections 44670.4 and 44670.5.

SEC. 9. Section 44671 of the Education Code is amended to read:

44671. Governing boards of participating school districts shall:

(a) Establish policies and identify resources necessary to the successful implementation of this chapter, including a district development plan to meet the objectives specified in Section 44670.3. The district plan shall be designed to support coordinated professional development for administrators, teachers, other certificated personnel, and classified personnel, consistent with district development objectives. In school districts with average daily attendance greater than 2,500 pupils, professional development activities for each category of school personnel shall be designed and implemented in consultation with personnel representing that category. The district plan shall include a process for the phase-in of all schools that choose to create and implement school development plans.

(b) Develop the capacity to assist schools, upon request, to plan, implement, and evaluate school development plans. School districts may develop the capacity to assist schools in conjunction with other districts, the county superintendent of schools, institutions of higher education, local subject matter projects, or a resource agency or consortium established pursuant to Article 2 (commencing with Section 44680).

(c) To the extent the district receives funding for this purpose pursuant to Section 44671.1, allocate to any school that is not already receiving funds for school improvement pursuant to Chapter 6 (commencing with Section 52000) of Part 28, funding pursuant to this article. Allocations may only be made to a school with an approved school development plan. Each district shall ensure that participating schools represent the diversity of pupil population and include schools that serve low-income and underachieving pupils.

(d) Ensure reasonable opportunities for representatives of each requesting school to meet with the governing board or its designated representatives to discuss the school development plan.

(e) Develop and disseminate to all schools criteria for school development plan approval, and approve or disapprove school development plan requests consistent with, but not limited to,

district approval criteria, the school district development plan, and regulations adopted by the State Board of Education. In the event any plan is not approved, specific reasons for that action shall be communicated to the applicant school.

(f) Assist schools to identify effective practices regarding, but not limited to, the objectives described in Section 44670.3 and to identify, coordinate, and make efficient use of existing resources to support school development plans.

(g) Integrate professional development activities for instructional paraprofessionals into the career development policy of the district in order to provide incentives for instructional paraprofessionals to pursue education and training which will improve instructional skills and lead to a teaching credential.

(h) Annually certify to the Superintendent of Public Instruction the number of school development plans funded and the aggregate amount of money awarded for the plans, which may include a request for reimbursement to school districts for the administrative costs of this chapter in an amount not to exceed 5 percent of the district's apportionment. School districts may reserve up to an additional five percent of the school development allocation, provided the funds are used for the purposes of developing and implementing the school district development plan pursuant to this section and for the purposes of providing assistance to schools consistent with any approved school development plan.

SEC. 10. Section 44671.1 of the Education Code is amended to read:

44671.1. The Superintendent of Public Instruction, in consultation with subject matter projects and resource agencies and consortia, as appropriate, shall:

(a) To the extent resources are available, assist district and school personnel, upon request, to design, implement, and evaluate school and district development plans authorized by this article.

(b) Ensure that procedures utilized by governing boards to approve and evaluate school development outcomes are consistent with this chapter and with standards and criteria adopted by the State Board of Education , and include in existing program quality reviews an assessment of the quality of the staff development programs conducted at the school site.

(c) Annually apportion to school districts, county superintendents of schools, and other qualified entities, funds appropriated for the purposes of this article. It is the intent of the Legislature that districts effectively use existing resources for staff development available through the School Improvement Program, state and federal compensatory education programs, the Mentor Teacher program and any other state and federal apportionments. It is the further intent of the Legislature that:

(1) In allocating funds among school development plans, resource agencies and consortia, and subject matter projects, priority be afforded to school level planning and subject matter projects, to the

end that funding is provided according to the following ratio: for every dollar allocated to support a resource agency, at least three dollars ($3) be allocated to support school level planning and at least one dollar ($1) shall be allocated to support one or more subject matter projects, until all subject matter projects are implemented and adequately funded.

(2) The Legislature intends that in balancing the adequacy of resources to effectively meet the requirements of this article against funding a larger number of schools or entities, that the provision of adequate resources to satisfy the requirements of this article prevail.

(3) In determining the funding level consideration shall be given to funding levels provided in the past to support school plans and staff development.

(4) If the amount appropriated for the purposes of this article is not adequate to fund all school district and county superintendent of schools apportionments as determined pursuant to paragraph (3), the Superintendent of Public Instruction shall calculate and notify each school district and county superintendent of schools of the amount which they shall receive, based on the following criteria:

(A) No district or county superintendent of schools shall receive more than the amount determined pursuant to subdivision (3).

(B) Funds shall be apportioned in a manner to ensure that the district or county superintendent receives funds adequate to involve an entire school or schools in programs operated pursuant to this article. Funding may not be provided for only some of the enrollment of the school.

(C) The grant award for an individual school shall not be less than four thousand dollars ($4,000).

(D) In identifying school districts and county superintendents to receive apportionments pursuant to this article, the Superintendent of Public Instruction shall consider at least the following criteria:

(i) Percentage of enrollment funded through the school improvement program, such that first priority shall go to those agencies with the smallest percentage enrollment in the school improvement program.

(ii) Balanced geographic distribution.

(iii) Balanced representation of the state in terms of the race, socioeconomic status, and academic achievement of the students served.

SEC. 11. Section 44671.2 of the Education Code is amended to read:

44671.2. The State Board of Education may adopt rules and regulations as necessary to implement this article which shall include standards and criteria for the approval of school development plans by school district governing boards. Those rules and regulations shall be limited to the following:

(a) The degree to which the objectives of school development plans conform to objectives specified in Section 44670.3 and the district development plan.

(b) The extent to which a substantial percentage of school personnel at the school will participate in proposed professional development activities.

(c) The adequacy of locally developed procedures to evaluate the effectiveness of school development activities.

(d) The extent to which existing resources are identified, coordinated, and used efficiently to support the school development plan.

SEC. 12. Section 44671.3 of the Education Code is amended to read:

44671.3. The State Board of Education shall, to the extent possible, consolidate standards and criteria for the local approval and evaluation of school development plans with existing requirements for state and federal categorical programs, in order to minimize paperwork requirements of school districts and schools.

SEC. 13. Section 44671.4 of the Education Code is amended to read:

44671.4. (a) Federal and state funds appropriated or apportioned for the purposes of this article shall not be used to supplant funds currently expended by school districts for the purpose of administering or conducting professional development or school improvement programs.

(b) Funds apportioned in any fiscal year, but not expended in that fiscal year, may be expended in the first subsequent fiscal year after the allocation is provided.

SEC. 14. Section 44671.5 is added to the Education Code, to read:

44671.5. As used in this article:

(a) "Instructional paraprofessional" means instructional aide, as defined in Section 45343 and teacher aide, as described in Section 45361.5.

(b) "School district" includes a county office of education.

SEC. 15. Article 2 (commencing with Section 44680) of Chapter 3.1 of Part 25 of the Education Code is repealed.

SEC. 16. Article 2 (commencing with Section 44680) is added to Chapter 3.1 of Part 25 of the Education Code, to read:

Article 2. Resource Agency or Consortium

44680. As used in this article:

(a) "Resource agency or consortium" means an entity designated pursuant to this article to assist public school personnel to develop school and school district development plans pursuant to Article 1 (commencing with Section 44670) and to meet the objectives established in an approved school or district development plan. Resource agencies and consortia may be designated by the State Board of Education upon approval of an application of one or more school districts separately or in conjunction, as appropriate, with one or more county superintendent of schools, public or private nonprofit educational entities, or institutions of higher education, or

any combination thereof. Any resource agency or consortium shall be established only upon the approval by the State Board of Education of an application as described in this subdivision, subsequent to review of that application by the Superintendent of Public Instruction and the receipt by the board of his or her recommendation for disposition.

(b) "Local education agency" means any school district, by itself or in conjunction, as appropriate, with any county superintendent of schools, local public or private nonprofit educational entity, or institution of higher education.

(c) "School development plan" means an approved plan established pursuant to Article 1 (commencing with Section 44670.1) or Chapter 6 (commencing with Section 52000) of Part 28.

(d) "School personnel" means all persons who provide instructional and support services to pupils, including teachers, administrators, instructional paraprofessionals, and pupil services personnel.

44680.1. Any local education agency that has established a resource committee as provided in Section 44680.4 may apply to establish one or more resource agencies or consortia or may enter into an agreement with one or more local education agencies in order to do so. A resource agency or consortium may operate pursuant to a joint powers agreement entered into by the participating agencies. The local educational agency administering this resource agency or consortium may receive funding directly from the state, may apply for grants, and may engage in fundraising.

44680.2. Each resource agency or consortium shall do all of the following:

(a) Assist schools and districts, upon request, to create, implement, and evaluate school and district development plans pursuant to Article 1 (commencing with Section 44670.1). The first priority for any resource agency or consortium shall be to assist schools without an improvement plan to develop a school plan which meets the requirements of Article 1 (commencing with Section 44670).

(b) Facilitate access by school personnel and local education agencies, to the resources of business and industry, and other groups and individuals providing high quality professional development that meets the objectives of an approved school development plan or a district development plan.

(c) Provide professional development that meets the objectives of one or more approved school development plans, a district development plan, or a regional plan developed pursuant to subdivision (a), provided that action does not duplicate quality professional development offered by local education agencies or other providers that is accessible to the same personnel.

(d) Provide incentives and employ procedures to ensure that professional development resources and activities are available to teachers of pupils with diverse learning needs and styles in a

multicultural society, including underachieving pupils and pupils with exceptional needs or abilities.

(e) Assist classroom teachers, including mentor teachers, to provide staff development which meets the criteria specified in Section 44670.5.

(f) Assist in the interpretation of state-recommended curriculum frameworks.

(g) Review and comment upon school development plans and district development plans in the region served by the agency or consortium.

(h) Disseminate information regarding professional development practices and models to schools, school districts, and county superintendents of schools located in the region served by the consortium pursuant to procedures established under Article 3 (commencing with Section 44681).

(i) Assist local subject matter projects in the region served by the center to sustain and extend the impact of their staff development programs.

(j) Facilitate cooperative agreements between school districts and institutions of higher education that will enable and encourage instructional paraprofessionals to complete the education necessary to become credentialed teachers. "Instructional paraprofessional," for the purposes of this section, means instructional aide, as defined in Section 45343 and teacher aide, as described in Section 45361.5.

(k) Assist schools, upon request, in the evaluation of staff development activities and outcomes.

(*l*) Assist schools, upon request, in improving professional development services through the use of technology.

44680.4. Each resource agency or consortium shall be advised by a resource committee representing participating agencies, and others, as appropriate. Classroom teachers selected by teachers shall comprise the majority of the resource committee members. In establishing a resource committee, the resource agency or consortium shall also include representatives, as appropriate, from all of the following:

(a) The schools served by the agency or consortium.

(b) Institutions of higher education that provide undergraduate education, maintain a department of education, and are located in, near, or adjacent to, the area served by the agency or consortium. In the event that more than one representative from institutes of higher education is selected, the additional representative or representatives shall not represent the same segment of postsecondary education.

(c) Business or industry.

(d) A local subject matter project serving the region.

44680.5. (a) Each committee shall operate pursuant to guidelines established by the local education agency of the region served by the resource agency or consortium as specified in an approved application to create an agency or consortium.

(b) Any actions taken by a committee shall be subject to all of the limitations imposed by law upon the local education agency.

44680.6. The Superintendent of Public Instruction shall do all of the following:

(a) Review applications to establish resource agencies or consortia, and recommend approval or disapproval for the State Board of Education, in accordance with standards and criteria adopted by the board.

(b) Assist school district personnel and resource consortia upon request, to design, implement, and evaluate professional development services authorized by this article.

(c) Facilitate communication among consortia established pursuant to this article.

44680.7. The State Board of Education may adopt rules and regulations necessary to implement this article and shall, at a minimum, develop and disseminate guidelines necessary to implement this article. The board shall approve or disapprove applications to establish resource agencies or consortia upon the receipt from the Superintendent of Public Instruction of his or her recommendation for disposition, and shall ensure that resource agencies or consortia are distributed throughout the state so that school personnel employed in rural, urban, and suburban school districts may avail themselves of agency or consortium services. However, first priority for the consortia or agency shall be areas where the resource services are least available. Any ranking of applications included by the Superintendent of Public Instruction in his or her recommendations for disposition shall include a copy of each application and a summary of the information used to determine the ranking. Approval shall be for a period of five years. Prior to the end of the approved period the agency or consortium application process shall be reopened. An agency or consortium may reapply for funding.

44680.8. Federal and state funds appropriated or apportioned for the purposes of Article 1 (commencing with Section 44670.1) or this article shall not be used to supplant funds currently expended by school districts, county superintendents of schools, or public institutions of higher education for the purpose of administering or conducting professional development programs.

No more than 5 percent of the funds appropriated for the purposes of this article shall be expended by any recipient for administrative expenses incurred under this article.

No more than 10 percent of funds appropriated for the purpose of establishing resource agencies or consortia shall be expended for capital outlay, including the acquisition and improvement of fixed assets and the purchase and replacement of equipment.

SEC. 17. Chapter 5 (commencing with Section 99200) is added to Part 65 of the Education Code, to read:

## CHAPTER 5. INSTRUCTIONAL STRATEGIES

### Article 1. Subject Matter Projects

99200. With funds appropriated therefor, and with the concurrence of the Trustees of the California State University and the Superintendent of Public Instruction, and in consultation with other institutions of higher education, as appropriate, the Regents of the University of California shall establish and maintain cooperative endeavors designed to strengthen the subject matter knowledge and enhance the instructional strategies in each subject area of teachers in the public schools. "Concurrence" for this purpose shall mean agreement on all of the following:

(a) The order in which subject matter projects shall be established pursuant to this chapter.

(b) The identification of the general concerns to be addressed by the subject matter project in each subject area.

(c) The priorities, program emphasis, goals, and general objectives for the project activities pursuant to subdivision (a) of Section 99200.5.

Grants to establish local sites of statewide subject matter projects shall be available to institutions of higher education, county offices of education and school districts, or any combination thereof, with a subject matter proposal approved pursuant to this article. Once established, each subject matter project shall be administered by the University of California in cooperation with the California State University, the State Department of Education, and other institutions of higher education, as appropriate, and with the advice of the project policy board, as established pursuant to Section 99202. Local sites of statewide subject matter projects shall be distributed throughout the state so that elementary, secondary, and postsecondary school personnel located in rural, urban, and suburban areas may avail themselves of subject matter projects.

99200.5. It is the intent of the Legislature that statewide subject matter projects do all of the following:

(a) Create opportunities for researchers, higher education faculty, and elementary and secondary school faculty to work together to accomplish all of the following:

(1) Identify exemplary teaching practices.

(2) Examine and develop research on learning, knowledge, and educational materials.

(3) Give consideration to the state-recommended curriculum framework in the subject matter area, with particular attention to the learning needs and styles of an increasingly diverse pupil population, many of whom are underachieving at present.

(b) Be modeled after projects which have been successful in strengthening systematically the subject matter knowledge and instructional strategies of project participants, such as the California Writing Project and the California Mathematics Project.

(c) Include an evaluation plan designed to measure the degree of implementation of the statewide project and local sites, changes in the instructional practices of participating teachers, and improvements in the learning and involvement by students in the subject matter.

99201. Priority for funding subject matter projects shall be as follows:

(a) Subject matter areas that are required as a condition of graduation from high school pursuant to Section 51225.3, other than subject matter areas that are specifically addressed by subject matter projects already established in statute.

(b) Subject matter areas that coincide with state curriculum initiatives, such as state-recommended curriculum frameworks.

99202. (a) It is the intent of the Legislature that within each subject matter project, a project policy board be established to assist in administering the project. It is the intent of the Legislature that in each project, the duties of the board shall include, but need not be limited to, all of the following:

(1) Setting the specific focus for the statewide project.

(2) Establishing goals and priorities for the statewide project.

(3) Setting guidelines for project sites.

(4) Reviewing and recommending site proposals for funding.

(5) Monitoring project activities to ensure that they adequately reflect the priorities of the project.

(b) It is the intent of the Legislature that the composition of each policy board be as follows:

(1) One representative selected by the California Postsecondary Education Commission.

(2) Two representatives selected by the President of the University of California, one of whom is a member of the faculty in the discipline addressed by the project.

(3) Two representatives selected by the Chancellor of the California State University, one of whom is a member of the faculty in the discipline addressed by the project.

(4) Five representatives selected by the Superintendent of Public Instruction, four of whom are classroom teachers in the subject areas addressed by the project.

(5) One representative of the statewide professional organization of teachers in the subject matter addressed by the project, to be selected by the president of that organization. If there is more than one statewide professional organization of teachers in that subject area, the members of the policy board may choose which organization shall select the representative and may choose to include a representative of one or more of the other organizations as nonvoting members of the policy board.

(6) Two representatives of the California community colleges selected by the Chancellor of the California Community Colleges, one of whom is a faculty member in the subject matter area addressed by the project.

(7) Two representatives of an independent postsecondary institution selected by the Association of Independent California Colleges and Universities, one of whom is a member of the faculty in the discipline addressed by the project.

99203. It is the intent of the Legislature that the project policy board of each statewide subject matter project establish criteria for approval of local project sites, including, but not limited to, the extent to which the following occur:

(a) The proposed site is designed to expand the base of subject matter knowledge and the repertoire of teaching techniques of participating teachers and their colleagues, and to expand the knowledge of students who attend their classes while improving the student's attitudes toward the learning of the subject.

(b) The activities of the proposed site do not duplicate existing programs offered by resource consortia or other providers.

(c) The proposed site gives attention to instructional strategies which have a potential for improving instruction for the diversity of pupil learning needs and styles, including pupils from diverse ethnic groups and cultural backgrounds, underachieving pupils, and pupils with exceptional needs or abilities.

(d) The proposed site establishes clear and informed approaches to the needs of women and minority students for continuing in courses required to enhance future career options.

(e) The proposed site gives attention to instructional strategies that make use of educational technology to support the instructional program.

(f) The proposed site involves various levels and segments of education in a cooperative approach.

(g) Participating school districts, colleges, and universities provide financial and personnel support for the proposed site.

(h) The proposed site uses participants as professional development providers in school districts, colleges, and universities.

(i) The proposed site provides continuing professional development to project participants.

(j) The proposed site addresses the need to integrate existing standards of competence in the subject matter into the curriculum at the grade level taught by each participating teacher.

(k) The proposed site contributes to the effectiveness of school and district development plans and coordinates with existing agencies or entities, such as the resource agency or consortia established pursuant to Article 2 (commencing with Section 44680) of Chapter 3.1 of Part 25.

(*l*) Neighboring institutions have worked collaboratively to develop a proposal which clearly indicates their intention to continue to work cooperatively throughout the duration of the local project.

99204. This chapter shall be operative, and shall apply to the University of California, only for such times as the Legislature has appropriated funds therefor and the Regents of the University of

California have accepted the funds. No provision of this chapter shall apply to the University of California unless the Regents of the University of California, by resolution, makes that provision applicable.

99205. This chapter does not apply to any subject matter area that is specifically addressed by one or more subject matter projects already established in statute.

SEC. 17.5. The Legislative Analyst shall include, in his or her analysis of the Budget Acts of 1990, 1991, and 1992, a report on the implementation of the staff development system set forth in Article 1 (commencing with Section 44670.1) and Article 2 (commencing with Section 44680) of Chapter 3.1 of Part 25 of the Education Code, and in Chapter 5 (commencing with Section 99200) of Part 65 of the Education Code. That report shall be based upon input from representatives of public elementary and secondary classroom teachers, public school administrators, school district governing board members, university faculty, and persons engaged in providing staff development services to public school employees.

SEC. 18. Any school that receives funding for purposes of Chapter 6 (commencing with Section 52000) of Part 28 of the Education Code may use a portion of those funds to implement the provisions of this act, consistent with the requirements of this act.

SEC. 19. It is the intent of the Legislature that Chapter 5 (commencing with Section 99200) of Part 65 of the Education Code be funded annually by the Budget Act.

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## CHAPTER 1363

An act to add Sections 188.4 and 541 to the Streets and Highways Code, relating to transportation.

[Approved by Governor September 25, 1988. Filed with Secretary of State September 26, 1988.]

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

SECTION 1. Section 188.4 is added to the Streets and Highways Code, to read:

188.4. (a) Maintenance expenditures on all toll facilities owned by the state shall, for accounting purposes, be classified as Category A or Category B expenditures. Notwithstanding any other provision of law, the cost of maintenance of toll facilities shall be paid in accordance with the following:

(1) Category A maintenance shall be paid from the State Highway Account and shall include all normal highway maintenance which would be performed by the state according to state procedures as if the facility was a toll-free state facility.

(2) Category B maintenance shall be paid from toll revenues and

shall include all maintenance and reconstruction work of those facilities such as toll facility administration buildings and toll booths which are constructed primarily for the purpose of collecting tolls.

(b) This section does not prevent the commission from complying with the provisions of any bond resolution in effect on July 1, 1988.

(c) In no event shall the maintenance of toll bridges be funded at a lower percentage than was established in accordance with procedures for funding maintenance of the southern bridge unit during the 1986–87 fiscal year, which includes the Dumbarton, the San Mateo-Hayward, and the San Francisco-Oakland Bay Bridges.

SEC. 2. Section 541 is added to the Streets and Highways Code, to read:

541. Route 241 is from Route 231 near the Cities of Tustin and Irvine to Route 5 south of San Clemente.

SEC. 3. Notwithstanding any other provision of law, no state or federal funds shall be used for any purpose related to State Highway Route 231 or Route 241 until an irrevocable offer to the County of Orange is recorded to dedicate permanently, for public recreation use and habitat protection, an area consisting of a cohesive uninterrupted parcel of land of 5,360 acres that includes the major portions of Limestone Canyon, Dripping Springs Meadow, Dripping Springs Canyon, Box Springs Canyon, Round Canyon, Upper Agua Chinon Wash, the Sinks, and lands fronting on Santiago Canyon Road. The land dedication shall be made pursuant to mitigation requirements, including mitigation for impact on raptor habitat areas and riparian and wetland habitat, including enhancement of existing resources and creation of new habitat, for Route 231 and for land uses proposed in the east Orange sphere of influence contiguous with the Limestone Canyon area.

SEC. 4. Section 2 of this act, which adds Section 541 to the Streets and Highways Code, shall not become operative until the County of Orange, the City of Orange, and the primary owner of lands identified in Section 3 of this act for dedication, execute memoranda of understanding that specify the procedures and understandings that shall govern the requirements of Section 3.

SEC. 5. This act shall become operative on January 31, 1989, except as otherwise provided in Section 4 of this act.

# CHAPTER 1364

An act to add Sections 188.4 and 531 to the Streets and Highways Code, relating to transportation.

[Approved by Governor September 25, 1988. Filed with Secretary of State September 26, 1988.]

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

SECTION 1. Section 188.4 is added to the Streets and Highways Code, to read:

188.4. (a) Maintenance expenditures on all toll facilities owned by the state shall, for accounting purposes, be classified as Category A or Category B expenditures. Notwithstanding any other provision of law, the cost of maintenance of toll facilities shall be paid in accordance with the following:

(1) Category A maintenance shall be paid from the State Highway Account and shall include all normal highway maintenance which would be performed by the state according to state procedures as if the facility was a toll-free state facility.

(2) Category B maintenance shall be paid from toll revenues and shall include all maintenance and reconstruction work of those facilities such as toll facility administration buildings and toll booths which are constructed primarily for the purpose of collecting tolls.

(b) This section does not prevent the commission from complying with the provisions of any bond resolution in effect on July 1, 1988.

(c) In no event shall the maintenance of toll bridges be funded at a lower percentage than was established in accordance with procedures for funding maintenance of the southern bridge unit during the 1986–87 fiscal year, which includes the Dumbarton, the San Mateo-Hayward, and the San Francisco-Oakland Bay Bridges.

SEC. 2. Section 531 is added to the Streets and Highways Code, to read:

531. Route 231 is from Route 5 near the border of the Cities of Tustin and Irvine to Route 91.

SEC. 3. Notwithstanding any other provision of law, no state or federal funds shall be used for any purpose related to State Highway Route 231 or Route 241 until an irrevocable offer to the County of Orange is recorded to dedicate permanently, for public recreation use and habitat protection, an area consisting of a cohesive uninterrupted parcel of land of 5,360 acres that includes the major portions of Limestone Canyon, Dripping Springs Meadow, Dripping Springs Canyon, Box Springs Canyon, Round Canyon, Upper Agua Chinon Wash, the Sinks, and fronting on Santiago Canyon Road. The land dedication shall be made pursuant to mitigation requirements, including mitigation for impact on raptor habitat areas and riparian and wetland habitat, including enhancement of existing resources and creation of new habitat, for Route 231 and for land uses proposed

in the east Orange sphere of influence contiguous with the Limestone Canyon area.

SEC. 4. Section 2 of this act, which adds Section 531 to the Streets and Highways Code, shall not become operative until the County of Orange, the City of Orange, and the primary owner of lands identified in Section 3 of this act for dedication, execute memoranda of understanding that specify the procedures and understandings that govern the requirements of Section 3.

SEC. 5. This act shall become operative on January 31, 1989, except as otherwise provided in Section 4 of this act.

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## CHAPTER 1365

An act to amend Section 11010 of the Business and Professions Code, to amend Sections 27288.1, 53313, 53316, 53317, 53321, 53324, 53325.1, 53326, 53327.5, 53328.5, 53330.5, 53337, 53340, 53344, 53345.3, 53356, and 53356.1 of, and to add Sections 50079.5, 53328.3, 53338.5, 53340.1, 53341.5, 53356.2, 53356.3, 53356.4, 53356.5, 53356.6, and 53356.7 to, the Government Code, and to amend Sections 3114.5 and 3115.5 of the Streets and Highways Code, relating to community facilities districts.

[Approved by Governor September 25, 1988. Filed with Secretary of State September 26, 1988.]

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

SECTION 1. Section 11010 of the Business and Professions Code is amended to read:

11010. (a) Except as otherwise provided pursuant to subdivision (c) or elsewhere in this chapter, any person who intends to offer subdivided lands within this state for sale or lease shall file with the Department of Real Estate an application for a public report consisting of a notice of intention and a completed questionnaire on a form prepared by the department.

(b) The notice of intention shall contain the following information about the subdivided lands and the proposed offering:

(1) The name and address of the owner.

(2) The name and address of the subdivider.

(3) The legal description and area of lands.

(4) A true statement of the condition of the title to the land, particularly including all encumbrances thereon.

(5) A true statement of the terms and conditions on which it is intended to dispose of the land, together with copies of any contracts intended to be used.

(6) A true statement of the provisions, if any, that have been made for public utilities in the proposed subdivision, including water, electricity, gas, telephone, and sewerage facilities.

(7) A true statement of the use or uses for which the proposed subdivision will be offered.

(8) A true statement of the provisions, if any, limiting the use or occupancy of the parcels in the subdivision.

(9) A true statement of the amount of indebtedness which is a lien upon the subdivision or any part thereof, and which was incurred to pay for the construction of any onsite or offsite improvement, or any community or recreational facility.

(10) A true statement or reasonable estimate, if applicable, of the amount of any indebtedness which has been or is proposed to be incurred by an existing or proposed special district, entity, taxing area, assessment district, or community facilities district within the boundaries of which, the subdivision, or any part thereof, is located, and which is to pay for the construction or installation of any improvement or to furnish community or recreational facilities to such subdivision, and which amounts are to be obtained by ad valorem tax or assessment, or by a special assessment or tax upon the subdivision, or any part thereof.

(11) The location of all existing airports, and of all proposed airports shown on the general plan of any city or county, located within two statute miles of the subdivision.

(12) A true statement, if applicable, referencing any soils or geologic report or soils and geologic reports that have been prepared specifically for the subdivision.

(13) A true statement of whether or not fill is used, or is proposed to be used in the subdivision and a statement giving the name and the location of the public agency where information concerning soil conditions in the subdivision is available.

(14) Such other information as the owner, his or her agent, or subdivider, may desire to present.

(c) The commissioner may by regulation, or on the basis of the particular circumstances of a proposed offering, waive the requirement of the submission of a completed questionnaire if the commissioner determines that prospective purchasers or lessees of the subdivision interests to be offered will be adequately protected through the issuance of a public report based solely upon information contained in the notice of intention.

SEC. 2. Section 27288.1 of the Government Code is amended to read:

27288.1. All documents described in this section now or hereafter authorized by law to be recorded in the official records of a county shall contain the following information in addition to any information as may be required by law pertaining to the particular document:

(a) If the document effects or evidences a transfer or encumbrance of an interest in real property, the name or names in which the interest appears of record, except that a notice of assessment recorded pursuant to Section 3114 of the Streets and Highways Code, a notice of special tax lien recorded pursuant to Section 3114.5 of the Streets and Highways Code, and a notice of

award of contract recorded pursuant to Section 5248 of the Streets and Highways Code, shall show the name or names of the assessed owners as they appear on the latest secured assessment roll.

(b) If the document releases or terminates any interest, right or encumbrance, it shall contain or have appended thereto all of the names of those persons and entities owning the title or interest being relieved by the document, or the names of the owners of that title or interest as they appeared at the time and in the document creating the interest, right or encumbrance.

(c) In cases where the county tax collector is filing purchaser's deeds with respect to a sale for defaulted taxes, those documents shall be deemed to constitute compliance with this section.

No document subject to this section shall be recorded or indexed in the official records of a county unless it contains the information required by this section as well as any additional information required by law pertaining to the particular document, but the recorder may rely upon the information contained in, or appended to, the document being offered for record. The failure of any document to include all of the names required by this section shall not affect the constructive notice which would otherwise be afforded by the recording of the document. This section shall not apply to a vacation or abandonment by a public agency of a public highway or road.

SEC. 2.5. Section 27288.1 of the Government Code is amended to read:

27288.1. All documents described in this section now or hereafter authorized by law to be recorded in the official records of a county shall contain the following information in addition to any information as may be required by law pertaining to the particular document:

(a) If the document effects or evidences a transfer or encumbrance of an interest in real property, the name or names in which the interest appears of record, except that a notice of assessment recorded pursuant to Section 3114 of the Streets and Highways Code, a notice of special tax lien recorded pursuant to Section 3114.5 of the Streets and Highways Code, and a notice of award of contract recorded pursuant to Section 5248 of the Streets and Highways Code, shall show the name or names of the assessed owners as they appear on the latest secured assessment roll.

(b) If the document releases or terminates any interest, right or encumbrance, it shall contain or have appended to it all of the names of those persons and entities owning the title or interest being relieved by the document, or the names of the owners of the title or interest as they appeared at the time and in the document and the recording reference of the document creating the interest, right, or encumbrance.

(c) In cases where the county tax collector is filing purchaser's deeds with respect to a sale for defaulted taxes, those documents shall be deemed to constitute compliance with this section.

No document described in this section shall be recorded or

indexed in the official records of a county unless it contains the information required by this section as well as any additional information required by law pertaining to the particular document, but the recorder may rely upon the information contained in, or appended to, the document being offered for record. The failure of any document described in this section to include all of the names required by this section shall not affect the constructive notice which would otherwise be afforded by the recording of the document. The failure of any document described in this section to include the recording reference of the document creating an interest, right, or encumbrance or the occurrence of an erroneous recording reference shall not affect the constructive notice which would otherwise be afforded by the recording of the document. This section shall not apply to a vacation or abandonment by a public agency of a public highway or road.

SEC. 3. Section 50079.5 is added to the Government Code, to read:

50079.5. This article shall not be construed to affect the authority of any community facilities district to levy any special tax or other charge under Chapter 2.5 (commencing with Section 53311) of Division 2.

SEC. 4. Section 53313 of the Government Code is amended to read:

53313. A community facilities district may be established under this chapter to finance any one or more of the following types of services within an area:

(a) Police protection services, including, but not limited to, criminal justice services. However, criminal justice services shall be limited to providing services for jails, detention facilities, and juvenile halls.

(b) Fire protection and suppression services, and ambulance and paramedic services.

(c) Recreation program services, library services, and the operation and maintenance of parks, parkways, open space, and museums and cultural facilities. A special tax may be levied for this purpose only upon approval of the voters as specified in subdivision (b) of Section 53328. However, the requirement contained in subdivision (b) of Section 53328 that a certain number of persons have been registered to vote for each of the 90 days preceding the close of the protest hearing does not apply to an election to enact a special tax for recreation program services, library services, and the operation and maintenance of parks and parkways subject to subdivision (c) of Section 53326.

(d) Flood and storm protection services, including, but not limited to, the operation and maintenance of storm drainage systems.

A community facilities district tax approved by vote of the landowners of the district may only finance the services authorized in this section to the extent that they are in addition to those

provided in the territory of the district before the district was created. The additional services may not supplant services already available within that territory when the district was created.

SEC. 5. Section 53316 of the Government Code is amended to read:

53316. This chapter applies to all local agencies insofar as those entities have the power to install or contribute revenue for any of the facilities or provide or contribute revenue for any of the services authorized under this chapter. This chapter authorizes local agencies to create community facilities districts pursuant to this chapter within their territorial limits. A local agency may initiate proceedings pursuant to Section 53318 to include territory proposed for annexation to the local agency within a community facilities district if a petition or resolution of application for the annexation of the territory to the local agency has been accepted for filing and a certificate of filing has been issued by the executive officer of the local agency formation commission at the time the proceedings to create the district are initiated. Those proceedings may be completed only if the annexation of the territory to the local agency is completed. The officers of local agencies who have similar powers and duties, as determined by the legislative body of the local agency, as the municipal officers referred to in this chapter shall have the powers and duties given by this chapter to the municipal officials. Where no similar officer exists, the legislative body of the local agency shall, by resolution, appoint a person or designate an officer to perform the duties under this chapter. Any local agency that has no authority to enact an ordinance under other laws may, for purposes of this chapter, enact an ordinance in substantially the same manner as provided for the enactment of a city ordinance in Chapter 2 (commencing with Section 36900) of Part 2 of Division 3 of Title 4.

SEC. 5.5. 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 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.

(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.

(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, 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. 6. Section 53321 of the Government Code is amended to read:

53321. Proceedings for the establishment of a community facilities district shall be instituted by the adoption of a resolution of intention to establish the district which shall do all of the following:

(a) State that a community facilities district is proposed to be established under the terms of this chapter and describe the boundaries of the territory proposed for inclusion in the district, which may be accomplished by reference to a map on file in the office of the clerk, showing the proposed community facilities district.

(b) State the name proposed for the district in substantially the following form: "Community Facilities District No. _____."

(c) State the type or types of public facilities and services

proposed to be financed by the district pursuant to this chapter. If the purchase of completed public facilities or the incurring of incidental expenses is proposed, the resolution shall identify those facilities or expenses.

(d) State that, except where funds are otherwise available, a special tax sufficient to pay for all facilities and services, secured by recordation of a continuing lien against all nonexempt real property in the district, will be annually levied within the area. The resolution shall specify the rate, method of apportionment, and manner of collection of the special tax in sufficient detail to allow each landowner or resident within the proposed district to estimate the maximum amount that he or she will have to pay. The legislative body may specify conditions under which the obligation to pay the specified special tax may be prepaid and permanently satisfied.

(e) Fix a time and place for a public hearing on the establishment of the district which shall be not less than 30 or more than 60 days after the adoption of the resolution.

(f) Describe any adjustment in property taxation to pay prior indebtedness pursuant to Sections 53313.6 and 53313.7.

(g) A description of the proposed voting procedure.

SEC. 6.5. Section 53324 of the Government Code is amended to read:

53324. If 50 percent or more of the registered voters, or six registered voters, whichever is more, residing within the territory proposed to be included in the district, or the owners of one-half or more of the area of the land in the territory proposed to be included in the district and not exempt from the special tax, file written protests against the establishment of the district, and protests are not withdrawn so as to reduce the value of the protests to less than a majority, no further proceedings to create the specified community facilities district or to levy the specified special tax shall be taken for a period of one year from the date of the decision of the legislative body.

If the majority protests of the registered voters or of the landowners are only against the furnishing of a specified type or types of facilities or services within the district, or against levying a specified special tax, those types of facilities or services or the specified special tax shall be eliminated from the resolution of formation.

SEC. 7. Section 53325.1 of the Government Code is amended to read:

53325.1. (a) If the legislative body determines to establish the district, it shall adopt a resolution of formation establishing the district. The resolution of formation shall contain all of the information required to be included in the resolution of intention to establish the district specified in Section 53321. If a special tax is proposed to be levied in the district to pay for any facilities or services and the special tax has not been eliminated by majority protest pursuant to Section 53324, the resolution shall:

(1) State that the proposed special tax to be levied within the district has not been precluded by majority protest pursuant to Section 53324.

(2) Identify any facilities or services proposed to be funded with the special tax.

(3) Set forth the name, address, and telephone number of the office, department, or bureau which will be responsible for preparing annually a current roll of special tax levy obligations by assessor's parcel number and which will be responsible for estimating future special tax levies pursuant to Section 53340.1.

(4) State that upon recordation of a notice of special tax lien pursuant to Section 3114.5 of the Streets and Highways Code, a continuing lien to secure each levy of the special tax shall attach to all nonexempt real property in the district and this lien shall continue in force and effect until the special tax obligation is prepaid and permanently satisfied and the lien canceled in accordance with law or until collection of the tax by the legislative body ceases.

(5) Set forth the county of recordation and the book and page in the Book of Maps of Assessments and Community Facilities Districts in the county recorder's office where the boundary map of the proposed community facilities district has been recorded pursuant to Sections 3111 and 3113 of the Streets and Highways Code.

(b) In the resolution of formation adopted pursuant to subdivision (a), the legislative body shall determine whether all proceedings were valid and in conformity with the requirements of this chapter. If the legislative body determines that all proceedings were valid and in conformity with the requirements of this chapter, it shall make a finding to that effect and that finding shall be final and conclusive.

SEC. 7.5. Section 53326 of the Government Code is amended to read:

53326. (a) The legislative body shall then submit the levy of any special taxes to the qualified electors of the proposed community facilities district in the next general election or in a special election to be held, notwithstanding any other requirement, including any requirement that elections be held on specified dates, contained in the Elections Code, at least 90 days, but not more than 180 days, following the adoption of the resolution of formation. The legislative body shall provide the resolution of formation, a certified map of sufficient scale and clarity to show the boundaries of the district, and a sufficient description to allow the election official to determine the boundaries of the district to the official conducting the election within three business days after the adoption of the resolution of formation. Assessor's parcel numbers for the land within the district shall be included if it is a landowner election or the district does not conform to an existing district's boundaries and if requested by the official conducting the election. If the election is to be held less than 125 days following the adoption of the resolution of formation, the concurrence of the election official conducting the election shall be required. However, any time limit specified by this section or

requirement pertaining to the conduct of the election may be waived with the unanimous consent of the qualified electors of the proposed district and the concurrence of the election official conducting the election.

(b) Except as otherwise provided in subdivision (c), if at least 12 persons, who need not necessarily be the same 12 persons, have been registered to vote within the territory of the proposed community facilities district for each of the 90 days preceding the close of the protest hearing, the vote shall be by the registered voters of the proposed district, with each voter having one vote. Otherwise, the vote shall be by the landowners of the proposed district and each landowner who is the owner of record at the close of the protest hearing, or the authorized representative thereof, shall have one vote for each acre or portion of an acre of land that he or she owns within the proposed community facilities district. The number of votes to be voted by a particular landowner shall be specified on the ballot provided to that landowner. If the vote is by landowners pursuant to this subdivision, the legislative body shall determine that any facilities financed by the district are necessary to meet increased demands placed upon local agencies as the result of development or rehabilitation occurring in the district.

(c) If the proposed special tax will not be apportioned in any tax year on any portion of property in residential use in that tax year, as determined by the legislative body, the legislative body may provide that the vote shall be by the landowners of the proposed district whose property would be subject to the tax if it were levied at the time of the election. Each of these landowners shall have one vote for each acre, or portion thereof, that the landowner owns within the proposed district which would be subject to the proposed tax if it were levied at the time of the election.

(d) Ballots for the special election authorized by subdivision (a) may be distributed to qualified electors by mail with return postage prepaid or by personal service by the election official. The official conducting the election may certify the proper mailing of ballots by an affidavit, which shall constitute conclusive proof of mailing in the absence of fraud. The voted ballots shall be returned to the election officer conducting the election not later than the hour specified in the resolution calling the election. However, if all the qualified voters have voted, the election shall be closed.

SEC. 8. Section 53327.5 of the Government Code is amended to read:

53327.5. (a) If the election is to be conducted by mail ballot, the election official conducting the election shall provide ballots and election materials pursuant to subdivision (d) of Section 53326 and Section 53327, together with all supplies and instructions necessary for the use and return of the ballot.

(b) The identification envelope for return of mail ballots used in landowner elections shall contain the following:

(1) The name of the landowner.

(2) The address of the landowner.

(3) A declaration, under penalty of perjury, stating that the voter is the owner of record or the authorized representative of the landowner entitled to vote and is the person whose name appears on the identification envelope.

(4) The printed name and signature of the voter.

(5) The address of the voter.

(6) The date of signing and place of execution of the declaration described in paragraph (3).

(7) A notice that the envelope contains an official ballot and is to be opened only by the canvassing board.

SEC. 9. Section 53328.3 is added to the Government Code, to read:

53328.3. Upon a determination by the legislative body that the requisite two-thirds of votes cast in an election held pursuant to Section 53326 are in favor of levying the special tax, the clerk of the legislative body shall record the notice of special tax lien provided for in Section 3114.5 of the Streets and Highways Code, whereupon the lien of the special tax shall attach as provided in Section 3115.5 of the Streets and Highways Code. The notice of special tax lien shall be recorded in the office of the county recorder in each county in which any portion of the district is located.

SEC. 10. Section 53328.5 of the Government Code is amended to read:

53328.5. Division 4.5 (commencing with Section 3100) of the Streets and Highways Code applies with respect to any special tax levied pursuant to this chapter. This chapter is a "principal act" as that term is defined in Section 3100 of the Streets and Highways Code. In all cases in which special taxes have been approved by the qualified electors pursuant to this chapter prior to January 1, 1989, the legislative body may direct the clerk of the legislative body to impose a lien for the special tax on nonexempt real property within the district by performing the filings required by Division 4.5 (commencing with Section 3100) of the Streets and Highways Code, and the county recorder shall accept those filings and may charge the clerk a fee for recording and indexing those documents pursuant to Section 3116 of the Streets and Highways Code. The failure of the clerk or recorder to perform the filings shall not subject the local agency or any of its officers or employees to civil liability.

SEC. 11. Section 53330.5 of the Government Code is amended to read:

53330.5. Upon approval of a special tax pursuant to Article 2 (commencing with Section 53318), the special tax may be levied only at the rate and may be apportioned only in the manner specified in the resolution of formation, except as provided in this article, and except that the legislative body may levy the special tax at a rate lower than that specified in the resolution. In addition, the special tax may be levied only so long as it is needed to pay the principal and interest on debt incurred in order to construct facilities under

authority of this chapter, or so long as it is needed to pay the costs and incidental expenses of services or of the construction of facilities authorized by this chapter.

When the legislative body determines that the special tax shall cease to be levied, the legislative body shall direct the clerk to record a Notice of Cessation of Special Tax which shall state that the obligation to pay the special tax has ceased and that the lien imposed by the Notice of Special Tax Lien recorded in Book _____, and Page _____ of the records of the County Recorder of _____ County, State of California, is extinguished. The Notice of Cessation of Special Tax shall additionally identify the book and page of the Book of Maps of Assessment and Community Facilities Districts wherein the map of the boundaries of the district is recorded.

SEC. 12. Section 53337 of the Government Code is amended to read:

53337. If 50 percent or more of the registered voters, or six registered voters, whichever is more, residing within the district, or the owners of one-half or more of the area of the land in the territory included in the district and not exempt from the special tax file written protests against changing the public facilities or services financed by the district, those changes in the facilities or services shall be eliminated from the resolution ordering changes in the types of public facilities or services to be financed and the changes shall not be included in a resolution for a period of one year from the date of the decision of the legislative body on the hearing.

If 50 percent or more of the registered voters, or six registered voters, whichever is more, residing within the district, or the owners of one-half or more of the area of the land in the territory included in the district and not exempt from the special tax file written protests against the levying of any additional special taxes within the district, or against a proposed alteration to an existing special tax within the district, those changes shall be eliminated from the resolution and the changes shall not be included in a resolution for a period of one year from the date of the decision of the legislative body on the hearing.

SEC. 12.5. Section 53338.5 is added to the Government Code, to read:

53338.5. The legislative body may, by ordinance, dissolve any existing Mello-Roos Community Facilities District which it has created upon making all of the following determinations:

(a) That the district is not obligated to pay any outstanding debt.

(b) That the district has no authorization to levy any special tax.

Upon dissolving a district, the legislative body shall cause an addendum to be recorded to the Notice of Special Tax Lien recorded pursuant to Section 3114.5 of the Streets and Highways Code which shall state that the Community Facilities District and all associated liens, if any, have been dissolved. The local agency shall be liable for any outstanding debt discovered to exist after the dissolution of a district.

SEC. 13. Section 53340 of the Government Code is amended to read:

53340. After a community facilities district has been created and authorized to levy specified special taxes pursuant to Article 2 (commencing with Section 53318), Article 3 (commencing with Section 53330), or Article 3.5 (commencing with Section 53339), the legislative body may, by ordinance, levy the special taxes at the rate and apportion them in the manner specified in the resolution adopted pursuant to Article 2 (commencing with Section 53318), Article 3 (commencing with Section 53330), or Article 3.5 (commencing with Section 53339), except that the legislative body may levy the special tax at a lower rate. For any tax year, the legislative body may, by resolution, levy the special tax at the same rate or at a lower rate than the rate provided by ordinance, if the resolution is adopted no later than the date of the first meeting of the legislative body in July of that tax year. Properties or entities of the state, federal, or other local governments shall, except as otherwise provided in Section 53317.3, be exempt from the special tax. No other properties or entities are exempt from the special tax unless the properties or entities are expressly exempted in the resolution of formation to establish a district adopted pursuant to Section 53325.1 or in a resolution of consideration to levy a new special tax or special taxes or to alter the rate or method of apportionment of an existing special tax as provided in Section 53334. The proceeds of any special tax may only be used to pay, in whole or part, the cost of providing public facilities, services, and incidental expenses pursuant to this chapter. The special tax shall be collected in the same manner as ordinary ad valorem property taxes are collected and shall be subject to the same penalties and the same procedure, sale, and lien priority in case of delinquency as is provided for ad valorem taxes, unless another procedure has been authorized in the resolution of formation establishing the district and adopted by the legislative body. The tax collector may collect the special tax at intervals as specified in the resolution of formation, including intervals different from the intervals at which the ordinary ad valorem property taxes are collected. The tax collector may deduct the reasonable administrative costs incurred in collecting the special tax.

All special taxes levied by a community facilities district shall be secured by the lien imposed pursuant to Section 3115.5 of the Streets and Highways Code. This lien shall be a continuing lien and shall secure each levy of special taxes. The lien of the special tax shall continue in force and effect until the special tax obligation is prepaid, permanently satisfied, and canceled in accordance with Section 53344 or until the special tax ceases to be levied by the legislative body in the manner provided in Section 53330.5.

SEC. 14. Section 53340.1 is added to the Government Code, to read:

53340.1. The legislative body levying the special tax shall designate an office, department, or bureau of the local agency which

shall be responsible for annually preparing the current roll of special tax levy obligations by assessor's parcel number on nonexempt property within the district and which will be responsible for estimating future special tax levies. The designated office, department, or bureau shall establish procedures to promptly respond to inquiries concerning current and future estimated tax liability. Neither the designated office, department, or bureau, nor the legislative body, shall be liable if any estimate of future tax liability is inaccurate.

SEC. 14.5. Section 53341.5 is added to the Government Code, to read:

53341.5. (a) If a lot, parcel, or unit of a subdivision is subject to a special tax levied pursuant to this chapter for which a public report is not required pursuant to Article 2 (commencing with Section 11010) of Chapter 1 of Part 2 of Division 4 of the Business and Professions Code, the subdivider, his or her agent, or representative, shall not sell, or lease for a term exceeding five years, the lot, parcel, or unit, or cause it to be sold or leased for a term exceeding five years, until the prospective purchaser or lessee of the lot, parcel, or unit has been furnished with and has signed a written notice as provided in this section. The notice shall contain the heading "NOTICE OF SPECIAL TAX" in type no smaller than 8-point type, and shall state the following in clear and simple language:

(1) That the property being purchased is or will be subject to a special tax.

(2) The maximum annual amount of the special tax, and the number of years for which it will be levied.

(3) The types of facilities or services to be paid for with the proceeds of the special tax.

(b) "Subdivision," as used in subdivision (a), means improved or unimproved land that is divided or proposed to be divided for the purpose of sale, lease, or financing, whether immediate or future, into two or more lots, parcels, or units and includes a condominium project, as defined by Section 1350, a community apartment project, a stock cooperative, and a limited-equity housing cooperative, as defined in Sections 11004, 11003.2, and 11003.4, respectively, of the Business and Professions Code.

(c) If any disclosure required to be made by this section is delivered after the execution of an agreement to purchase, the buyer shall have three days after delivery in person or five days after delivery by deposit in the mail, to terminate his or her agreement by delivery of written notice of that termination to the owner, subdivider, or agent. Any disclosure delivered after the execution of an agreement to purchase shall contain a statement describing the buyer's right, method and time to rescind as prescribed by this subdivision.

(d) The failure of the buyer or lessee to sign the notice shall not invalidate any grant, conveyance, lease, or encumbrance.

(e) Any person or entity who willfully violates the provisions of

this section shall be liable to the purchaser of a lot or unit which is subject to the provisions of this section, for actual damages, and in addition thereto, shall be guilty of a public offense punishable by a fine in an amount not to exceed five hundred dollars ($500). In an action to enforce such liability or fine, the prevailing party shall be awarded reasonable attorney's fees.

SEC. 15. Section 53344 of the Government Code is amended to read:

53344. In the event that the legislative body has specified conditions pursuant to Section 53321 under which the obligation to pay the special tax identified therein may be prepaid and permanently satisfied, and if the special tax is so prepaid and permanently satisfied as to a particular parcel of land, the legislative body shall prepare and record in the office of the county recorder of the county in which the parcel of land is located, and the county recorder shall accept for recordation, a Notice of Cancellation of Special Tax Lien as to that parcel. The Notice of Cancellation of Special Tax Lien shall identify with particularity the special tax which has been prepaid and permanently satisfied, shall state the book and page number in the records of the county recorder where the Notice of Special Tax Lien being cancelled is recorded, shall contain the legal description and assessor's parcel number of the particular parcel of land subject to the lien, and shall contain the name of the owner of record of the parcel. The recorder shall mail the original Notice of Cancellation of Special Tax Lien to the owner of the property after recording the document. The legislative body may specify a charge for the preparation and recordation of this notice.

SEC. 16. Section 53345.3 of the Government Code is amended to read:

53345.3. The amount of the proposed bonded indebtedness may include all costs and estimated costs incidental to, or connected with, the accomplishment of the purpose for which the proposed debt is to be incurred, including, but not limited to, the estimated costs of construction or acquisition of buildings, or both; acquisition of land, rights-of-way, water, sewer, or other capacity or connection fees; lease payments for school facilities, satisfaction of contractual obligations relating to expenses or the advancement of funds for expenses existing at the time the bonds are issued pursuant to this chapter; architectural, engineering, inspection, legal, fiscal, and financial consultant fees; bond and other reserve funds; discount fees; interest on any bonds of the district due and payable prior to the expiration of one year from the date of completion of the facilities, not to exceed two years; election costs; and all costs of issuance of the bonds, including, but not limited to, fees for bond counsel, costs of obtaining credit ratings, bond insurance premiums, fees for letters of credit, and other credit enhancement costs, and printing costs.

SEC. 17. Section 53356 of the Government Code is amended to read:

53356. If more than two-thirds of the votes cast at the election are in favor of incurring the indebtedness, the legislative body may, by resolution, at the time or times it deems proper, provide for the following:

(a) The form of the bonds.

(b) The execution of the bonds.

(c) The issuance of any part of the bonds.

(d) The appointment of one or more banks or trust companies within or without the state having the necessary trust powers as trustee, fiscal agent, paying agent, or bond registrar.

(e) The execution of a trust agreement or indenture securing the bonds.

(f) The pledge or assignment of any revenues of the community facilities district to the repayment of the bonds.

(g) The investment of any bond proceeds and other revenues, including special tax revenues, by the trustee or fiscal agent in any securities or obligations described in the resolution, indenture, trust agreement, or other instrument providing for the issuance of the bonds.

(h) The date or dates to be borne by the bonds and the time or times of maturity of the bonds and the place or places and time or times that the bonds shall be payable.

(i) The interest, fixed or variable, to be borne by the bonds.

(j) The denominations, form, and registration privileges of the bonds.

(k) Any other terms and conditions determined to be necessary by the legislative body.

SEC. 18. Section 53356.1 of the Government Code is amended to read:

53356.1. (a) As a cumulative remedy, if bonds are outstanding, the legislative body may, not later than four years after the due date of the last installment of principal thereof, order that any delinquent special taxes levied in whole or in part for payment of the bonds, together with any penalties, interest, and costs, be collected by an action brought in the superior court to foreclose the lien of special tax.

(b) The legislative body may, by resolution, adopted prior to the issuance of bonds under this chapter covenant for the benefit of bondowners to commence and diligently pursue to completion any foreclosure action regarding delinquent installments of any amount levied as a special tax for the payment of interest or principal of any bonds that are issued. The resolution may specify a deadline for commencement of the foreclosure action and any other terms and conditions the legislative body determines reasonable regarding the foreclosure action.

SEC. 19. Section 53356.2 is added to the Government Code, to read:

53356.2. (a) When any foreclosure actions are ordered, the tax collector shall be credited upon the current tax roll with the amount

charged on account of the delinquent special taxes to be sued on, including applicable penalties, interest, and costs, and the tax collector shall be relieved of further duty in regard thereto. Any amounts not the subject of a foreclosure action shall remain collectible by the tax collector.

(b) The tax collector may charge the actual cost incurred in removing these sums from the tax roll. This charge shall be added to the costs to be recovered in the foreclosure action.

SEC. 20. Section 53356.3 is added to the Government Code, to read:

53356.3. At any time after the tax collector has been relieved of his or her duty to collect sums under Section 53356.2 and before judgment in a foreclosure action, the local agency shall dismiss the action upon payment of all of the following:

(a) The amount of any delinquent special taxes together with any penalties, interest, and costs accrued thereon to date of complete payment hereunder.

(b) Costs of suit, including, but not limited to, litigation guarantees provided by title companies with respect to all claims of ownership or interest in the subject property.

(c) Attorneys' fees authorized by the local agency.

(d) The tax collector's costs authorized by subdivision (b) of Section 53356.2.

SEC. 21. Section 53356.4 is added to the Government Code, to read:

53356.4. The foreclosure action shall be brought in the name of the local agency, and may be brought within the time specified in Section 53356.1. The complaint may be brief and need only include the following allegations:

(a) That on a stated date, a certain sum of special taxes, levied against the subject property (describing it) pursuant to this chapter, became delinquent.

(b) On that date, bonds issued pursuant to this chapter, payable in whole or in part by the subject special taxes, were outstanding.

(c) That the legislative body has ordered the foreclosure.

SEC. 22. Section 53356.5 is added to the Government Code, to read:

53356.5. Any judgment shall decree the amount of the continuing lien against each parcel to be foreclosed, and shall order the parcel to be sold on execution as in other cases of the sale of real property by process of the court. The judgment amount shall include reasonable attorneys' fees to be fixed by the court, together with interest, penalties, and other authorized charges and costs (all calculated up to date of judgment). The foreclosure action shall be governed and regulated by the provisions of this chapter, and also where not in conflict with this chapter, by other provisions of law generally applicable to foreclosure actions.

SEC. 23. Section 53356.6 is added to the Government Code, to read:

53356.6. Property sold hereunder may not be sold for less than the amount of the judgment plus postjudgment interest and authorized costs without the consent of the owners of 75 percent by value of the outstanding bonds.

SEC. 24. Section 53356.7 is added to the Government Code, to read:

53356.7. No special tax installment, interest or penalties thereon, or deed shall be held invalid for any error in computation if the error is found to be comparatively negligible, or is found to be in favor of the owner of the real property affected thereby.

SEC. 25. Section 3114.5 of the Streets and Highways Code is amended to read:

3114.5. (a) This section applies only to community facilities districts.

(b) Within 15 days after determination pursuant to Section 53328 of the Government Code that the requisite number of voters are in favor of the levy of a special tax, the clerk of the legislative body shall execute and record a notice of special tax lien in the office of the county recorder of each county in which all or any part of the community facilities district is located, and the county recorder shall accept that notice. The notice of special tax lien shall contain the information required by Section 27288.1 of the Government Code and shall be in substantially the following form:

NOTICE OF SPECIAL TAX LIEN

Pursuant to the requirements of Section 3114.5 of the Streets and Highways Code and Section 53328.3 of the Government Code, the undersigned clerk of the legislative body of _____, State of California, hereby gives notice that a lien to secure payment of a special tax which the (here insert name of legislative body) of (here insert city and name of county thereafter), State of California is hereby imposed. The special tax secured by this lien is authorized to be levied for the purpose of: (as applicable) (1) paying principal and interest on bonds, the proceeds of which are being used to finance (briefly describe facilities financed); (2) providing (briefly described facilities financed without bonds); (3) providing (briefly described services being financed).

The special tax is authorized to be levied within Community Facilities District No. _____ which has now been officially formed and the lien of the special tax is a continuing lien which shall secure each annual levy of the special tax and which shall continue in force and effect until the special tax obligation is prepaid, permanently satisfied, and canceled in accordance with law or until the special tax ceases to be levied and a notice of cessation of special tax is recorded in accordance with Section 53330.5 of the Government Code.

The rate, method of apportionment, and manner of collection of the authorized special tax is as follows: (here insert verbatim the description of the rate, method of apportionment, and manner of

collection from the resolution of formation of the community facilities district). Conditions under which the obligation to pay the special tax may be prepaid and permanently satisfied and the lien of the special tax canceled are as follows: (here insert such conditions as are set forth in the resolution of formation or, if no provision has been made for prepayment of the special tax obligation, so state).

Notice is further given that upon the recording of this notice in the office of the county recorder, the obligation to pay the special tax levy shall become a lien upon all nonexempt real property within Community Facilities District No. _____ in accordance with Section 3115.5 of the Streets and Highways Code.

The name(s) of the owner(s) of the real property included within this community facilities district as they appear on the latest secured assessment roll as of the date of recording of this notice are as follows: (insert names of owners shown on assessment roll).

Reference is made to the boundary map (or the amended boundary map) of the community facilities district recorded at Book _____ of Maps of Assessment and Community Facilities Districts at Page _____, in the office of the County Recorder for the County of _____, State of California which map is now the final boundary map of the community facilities district.

The assessor's tax parcel(s) numbers of all parcels or any portion thereof which are included within this community facilities district are as follows: (insert tax parcel number(s)).

For further information concerning the current and estimated future tax liability of owners or purchasers of real property subject to this special tax lien, interested persons should contact (here provide name, address, and telephone number of the appropriate office, department, or bureau of the public entity designated pursuant to Section 53340.1 of the Government Code).

(c) The county recorder shall endorse upon the notice the time and date of filing, and shall cross index the notice by reference to the page of the book of maps of assessment and community facilities districts in which the boundary map of the district was filed.

SEC. 26. Section 3115.5 of the Streets and Highways Code is amended to read:

3115.5. (a) This section applies only to community facilities districts.

(b) From the date of the recording in the office of the county recorder pursuant to Section 3114.5, or if the community facilities district is located in two or more counties, then from the date of the recording in the office of the county recorder where a notice is last recorded, all persons are deemed to have notice of the contents of the Notice of Special Tax Lien.

(c) Upon the date of the last of the recordings made pursuant to subdivision (b), the notice of special tax lien shall impose a lien upon all nonexempt real property in the district. The lien imposed pursuant to this section shall continue in force and effect until the special tax obligation is prepaid and permanently satisfied and the

lien canceled in accordance with law or until the special tax ceases to be levied and a notice of cessation of special tax is recorded in accordance with Section 53330.5 of the Government Code.

SEC. 27. Any proceedings to create a community facilities district pursuant to the Mello-Roos Community Facilities Act of 1982, Chapter 2.5 (commencing with Section 53311) of Part 1 of Division 2 of Title 5 of the Government Code, for which a resolution of intention has been adopted to establish the district prior to the effective date of this act, or for which a special tax was first levied after the effective date of this act, may be conducted in accordance with the terms of the Mello-Roos Community Facilities Act of 1982 in effect at the time the proceedings were initiated, or those proceedings may be conducted in accordance with the Mello-Roos Community Facilities Act of 1982 as affected by this act, as nearly as practicable, as determined by the legislative body and with the concurrence of the official conducting the election, as if this act had been in effect when the proceedings were commenced.

SEC. 28. Section 2.5 of this bill incorporates amendments to Section 27288.1 of the Government Code proposed by both this bill and AB 3266. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1989, (2) each bill amends Section 27288.1 of the Government Code, and (3) this bill is enacted after AB 3266, in which case Section 2 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.

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## CHAPTER 1366

An act to add Section 19844.5 to the Government Code, relating to state employees.

[Approved by Governor September 25, 1988. Filed with Secretary of State September 26, 1988.]

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

SECTION 1. Section 19844.5 is added to the Government Code, to read:

19844.5. (a) A state employee who is called into service by the Office of Emergency Services pursuant to a mission assignment number for the purpose of engaging in a search and rescue operation, disaster mission, or other life-saving mission conducted within the state is entitled to administrative time off from his or her appointing power. The appointing power shall not be liable for

payment of any disability or death benefits in the event the employee is injured or killed in the course of service to the Office of Emergency Services, but the employee shall remain entitled to any benefits currently provided by the office.

(b) The period of the duty described in subdivision (a) shall not exceed 10 calendar days per fiscal year, including the time involved in going to and returning from the duty. A single mission shall not exceed three days, unless an extension of time is granted by the office and the appointing power.

(c) This section shall apply only to volunteers participating in the California Explorer Search and Rescue Team, Drowning Accident Rescue Team, Wilderness Organization of Finders, California Rescue Dog Association, and the California Wing of the Civil Air Patrol.

(d) A state employee engaging in a duty as described in this section shall not receive overtime compensation for the hours of time off taken but shall receive normal compensation.

(e) A state employee shall be released to engage in a duty described in this section at the discretion of the appointing power. However, leave shall not be unreasonably denied. The appointing power shall also establish a procedure whereby state employees who receive weekend or evening requests to serve may be released to do so.

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## CHAPTER 1367

An act to amend Section 3003 of the Penal Code, relating to parole.

[Approved by Governor September 25, 1988 Filed with Secretary of State September 26, 1988 ]

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

SECTION 1. Section 3003 of the Penal Code is amended to read:

3003. (a) An inmate who is released on parole shall be returned to the county from which he or she was committed.

For purposes of this subdivision, "county from which he or she was committed" means the county where the crime for which the inmate was convicted occurred.

(b) Notwithstanding subdivision (a), an inmate may be returned to another county in a case where that would be in the best interests of the public and of the parolee. If the Board of Prison Terms setting the conditions of parole for inmates sentenced pursuant to subdivision (b) of Section 1168 or the Department of Corrections setting the conditions of parole for inmates sentenced pursuant to Section 1170 decides on a return to another county, it shall place its reasons in writing in the parolee's permanent record. In making its decision, the authority may consider, among others, the following factors:

(1) The need to protect the life or safety of a victim, the parolee, a witness or any other person.

(2) Public concern that would reduce the chance that the inmate's parole would be successfully completed.

(3) The verified existence of a work offer, or an educational or vocational training program.

(4) The last legal residence of the inmate having been in another county.

(5) The existence of family in another county with whom the inmate has maintained strong ties and whose support would increase the chance that the inmate's parole would be successfully completed.

(6) The lack of necessary outpatient treatment programs for parolees receiving treatment pursuant to Section 2960.

(c) Notwithstanding any other provision of law, an inmate who is released on parole shall not be returned to within 20 miles of the actual residence of a victim of, or a witness to, a violent felony as defined in subdivision (c) of Section 667.5, if the Board of Prison Terms or the Department of Corrections finds that there is a need to protect the life, safety, or well-being of a victim or witness.

(d) An inmate may be paroled to another state pursuant to any other provision of law.

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## CHAPTER 1368

An act to amend Sections 1624, 3308, 3440.1, and 3440.9 of the Civil Code, to amend Sections 697.610, 697.730, and 697.740 of the Code of Civil Procedure, and to amend Sections 2201, 2402, 2718, 6103, 9318, 9402, 10103, 10106, 10209, 10307, 10402, 10516, 10518, and 10519 of the Commercial Code, relating to commercial transactions.

[Approved by Governor September 25, 1988. Filed with Secretary of State September 26, 1988.]

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

SECTION 1. Section 1624 of the Civil Code is amended to read:

1624. The following contracts are invalid, unless they, or some note or memorandum thereof, are in writing and subscribed by the party to be charged or by the party's agent:

(a) An agreement that by its terms is not to be performed within a year from the making thereof.

(b) A special promise to answer for the debt, default, or miscarriage of another, except in the cases provided for in Section 2794.

(c) An agreement for the leasing for a longer period than one year, or for the sale of real property, or of an interest therein; such an agreement, if made by an agent of the party sought to be charged, is invalid, unless the authority of the agent is in writing, subscribed

by the party sought to be charged.

(d) An agreement authorizing or employing an agent, broker, or any other person to purchase or sell real estate, or to lease real estate for a longer period than one year, or to procure, introduce, or find a purchaser or seller of real estate or a lessee or lessor of real estate where the lease is for a longer period than one year, for compensation or a commission.

(e) An agreement which by its terms is not to be performed during the lifetime of the promisor.

(f) An agreement by a purchaser of real property to pay an indebtedness secured by a mortgage or deed of trust upon the property purchased, unless assumption of the indebtedness by the purchaser is specifically provided for in the conveyance of the property.

This section does not apply to leases subject to Division 10 (commencing with Section 10101) of the Commercial Code.

SEC. 1.5. Section 1624 of the Civil Code is amended to read:

1624. The following contracts are invalid, unless they, or some note or memorandum thereof, are in writing and subscribed by the party to be charged or by the party's agent:

(a) An agreement that by its terms is not to be performed within a year from the making thereof.

(b) A special promise to answer for the debt, default, or miscarriage of another, except in the cases provided for in Section 2794.

(c) An agreement for the leasing for a longer period than one year, or for the sale of real property, or of an interest therein; such an agreement, if made by an agent of the party sought to be charged, is invalid, unless the authority of the agent is in writing, subscribed by the party sought to be charged.

(d) An agreement authorizing or employing an agent, broker, or any other person to purchase or sell real estate, or to lease real estate for a longer period than one year, or to procure, introduce, or find a purchaser or seller of real estate or a lessee or lessor of real estate where the lease is for a longer period than one year, for compensation or a commission.

(e) An agreement which by its terms is not to be performed during the lifetime of the promisor.

(f) An agreement by a purchaser of real property to pay an indebtedness secured by a mortgage or deed of trust upon the property purchased, unless assumption of the indebtedness by the purchaser is specifically provided for in the conveyance of the property.

(g) A contract, promise, undertaking, or commitment to loan money or to grant or extend credit, in an amount greater than one hundred thousand dollars ($100,000), not primarily for personal, family, or household purposes, made by a person engaged in the business of lending or arranging for the lending of money or extending credit. For purposes of this section, a contract, promise,

undertaking or commitment to loan money secured soley by residential property consisting of one to four dwelling units shall be deemed to be for personal, family, or household purposes.

This section does not apply to leases subject to Division 10 (commencing with Section 10101) of the Commercial Code.

SEC. 2. Section 3308 of the Civil Code is amended to read:

3308. The parties to any lease of real or personal property may agree therein that if the lease shall be terminated by the lessor by reason of any breach thereof by the lessee, the lessor shall thereupon be entitled to recover from the lessee the worth at the time of the termination, of the excess, if any, of the amount of rent and charges equivalent to rent reserved in the lease for the balance of the stated term or any shorter period of time over the then reasonable rental value of the property for the same period.

The rights of the lessor under the agreement shall be cumulative to all other rights or remedies now or hereafter given to the lessor by law or by the terms of the lease; provided, however, that the election of the lessor to exercise the remedy hereinabove permitted shall be binding upon him or her and exclude recourse thereafter to any other remedy for rental or charges equivalent to rental or damages for breach of the covenant to pay the rent or charges accruing subsequent to the time of the termination. The parties to the lease may further agree therein that unless the remedy provided by this section is exercised by the lessor within a specified time the right thereto shall be barred.

This section does not apply to a lease of real property unless (a) the lease was executed before July 1, 1971, or (b) the terms of the lease were fixed by a lease, option, or other agreement executed before July 1, 1971.

This section does not apply to leases subject to Division 10 (commencing with Section 10101) of the Commercial Code.

SEC. 3. Section 3440.1 of the Civil Code is amended to read:

3440.1. This chapter does not apply to any of the following:

(a) Things in action.

(b) Ships or cargoes if either are at sea or in a foreign port.

(c) The sale of accounts or chattel paper governed by the Uniform Commercial Code, security interests, and contracts of bottomry or respondentia.

(d) Wines or brandies in the wineries, distilleries, or wine cellars of the makers or owners of the wines or brandies, or other persons having possession, care, and control of the wines or brandies, and the pipes, casks, and tanks in which the wines or brandies are contained, if the transfers are made in writing and executed and acknowledged, and if the transfers are recorded in the book of official records in the office of the county recorder of the county in which the wines, brandies, pipes, casks, and tanks are situated.

(e) A transfer or assignment made for the benefit of creditors generally or by any assignee acting under an assignment for the benefit of creditors generally.

(f) Property exempt from enforcement of a money judgment.

(g) Standing timber.

(h) Subject to the limitations in Section 3440.3, a transfer of personal property if all of the following conditions are satisfied:

(1) Prior to the date of the intended transfer, the transferor or the transferee files a financing statement, with respect to the property transferred, signed by the transferor. The financing statement shall be filed in the office of the Secretary of State in accordance with Chapter 4 (commencing with Section 9401) of Division 9 of the Commercial Code, but may use the terms "transferor" in lieu of "debtor" and "transferee" in lieu of "secured party." The provisions of Chapter 4 (commencing with Section 9401) of Division 9 of the Commercial Code shall apply as appropriate to the financing statement.

(2) The transferor or the transferee publishes a notice of the intended transfer one time in a newspaper of general circulation published in the judicial district in which the personal property is located, if there is one, and if there is none in the judicial district, then in a newspaper of general circulation in the county embracing the judicial district. The publication shall be completed not less than 10 days before the date the transfer occurs. The notice shall contain the name and address of the transferor and transferee and a general statement of the character of the personal property intended to be transferred, and shall indicate the place where the personal property is located and a date on or after which the transfer is to be made.

(i) Personal property not located within this state at the time of the transfer or attachment of the lien if the provisions of this subdivision are not used for the purpose of evading this chapter.

(j) A transfer of property which (1) is subject to a statute or treaty of the United States or a statute of this state that provides for the registration of transfers of title or issuance of certificates of title and (2) is so far perfected under that statute or treaty that a bona fide purchaser cannot acquire an interest in the property transferred that is superior to the interest of the transferee.

(k) A transfer of personal property in connection with a transaction in which the property is immediately thereafter leased by the transferor from the transferee provided the transferee purchased the property for value and in good faith (subdivision (3) of Section 10308 of the Commercial Code).

SEC. 4. Section 3440.9 of the Civil Code is amended to read:

3440.9. Subdivision (2) of Section 2402 and subdivision (1) of Section 10308 of the Commercial Code are not restricted by the provisions of this chapter.

SEC. 5. Section 697.610 of the Code of Civil Procedure is amended to read:

697.610. Except as provided in Section 9504 of the Commercial Code, a judgment lien on personal property continues notwithstanding the sale, exchange, or other disposition of the property, unless the person receiving the property is one of the

following:

(a) A buyer in ordinary course of business (as defined in Section 1201 of the Commercial Code) who, under Section 9307 of the Commercial Code, would take free of a security interest created by the seller.

(b) A lessee in ordinary course of business (as defined in paragraph (o) of subdivision (1) of Section 10103 of the Commercial Code) who, under subdivision (3) of Section 10307 of the Commercial Code, would take free of a security interest created by the lessor.

(c) A holder to whom a negotiable document of title has been duly negotiated within the meaning of Section 7501 of the Commercial Code.

(d) A purchaser of chattel paper who gives new value and takes possession of the chattel paper in the ordinary course of business.

SEC. 6. Section 697.730 of the Code of Civil Procedure is amended to read:

697.730. (a) Subject to Section 701.630 and except as provided in subdivision (b), if tangible personal property subject to an execution lien is in the custody of a levying officer and is transferred or encumbered, the property remains subject to the lien after the transfer or encumbrance.

(b) If a levy upon tangible personal property of a going business is made by the levying officer placing a keeper in charge of the business, a purchaser or lessee of property subject to the execution lien takes the property free of the execution lien if the purchaser is a buyer in ordinary course of business (as defined in Section 1201 of the Commercial Code) who, under Section 9307 of the Commercial Code, would take free of a security interest created by his or her seller or the lessee is a lessee in ordinary course of business (as defined in paragraph (o) of subdivision (1) of Section 10103 of the Commercial Code) who, under subdivision (3) of Section 10307 of the Commercial Code, would take free of a security interest created by the lessor.

SEC. 7. Section 697.740 of the Code of Civil Procedure is amended to read:

697.740. Except as provided in Section 9504 of the Commercial Code and in Section 701.630, if personal property subject to an execution lien is not in the custody of a levying officer and the property is transferred or encumbered, the property remains subject to the lien after the transfer or encumbrance except where the transfer or encumbrance is made to one of the following persons:

(a) A person who acquires an interest in the property under the law of this state for reasonably equivalent value without knowledge of the lien. For purposes of this subdivision, value is given for a transfer or encumbrance if, in exchange for the transfer or encumbrance, property is transferred or an antecedent debt is secured or satisfied.

(b) A buyer in ordinary course of business (as defined in Section

1201 of the Commercial Code) who, under Section 9307 of the Commercial Code, would take free of a security interest created by the seller or encumbrancer.

(c) A lessee in ordinary course of business (as defined in paragraph (o) of subdivision (1) of Section 10103 of the Commercial Code) who, under subdivision (3) of Section 10307 of the Commercial Code, would take free of a security interest created by the lessor.

(d) A holder in due course (as defined in Section 3302 of the Commercial Code) of a negotiable instrument within the meaning of Section 3104 of the Commercial Code.

(e) A holder to whom a negotiable document of title has been duly negotiated within the meaning of Section 7501 of the Commercial Code.

(f) A bona fide purchaser (as defined in Section 8302 of the Commercial Code) of a security.

(g) A purchaser of chattel paper or an instrument who gives new value and takes possession of the chattel paper or instrument in the ordinary course of business.

(h) A holder of a purchase money security interest (as defined in Section 9107 of the Commercial Code).

(i) A collecting bank holding a security interest in items being collected, accompanying documents and proceeds, pursuant to Section 4208 of the Commercial Code.

(j) A person who acquires any right or interest in letters of credit, advices of credit, or money.

(k) A person who acquires any right or interest in property subject to a certificate of title statute of another jurisdiction under the law of which indication of a security interest on the certificate of title is required as a condition of perfection of the security interest.

SEC. 8. Section 2201 of the Commercial Code is amended to read:

2201. (1) Except as otherwise provided in this section a contract for the sale of goods for the price of five hundred dollars ($500) or more is not enforceable by way of action or defense unless there is some writing sufficient to indicate that a contract for sale has been made between the parties and signed by the party against whom enforcement is sought or by his or her authorized agent or broker. A writing is not insufficient because it omits or incorrectly states a term agreed upon but the contract is not enforceable under this paragraph beyond the quantity of goods shown in the writing.

(2) Between merchants if within a reasonable time a writing in confirmation of the contract and sufficient against the sender is received and the party receiving it has reason to know its contents, it satisfies the requirements of subdivision (1) against the party unless written notice of objection to its contents is given within 10 days after it is received.

(3) A contract which does not satisfy the requirements of subdivision (1) but which is valid in other respects is enforceable:

(a) If the goods are to be specially manufactured for the buyer

and are not suitable for sale to others in the ordinary course of the seller's business and the seller, before notice of repudiation is received and under circumstances which reasonably indicate that the goods are for the buyer, has made either a substantial beginning of their manufacture or commitments for their procurement;

(b) If the party against whom enforcement is sought admits in his or her pleading, testimony, or otherwise in court that a contract for sale was made, but the contract is not enforceable under this provision beyond the quantity of goods admitted; or

(c) With respect to goods for which payment has been made and accepted or which have been received and accepted (Section 2606).

SEC. 9. Section 2402 of the Commercial Code is amended to read:

2402. (1) Except as provided in subdivisions (2) and (3), rights of unsecured creditors of the seller with respect to goods which have been identified to a contract for sale are subject to the buyer's rights to recover the goods under this division (Sections 2502 and 2716).

(2) A creditor of the seller may treat a sale or an identification of goods to a contract for sale as void if as against him or her a retention of possession by the seller is fraudulent or void under any rule of law of the state where the goods are situated, except that retention of possession in good faith and current course of trade by a merchant-seller for a commercially reasonable time after a sale or identification is not fraudulent or void.

(3) Nothing in this division shall be deemed to impair the rights of creditors of the seller:

(a) Under the provisions of the division on secured transactions (Division 9); or

(b) Where identification to the contract or delivery is made not in current course of trade but in satisfaction of or as security for a pre-existing claim for money, security or the like and is made under circumstances which under any rule of law of the state where the goods are situated would apart from this division constitute the transaction a fraudulent transfer or voidable preference.

SEC. 10. Section 2718 of the Commercial Code is amended to read:

2718. (1) Damages for breach by either party may be liquidated in the agreement subject to and in compliance with Section 1671 of the Civil Code. If the agreement provides for liquidation of damages, and such provision does not comply with Section 1671 of the Civil Code, remedy may be had as provided in this division.

(2) Where the seller justifiably withholds delivery of goods because of the buyer's breach, the buyer is entitled to restitution of any amount by which the sum of his or her payments exceeds:

(a) The amount to which the seller is entitled by virtue of terms liquidating the seller's damages in accordance with subdivision (1), or

(b) In the absence of such terms, 20 percent of the value of the total performance for which the buyer is obligated under the contract or five hundred dollars ($500), whichever is smaller.

(3) The buyer's right to restitution under subdivision (2) is subject to offset to the extent that the seller establishes:

(a) A right to recover damages under the provisions of this chapter other than subdivision (1), and

(b) The amount or value of any benefits received by the buyer directly or indirectly by reason of the contract.

(4) Where a seller has received payment in goods their reasonable value or the proceeds of their resale shall be treated as payments for the purposes of subdivision (2); but if the seller has notice of the buyer's breach before reselling goods received in part performance, his or her resale is subject to the conditions laid down in this division on resale by an aggrieved seller (Section 2706).

SEC. 10.5. Section 6103 of the Commercial Code is amended to read:

6103. The following transfers are not subject to this division:

(1) A transfer of personal property, if the personal property is leased back to the transferor immediately following the transfer, and if there has been compliance with subdivision (h) of Section 3440.1 of the Civil Code with respect to the transfer.

(2) Assignments for the benefit of all the creditors of the transferor, and subsequent transfers by the assignee thereunder.

(3) Transfers of property subject to a lien or other security interest in settlement or realization of such lien or other security interest.

(4) Sales by executors, administrators, receivers, trustees in bankruptcy, or any public officer under judicial process.

(5) Sales made in the course of judicial or administrative proceedings for the dissolution or reorganization of a corporation and of which notice is sent to the creditors of the corporation pursuant to order of the court or administrative agency.

(6) Transfers of property which is exempt from enforcement of a money judgment.

(7) The transfer of goods in a warehouse where a warehouse receipt has been issued therefor by a warehouseman (Section 7102) and a copy of such receipt is kept at the principal place of business of the warehouseman and at the warehouse in which said goods are stored.

(8) A transfer which is subject to and complies with Article 5 (commencing with Section 24070) of Chapter 6 of Division 9 of the Business and Professions Code, except that such transfer shall be subject to subdivision (1) of Section 6105 insofar as it refers to Section 6107, Section 6107 other than paragraph (e) of subdivision (1) thereof, and subdivision (a) of Section 6111.

(9) A transfer of personal property if Chapter 2 (commencing with Section 3440) of Part 2 of Division 4 of the Civil Code does not apply thereto by reason of subdivision (k) of Section 3440.1 of the Civil Code.

SEC. 11. Section 9318 of the Commercial Code is amended to read:

9318. (1) Unless an account debtor has made an enforceable agreement not to assert defenses or claims arising out of a sale as provided in Section 9206 the rights of an assignee are subject to:

(a) All the terms of the contract between the account debtor and assignor and any defense or claim arising therefrom; and

(b) Any other defense or claim of the account debtor against the assignor which accrues before the account debtor receives notification of the assignment.

(2) So far as the right to payment or a part thereof under an assigned contract has not been fully earned by performance, and notwithstanding notification of the assignment, any modification of or substitution for the contract made in good faith and in accordance with reasonable commercial standards is effective against an assignee unless the account debtor has otherwise agreed but the assignee acquires corresponding rights under the modified or substituted contract. The assignment may provide that the modification or substitution is a breach by the assignor.

(3) The account debtor is authorized to pay the assignor until the account debtor receives notification that the amount due or to become due has been assigned and that payment is to be made to the assignee. A notification which does not reasonably identify the rights assigned is ineffective. If requested by the account debtor, the assignee must seasonably furnish reasonable proof that the assignment has been made and unless he or she does so the account debtor may pay the assignor.

(4) A term in any contract between an account debtor and an assignor is ineffective if it prohibits assignment of an account or prohibits creation of a security interest in chattel paper or a security interest in a general intangible for money due or to become due or requires the account debtor's consent to the assignment or security interest.

SEC. 12. Section 9402 of the Commercial Code is amended to read:

9402. (1) A financing statement is sufficient if it gives the names of the debtor and the secured party, is signed by the debtor, gives an address of the secured party from which information concerning the security interest may be obtained, gives a mailing address of the debtor, and contains a statement indicating the types, or describing the items, of collateral. A financing statement should include the debtor's trade name or style, if any, if known to the secured party, and the effective period of the financing statement, but a failure to include such trade name or style or the effective period of the financing statement or any error in any included trade name or style or effective period, shall not under any circumstances affect the validity of the financing statement. A financing statement may be filed before a security agreement is made or a security interest otherwise attaches. When the financing statement covers crops growing or to be grown, the statement must also contain a description of the real estate concerned. When the financing

statement covers timber to be cut or covers minerals or the like (including oil and gas) or accounts subject to subdivision (5) of Section 9103, or when the financing statement is filed as a fixture filing (Section 9313) and the collateral is goods which are or are to become fixtures, the statement must also comply with subdivision (5). A copy of the security agreement is sufficient as a financing statement if it contains the above information and is signed by the debtor. A certified copy of a financing statement or security agreement is sufficient as a financing statement if the original thereof was filed in this state.

(2) A financing statement which otherwise complies with subdivision (1) is sufficient when it is signed by the secured party instead of the debtor if it is filed to perfect a security interest in or as a fixture filing covering:

(a) Collateral already subject to a security interest in another jurisdiction when it is brought into this state or when the debtor's location is changed to this state. The financing statement must state that the collateral was brought into this state or that the debtor's location was changed to this state under such circumstances;

(b) Proceeds under Section 9306, if the security interest in the original collateral was perfected. The financing statement must describe the original collateral and give the date of filing and the file number of the prior financing statement;

(c) Collateral as to which the filing has lapsed. The financing statement must include a statement to the effect that the prior financing statement has lapsed and give the date of filing and the file number of the prior financing statement; or

(d) Collateral acquired after a change of name, identity or corporate structure of the debtor (subdivision (7)). The financing statement must include a statement that the name, identity or corporate structure of the debtor has been changed and give the date of filing and the file number of the prior financing statement and the name of the debtor as shown in the prior financing statement.

(3) A form substantially as follows is sufficient to comply with subdivision (1):

Name of debtor (or assigner) _____
Address _____
Name of secured party (or assignee) _____
Address _____
Debtor's trade name or style, if any _____
1. This financing statement covers the following types (or items) of property: (Describe) _____
2. (If collateral is crops) The above-described crops are growing or are to be grown on: (Describe real estate) _____

3. (If applicable) The above goods are or are to become fixtures on* (Describe real estate) _____

and this financing statement is to be recorded in the real estate records. (If the debtor does not have an interest of record) The name of a record owner is _____

4. (If products of collateral are claimed) Products of the collateral are also covered.

5. This financing statement is effective for a period of five years from the date of filing and will lapse pursuant to Section 9403 of the California Commercial Code upon the expiration of the five-year period unless a continuation statement is filed prior to the lapse. (If the debtor is a transmitting utility and the financing statement so states.) This financing statement is effective until a termination statement is filed. (If a real estate mortgage is effective as a fixture filing.) This financing statement remains in effect as a fixture filing until the mortgage is released or satisfied of record or its effectiveness otherwise terminates as to the real estate.

(Use whichever is applicable)

_____
Signature of debtor (or assigner)

_____
Signature of secured party (or assignee)

*Where appropriate substitute either "The above timber is standing on " or "The above mineral or the like (including oil and gas) or accounts will be financed at the wellhead or minehead of the well or mine located on . . ."

(4) A financing statement may be amended by filing a writing signed by both the debtor and the secured party, or by the secured party alone in the case of an amendment pursuant to subdivision (7). An amendment does not extend the period of effectiveness of a financing statement. If any amendment adds collateral, it is effective as to the added collateral only from the filing date of the amendment. In this division, unless the context otherwise requires, the term "financing statement" means the original financing statement and any amendments.

(5) A financing statement covering timber to be cut or covering minerals or the like (including oil and gas) or accounts subject to subdivision (5) of Section 9103, or a financing statement filed as a fixture filing (Section 9313) where the debtor is not a transmitting utility, must show that it covers this type of collateral, must recite that it is to be recorded in the real estate records, and the financing statement must contain a description of the real estate sufficient if it were contained in a mortgage of the real estate to give constructive notice of the mortgage under the law of this state. If the debtor does not have an interest of record in the real estate, the financing statement must show the name of a record owner. A financing statement filed as a fixture filing (Section 9313) where the debtor is not a transmitting utility must also recite either that it is filed as a fixture filing or that it covers goods which are or are to become fixtures.

(6) A mortgage is effective as a financing statement filed as a

fixture filing from the date of its recording if:

(a) The goods are described in the mortgage by item or type;

(b) The goods are or are to become fixtures related to the real estate described in the mortgage;

(c) The mortgage complies with the requirements for a financing statement in this section other than a recital that it is to be filed in the real estate records; and

(d) The mortgage is duly recorded.

No fee with reference to the financing statement is required other than the regular recording and satisfaction fees with respect to the mortgage.

(7) A financing statement sufficiently shows the name of the debtor if it gives the individual, partnership or corporate name of the debtor, whether or not it adds other trade names or names of partners. Where the debtor so changes his or her name or in the case of an organization its name, identity or corporate structure that a filed financing statement becomes seriously misleading, the filing is not effective to perfect a security interest in collateral acquired by the debtor more than four months after the change, unless a new appropriate financing statement or an appropriate amendment to the filed financing statement is filed before the acquisition of the collateral by the debtor. A filed financing statement remains effective with respect to collateral transferred by the debtor even though the secured party knows of or consents to the transfer.

(8) A financing statement substantially complying with the requirements of this section is effective even though it contains minor errors which are not seriously misleading. A financing statement filed as a fixture filing (Section 9313) where the debtor is not a transmitting utility is not effective if it does not recite that it is to be recorded in the real estate records and either that it is filed as a fixture filing or that it covers goods which are or are to become fixtures.

(9) A financing statement substantially complying with the requirements of this section creates a security interest only to the extent of the interest of the debtor.

(10) No person or entity acting for or on behalf of the parties to a financing statement shall incur any liability for the consequences of recording a financing statement in the real estate records, and no action may be brought or maintained against that person or entity as a result of the recordation.

SEC. 12.2. Section 10103 of the Commercial Code, as added by Senate Bill No. 1580, is amended to read:

10103. (1) In this division, unless the context otherwise requires:

(a) "Buyer in ordinary course of business" means a person who in good faith and without knowledge that the sale to him or her is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods buys in ordinary course from a person in the business of selling goods of that kind, but does not include a pawnbroker. "Buying" may be for cash or by exchange of

other property or on secured or unsecured credit and includes receiving goods or documents of title under a preexisting contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(b) "Cancellation" occurs when either party puts an end to the lease contract for default by the other party.

(c) "Commercial unit" means such a unit of goods as by commercial usage is a single whole for purposes of lease and division of which materially impairs its character or value on the market or in use. A commercial unit may be a single article, as a machine, or a set of articles, as a suite of furniture or a line of machinery, or a quantity, as a gross or carload, or any other unit treated in use or in the relevant market as a single whole.

(d) "Conforming" goods or performance under a lease contract means goods or performance that are in accordance with the obligations under the lease contract.

(e) "Consumer lease" means a lease that a lessor regularly engaged in the business of leasing or selling makes to a lessee who is a natural person and takes under the lease primarily for a personal, family, or household purpose.

(f) "Fault" means wrongful act, omission, breach, or default.

(g) "Finance lease" means a lease in which (i) the lessor does not select, manufacture, or supply the goods, (ii) the lessor acquires the goods or the right to possession and use of the goods in connection with the lease, and (iii) either (A) the lessee receives a copy of the contract evidencing the lessor's purchase of the goods on or before signing the lease contract, (B) the lessee's approval of the contract evidencing the lessor's purchase of the goods is a condition to effectiveness of the lease contract, (C) the lessor (aa) informs the lessee in writing of the identity of the supplier unless the lessee has selected the supplier and directed the lessor to purchase the goods from the supplier, (bb) informs the lessee in writing that the lessee may have rights under the contract evidencing the lessor's purchase of the goods, and (cc) advises the lessee in writing to contact the supplier for a description of any such rights, or (D) the lease contract discloses all warranties and other rights provided to the lessee by the lessor and supplier in connection with the lease contract and informs the lessee that there are no warranties or other rights provided to the lessee by the lessor and supplier other than those disclosed in the lease contract.

(h) "Goods" means all things that are movable at the time of identification to the lease contract, or are fixtures (Section 10309), but the term does not include money, documents, instruments, accounts, chattel paper, general intangibles, or minerals or the like, including oil and gas, before extraction. The term also includes the unborn young of animals.

(i) "Installment lease contract" means a lease contract that authorizes or requires the delivery of goods in separate lots to be separately accepted, even though the lease contract contains a clause

"each delivery is a separate lease" or its equivalent.

(j) "Lease" means a transfer of the right to possession and use of goods for a term in return for consideration, but a sale, including a sale on approval or a sale or return, or retention or creation of a security interest is not a lease. Unless the context clearly indicates otherwise, the term includes a sublease.

(k) "Lease agreement" means the bargain, with respect to the lease, of the lessor and the lessee in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in this division. Unless the context clearly indicates otherwise, the term includes a sublease agreement.

(*l*) "Lease contract" means the total legal obligation that results from the lease agreement as affected by this division and any other applicable rules of law. Unless the context clearly indicates otherwise, the term includes a sublease contract.

(m) "Leasehold interest" means the interest of the lessor or the lessee under a lease contract.

(n) "Lessee" means a person who acquires the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublessee.

(o) "Lessee in ordinary course of business" means a person who in good faith and without knowledge that the lease to him or her is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods leases in ordinary course from a person in the business of selling or leasing goods of that kind, but does not include a pawnbroker. "Leasing" may be for cash or by exchange of other property or on secured or unsecured credit and includes receiving goods or documents of title under a preexisting lease contract but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(p) "Lessor" means a person who transfers the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublessor.

(q) "Lessor's residual interest" means the lessor's interest in the goods after expiration, termination, or cancellation of the lease contract.

(r) "Lien" means a charge against or interest in goods to secure payment of a debt or performance of an obligation, but the term does not include a security interest.

(s) "Lot" means a parcel or a single article that is the subject matter of a separate lease or delivery, whether or not it is sufficient to perform the lease contract.

(t) "Merchant lessee" means a lessee that is a merchant with respect to goods of the kind subject to the lease.

(u) "Present value" means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate was not manifestly unreasonable at the time the

transaction was entered into; otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into.

(v) "Purchase" includes taking by sale, lease, mortgage, security interest, pledge, gift, or any other voluntary transaction creating an interest in goods.

(w) "Sublease" means a lease of goods the right to possession and use of which was acquired by the lessor as a lessee under an existing lease.

(x) "Supplier" means a person from whom a lessor buys or leases goods to be leased under a finance lease.

(y) "Supply contract" means a contract under which a lessor buys or leases goods to be leased.

(z) "Termination" occurs when either party pursuant to a power created by agreement or law puts an end to the lease contract otherwise than for default.

(2) Other definitions applying to this division and the sections in which they appear are:

"Accessions." Subdivision (1) of Section 10310.

"Construction mortgage." Paragraph (d) of subdivision (1) of Section 10309.

"Encumbrance." Paragraph (e) of subdivision (1) of Section 10309.

"Fixtures." Paragraph (a) of subdivision 1 of Section 10309.

"Fixture filing." Paragraph (b) of subdivision (1) of Section 10309.

"Purchase money lease." Paragraph (c) of subdivision (1) of Section 10309.

(3) The following definitions in other divisions apply to this division:

"Account." Section 9106.

"Between merchants." Subdivision (3) of Section 2104.

"Buyer." Paragraph (a) of subdivision (1) of Section 2103.

"Chattel paper." Paragraph (b) of subdivision (1) of Section 9105.

"Consumer goods." Subdivision (1) of Section 9109.

"Document." Paragraph (f) of subdivision (1) of Section 9105.

"Entrusting." Subdivision (3) of Section 2403.

"General intangibles." Section 9106.

"Good faith." Paragraph (b) of subdivision (1) of Section 2103.

"Instrument." Paragraph (i) of subdivision (1) of Section 9105.

"Merchant." Subdivision (1) of Section 2104.

"Mortgage." Paragraph (j) of subdivision (1) of Section 9105.

"Pursuant to commitment." Paragraph (k) of subdivision (1) of Section 9105.

"Receipt." Paragraph (c) of subdivision (1) of Section 2103.

"Sale." Subdivision (1) of Section 2106.

"Sale on approval." Section 2326.

"Sale or return." Section 2326.

"Seller." Paragraph (d) of subdivision (1) of Section 2103.

(4) In addition, Division 1 (commencing with Section 1101) contains general definitions and principles of construction and interpretation applicable throughout this division.

SEC. 12.4. Section 10106 of the Commercial Code, as added by Senate Bill No. 1580, is amended to read:

10106. (1) If the law chosen by the parties to a consumer lease is that of a jurisdiction other than a jurisdiction in which the lessee resides at the time the lease agreement becomes enforceable or within 30 days thereafter, in which the goods are to be used, or in which the lease is executed by the lessee, the choice is not enforceable.

(2) If the judicial forum chosen by the parties to a consumer lease is in a county other than the county in which the lessee in fact signed the lease, the county in which the lessee resides at the commencement of the action, the county in which the lessee resided at the time the lease contract became enforceable, or the county in which the goods are permanently stored, the choice is not enforceable.

SEC. 12.6. Section 10209 of the Commercial Code, as added by Senate Bill No. 1580, is amended to read:

10209. (1) The benefit of the supplier's promises to the lessor under the supply contract and of all warranties, whether express or implied, under the supply contract, extends to the lessee to the extent of the lessee's leasehold interest under a finance lease related to the supply contract, but subject to the terms of the supply contract and all of the supplier's defenses or claims arising therefrom.

(2) The extension of the benefit of the supplier's promises and warranties to the lessee (subdivision (1) of Section 10209) does not: (a) modify the rights and obligations of the parties to the supply contract, whether arising therefrom or otherwise, or (b) impose any duty or liability under the supply contract on the lessee.

(3) Any modification or rescission of the supply contract by the supplier and the lessor is effective against the lessee unless, prior to the modification or rescission, the supplier has received notice that the lessee has entered into a finance lease related to the supply contract. If the supply contract is modified or rescinded after the lessee enters the finance lease, the lessee has a cause of action against the lessor. The lessee's recovery from such action shall put the lessee in as good a position as if the modification or rescission had not occurred.

(4) In addition to the extension of the benefit of the supplier's promises and warranties to the lessee under subdivision (1), the lessee retains all rights and remedies which the lessee may have against the supplier that arise from any agreement between the lessee and the supplier or from any other law.

SEC. 13. Section 10307 of the Commercial Code, as added by Senate Bill No. 1580, is amended to read:

10307. (1) Except as otherwise provided in Section 10306, a creditor of a lessee takes subject to the lease contract.

(2) Except as otherwise provided in subdivisions (3) and (4) of this section and in Sections 10306 and 10308, a creditor of a lessor takes subject to the lease contract:

(a) Unless the creditor holds a lien that attached to the goods before the lease contract became enforceable;

(b) Unless the creditor holds a security interest in the goods and the lessee did not give value and receive delivery of the goods without knowledge of the security interest; or

(c) Unless the creditor holds a security interest in the goods that attached and was perfected before (i) the lease contract became enforceable , (ii) the lessee gave value and received delivery of the goods, or (iii) in the case of a purchase money security interest, the date that is 20 days after the date that the lessor received possession of the goods or the date that the lessee received possession of the goods, whichever is earlier.

(3) A lessee in the ordinary course of business takes the leasehold interest free of a security interest in the goods created by the lessor even though the security interest is perfected and the lessee knows of its existence.

(4) A lessee other than a lessee in the ordinary course of business takes the leasehold interest free of a security interest to the extent that it secures future advances made after the secured party acquires knowledge of the lease unless the future advances are made pursuant to a commitment entered into without knowledge of the lease.

SEC. 13.2. Section 10402 of the Commercial Code, as added by Senate Bill No. 1580, is amended to read:

10402. (1) If either party repudiates a lease contract, other than a consumer lease, with respect to a performance not yet due under the lease contract, the loss of which performance will substantially impair the value of the lease contract to the other, the aggrieved party may:

(a) For a commercially reasonable time, await retraction of repudiation and performance by the repudiating party;

(b) Make demand pursuant to Section 10401 and await assurance of future performance adequate under the circumstances of the particular case; or

(c) Resort to any right or remedy upon default under the lease contract or this division, even though the aggrieved party has notified the repudiating party that the aggrieved party would await the repudiating party's performance and assurance and has urged retraction. In addition, whether or not the aggrieved party is pursuing one of the foregoing remedies, the aggrieved party may suspend performance or, if the aggrieved party is the lessor, proceed in accordance with the provisions of this division on the lessor's right to identify goods to the lease contract notwithstanding default or to salvage unfinished goods (Section 10524).

(2) The rights and remedies of the parties to a consumer lease in connection with a repudiation of that lease shall be determined under other laws, and this section shall not affect the applicability or

interpretation of those laws.

SEC. 13.4. Section 10516 of the Commercial Code, as added by Senate Bill No. 1580, is amended to read:

10516. (1) A lessee must pay rent for any goods accepted in accordance with the lease contract, with due allowance for goods rightfully rejected or not delivered.

(2) A lessee's acceptance of goods precludes rejection of the goods accepted. In the case of a finance lease, other than a consumer lease in which the supplier assisted in the preparation of the lease contract or participated in negotiating the terms of the lease contract with the lessor, if made with knowledge of a nonconformity, acceptance cannot be revoked because of it. In any other case, if made with knowledge of a nonconformity, acceptance cannot be revoked because of it unless the acceptance was on the reasonable assumption that the nonconformity would be seasonably cured. Acceptance does not of itself impair any other remedy provided by this division or the lease agreement for nonconformity.

(3) If a tender has been accepted:

(a) Within a reasonable time after the lessee discovers or should have discovered any default, (i) the lessee shall notify the lessor, or be barred from any remedy against the lessor, and, in addition, (ii) in the case of a finance lease, the lessee shall notify the supplier or be barred from any remedy against the supplier;

(b) Within a reasonable time after the lessee receives notice of litigation for infringement or the like (Section 10211) the lessee shall notify the lessor or be barred from any remedy over for liability established by the litigation; and

(c) The burden is on the lessee to establish any default.

(4) If a lessee is sued for breach of a warranty or other obligation for which a lessor or a supplier is answerable over:

(a) The lessee may give the lessor or the supplier written notice of the litigation. If the notice states that the lessor or the supplier may come in and defend and that if the lessor or the supplier does not do so he or she will be bound in any action against him or her by the lessee by any determination of fact common to the two litigations, then unless the lessor or the supplier after seasonable receipt of the notice does come in and defend he or she is so bound.

(b) The lessor or the supplier may demand in writing that the lessee turn over control of the litigation including settlement if the claim is one for infringement or the like (Section 10211) or else be barred from any remedy over. If the demand states that the lessor or the supplier agrees to bear all expense and to satisfy any adverse judgment, then unless the lessee after seasonable receipt of the demand does turn over the control the lessee is so barred.

(5) The provisions of subdivisions (3) and (4) apply to any obligation of a lessee to hold the lessor or the supplier harmless against infringement or the like (Section 10211).

(6) Subdivision (3) shall not apply to a consumer lease.

SEC. 14. Section 10518 of the Commercial Code, as added by

Senate Bill No. 1580, is amended to read:

10518. (1) After default by a lessor under the lease contract (subdivision (1) of Section 10508), the lessee may cover by making any purchase or lease of or contract to purchase or lease goods in substitution for those due from the lessor.

(2) Except as otherwise provided with respect to damages liquidated in the lease agreement (Section 10504) or determined by agreement of the parties (Section 10503 and subdivision (3) of Section 1102), if a lessee's cover is by lease agreement substantially similar to the original lease agreement and the lease agreement is made in good faith and in a commercially reasonable manner, the lessee may recover from the lessor as damages (a) the present value, as of the date of the commencement of the term of the new lease agreement, of the difference between the total rent for the lease term of the new lease agreement and the total rent for the then remaining lease term of the original lease agreement and (b) any incidental or consequential damages less expenses saved in consequence of the lessor's default.

(3) If the lessee's cover is by lease agreement that qualifies for treatment under subdivision (2), the lessee may elect to proceed under subdivision (2) or Section 10519. If a lessee's cover is by lease agreement that for any reason does not qualify for treatment under subdivision (2), or is by purchase or otherwise, the lessee may recover from the lessor under Section 10519 as if the lessee had elected not to cover.

SEC. 15. Section 10519 of the Commercial Code, as added by Senate Bill No. 1580, is amended to read:

10519. (1) Except as otherwise provided with respect to damages liquidated in the lease agreement (Section 10504) or determined by agreement of the parties (Section 10503 and subdivision (3) of Section 1102), if a lessee elects not to cover or a lessee elects to cover and the cover is by lease agreement, whether or not the lease agreement qualifies for treatment under subdivision (2) of Section 10518, or is by purchase or otherwise, the measure of damages for default by the lessor (subdivision (1) of Section 10508) is the present value as of the date of the default of the difference between the then market rent and the original rent, computed for the remaining lease term of the original lease agreement together with incidental and consequential damages, less expenses saved in consequence of the lessor's default.

(2) Market rent is to be determined as of the place for tender or, in cases of rejection after arrival or revocation of acceptance, as of the place of arrival.

(3) If the lessee has accepted goods and given notification (subdivision (3) of Section 10516), the measure of damages for nonconforming tender or delivery by a lessor is the loss resulting in the ordinary course of events from the lessor's default as determined in any manner that is reasonable together with incidental and consequential damages, less expenses saved in consequence of the

lessor's default.

(4) The measure of damages for breach of warranty is the present value at the time and place of acceptance of the difference between the value of the use of the goods accepted and the value if they had been as warranted for the lease term, unless special circumstances show proximate damages of a different amount, together with incidental and consequential damages, less expenses saved in consequence of the lessor's default or breach of warranty.

SEC. 16. To accommodate the optional wording for financing statements permitted by subdivision (3) of Section 9402 of the Commercial Code, the Secretary of State may prescribe more than one standard form of financing statement.

SEC. 17. Section 1.5 of this bill incorporates amendments to Section 1624 of the Civil Code proposed by both this bill and SB 2789. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1989 (2) each bill amends Section 1624 of the Civil Code, and (3) this bill is enacted after SB 2789, in which case Section 1 of this bill shall not become operative.

SEC. 18. This act shall not become operative unless and until Senate Bill 1580 of the 1987–88 Regular Session is enacted and becomes operative.

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## CHAPTER 1369

An act relating to aviation.

[Approved by Governor September 25, 1988. Filed with Secretary of State September 26, 1988.]

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

SECTION 1. (a) The Secretary of the Business, Transportation and Housing Agency shall coordinate and direct a study and report to be done jointly by the Office of Economic Research in the Department of Commerce and the Division of Aeronautics in the Department of Transportation. The primary goal of the study is to identify, quantify, and document the role of aviation in the economic development of California.

(b) The study shall examine, among other things, the question of whether future airport capacity, particularly in air carrier airports, will constrain the future development of the California economy, the growth of jobs, and the ability of the state to take advantage of the growing international market in the Pacific Rim for which California's major airports serve as a gateway for the rest of the United States.

(c) The study shall attempt to quantify the economic value of the flow of commerce through California's airports and measure changes in that flow over time. In that regard, the secretary shall receive the

assistance and cooperation of other state agencies, including the California State World Trade Commission, in measuring the flow of international trade, and the Employment Development Department in measuring the impact of airports on employment and income.

(d) The secretary shall identify constraints on the growth of jobs and income in California which may be attributable to a lack of current or future airport capacity in the state. In addition, the secretary shall develop recommendations for policies that should be implemented by the Governor and the Legislature in order to improve, develop, and maintain a healthy and adequate system of airport capacity for the California economy. The report required by subdivision (e) shall include information on the potential of using federal or military airports to accommodate increasing demand for airport capacity.

(e) The secretary may contract for the performance of some or all of the sections of the study required by this act. The secretary shall, not later than January 1, 1990, report findings and recommendations of the study to the Governor, the Senate Committee on Rules, the Speaker of the Assembly, and the California Commission on Aviation and Airports.

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## CHAPTER 1370

An act to add Section 24100.3 to the Health and Safety Code, relating to health.

[Approved by Governor September 25, 1988. Filed with Secretary of State September 26, 1988 ]

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

SECTION 1. Section 24100.3 is added to the Health and Safety Code, to read:

24100.3. Persons providing aquatic instruction, including, but not limited to, swimming instruction, water safety instruction, water contact activities, and competitive aquatic sports, at a public swimming pool shall possess an American Red Cross or Y.M.C.A. Advanced Life Saving or Life Guard Training certificate, or both, or have equivalent qualifications, as determined by the state department. In addition, these persons shall be certified in standard first aid and cardiopulmonary resuscitation (C.P.R). All of these persons shall meet these qualifications by January 1, 1990. Persons who only disseminate written materials relating to water safety, are not persons providing aquatic instruction within the meaning of this section.

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.

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## CHAPTER 1371

An act to amend Section 6254 of the Government Code, and to amend Section 13823.4 of the Penal Code, relating to domestic violence.

[Approved by Governor September 25, 1988. Filed with Secretary of State September 26, 1988.]

*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 intraagency 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 intraagency 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 such investigatory or security files compiled by any other state or local police agency, or any such 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, 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) 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, or 289 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, 286, 288, 288a, or 289 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, or 289 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 provisions of 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, 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.

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 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 intraagency 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 intraagency 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 such investigatory or security files compiled by any other state or local police agency, or any such 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, 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) 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, 286, 288, 288a, or 289 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, or 289 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, or 289 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 provisions of 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, 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 concealed weapons issued 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.

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. 3. Section 13823.4 of the Penal Code is amended to read:

13823.4. (a) The Legislature finds the problem of family violence to be of serious and increasing magnitude. The Legislature also finds that acts of family violence often result in other crimes and social problems.

(b) There is in the Office of Criminal Justice Planning, a Family Violence Prevention Program. This program shall provide financial and technical assistance to local domestic and family violence centers in implementing family violence prevention programs.

The goals and functions of the program shall include all of the following:

(1) Promotion of community involvement through public education geared specifically toward reaching and educating the friends and neighbors of members of violent families.

(2) Development and dissemination of model protocols for the training of criminal justice system personnel in domestic violence intervention and prevention.

(3) Increasing citizen involvement in family violence prevention.

(4) Identification and testing of family violence prevention models.

(5) Replication of successful models, as appropriate, through the state.

(6) Identification and testing of domestic violence model protocols and intervention systems in major service delivery institutions.

(7) Development of informational materials and seminars to enable emulation or adaptation of the models by other communities.

(8) Provision of domestic violence prevention education and skills to students in schools.

(c) The executive director shall allocate funds to local centers meeting the criteria for funding that shall be established by the Office of Criminal Justice Planning in consultation with practitioners and experts in the field of family violence prevention. All centers receiving funds pursuant to this section shall have had an ongoing recognized program, supported by either public or private funds, dealing with an aspect of family violence, for at least two years prior to the date specified for submission of applications for funding pursuant to this section. All centers funded pursuant to this section shall utilize volunteers to the greatest extent possible.

The centers may seek, receive, and make use of any funds which may be available from all public and private sources to augment any state funds received pursuant to this section. Sixty percent of the state funds received pursuant to this section shall be used to develop and implement model program protocols and materials. Forty percent of the state funds received pursuant to this section shall be allocated to programs to disseminate model program protocols and materials. Dissemination shall include training for domestic violence agencies in California. Each of the programs funded under this section shall focus on no more than two targeted areas. These targeted model areas shall be determined by the Office of Criminal Justice Planning in consultation with practitioners and experts in the field of domestic violence, using the domestic violence model priorities survey of the California Alliance Against Domestic Violence.

Centers receiving funding shall provide matching funds of at least 10 percent of the funds received pursuant to this section.

(d) The Office of Criminal Justice Planning shall develop and disseminate throughout the state information and materials concerning family violence prevention, including, but not limited to, a procedures manual on prevention models. The office shall also establish a resource center for the collection, retention, and distribution of educational materials related to family violence and its prevention.

SEC. 4. Section 2 of this bill incorporates amendments to Section 6254 of the Government Code proposed by both this bill and SB 2479. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1989, (2) each bill amends Section 6254 of the Government Code, and (3) this bill is enacted after SB 2479, in which case Section 1 of this bill shall not become operative.

## CHAPTER 1372

An act to amend Section 5149 of, and to add Article 3.5 (commencing with Section 5170) to Chapter 5 of Part 9 of Division 1 of, the Revenue and Taxation Code, relating to taxation.

[Approved by Governor September 25, 1988. Filed with Secretary of State September 26, 1988.]

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

SECTION 1. Section 5149 of the Revenue and Taxation Code is amended to read:

5149. All courts wherein actions brought under this part (with the exclusion of actions brought under Section 5148) are or hereafter may be pending shall give those actions precedence over all other civil actions therein, except actions to which special precedence is given by law, in the matter of setting same for hearing or trial, and in hearing the same, to the end that all those actions shall be quickly heard and determined.

SEC. 2. Article 3.5 (commencing with Section 5170) is added to Chapter 5 of Part 9 of Division 1 of the Revenue and Taxation Code, to read:

### Article 3.5. Scope of Judicial Review of Assessments in Refund Actions

5170. In suits for the refund of state-assessed property taxes, the trial court shall not be restricted to the administrative record, but shall consider all evidence relating to the valuation of the property admissible under the rules of evidence. The court shall base its decision upon the preponderance of the evidence before it.

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## CHAPTER 1373

An act to amend Sections 629.32, 629.48, and 631 of, the Penal Code, and to repeal Section 5 of Chapter 111 of the Statutes of 1988, relating to surveillance.

[Approved by Governor September 25, 1988. Filed with Secretary of State September 26, 1988 ]

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

SECTION 1. Section 629.32 of the Penal Code, as added by Chapter 111 of the Statutes of 1988, is amended to read:

629.32. (a) If a peace officer, while engaged in intercepting wire communications in the manner authorized by this chapter,

intercepts wire communications relating to crimes other than those specified in the order of authorization, but which are enumerated in subdivision (a) of Section 629.02, (1) the contents thereof, and evidence derived therefrom, may be disclosed or used as provided in Sections 629.24 and 629.26 and (2) the contents and any evidence derived therefrom may be used under Section 629.28 when authorized by a judge if the judge finds upon subsequent application, that the contents were otherwise intercepted in accordance with the provisions of this chapter. The application shall be made as soon as practicable.

(b) If a peace officer, while engaged in intercepting wire communications in the manner authorized by this chapter, intercepts wire communications relating to crimes other than those specified in the order of authorization or enumerated in subdivision (a) of Section 629.02, the contents thereof, and evidence derived therefrom, may not be disclosed or used as provided in Sections 629.24 and 629.26, except to prevent the commission of a public offense. The contents and any evidence derived therefrom may not be used under Section 629.28, except where the evidence was obtained through an independent source or inevitably would have been discovered, and the use is authorized by a judge who finds that the contents were intercepted in accordance with this chapter.

(c) The use of the contents of an intercepted wire communication relating to crimes other than that specified in the order of authorization to obtain a search or arrest warrant entitles the person named in the warrant to notice of the intercepted wire communication and a copy of the contents thereof which were used to obtain the warrant.

SEC. 2. Section 629.48 of the Penal Code as added by Chapter 111 of the Statutes of 1988, is amended to read:

629.48. This chapter shall remain in effect only until January 1, 1994, and as of that date is repealed.

SEC. 3. Section 631 of the Penal Code, as amended by Section 3 of Chapter 111 of the Statutes of 1988, is amended to read:

631. (a) Any person who, by means of any machine, instrument, or contrivance, or in any other manner, intentionally taps, or makes any unauthorized connection, whether physically, electrically, acoustically, inductively, or otherwise, with any telegraph or telephone wire, line, cable, or instrument, including the wire, line, cable, or instrument of any internal telephonic communication system, or who willfully and without the consent of all parties to the communication, or in any unauthorized manner, reads, or attempts to read, or to learn the contents or meaning of any message, report, or communication while the same is in transit or passing over any such wire, line, or cable, or is being sent from, or received at any place within this state; or who uses, or attempts to use, in any manner, or for any purpose, or to communicate in any way, any information so obtained, or who aids, agrees with, employs, or conspires with any person or persons to unlawfully do, or permit, or

cause to be done any of the acts or things mentioned above in this section, is punishable by a fine not exceeding two thousand five hundred dollars ($2,500), or by imprisonment in the county jail not exceeding one year, or by imprisonment in the state prison, or by both a fine and imprisonment in the county jail or in the state prison. If such person has previously been convicted of a violation of this section or Section 632 or 636, he or she is punishable by a fine not exceeding ten thousand dollars ($10,000), or by imprisonment in the county jail not exceeding one year, or by imprisonment in the state prison, or by both a fine and imprisonment in the county jail or in the state prison.

(b) This section shall not apply (1) to any public utility engaged in the business of providing communications services and facilities, or to the officers, employees or agents thereof, where the acts otherwise prohibited herein are for the purpose of construction, maintenance, conduct or operation of the services and facilities of the public utility, or where the public utility is acting in good faith reliance on a court order issued under Chapter 1.3 (commencing with Section 629), or (2) to the use of any instrument, equipment, facility, or service furnished and used pursuant to the tariffs of such a public utility, or (3) to any telephonic communication system used for communication exclusively within a state, county, city and county, or city correctional facility.

(c) Except as proof in an action or prosecution for violation of this section, no evidence obtained in violation of this section shall be admissible in any judicial, administrative, legislative or other proceeding.

(d) This section shall remain in effect only until January 1, 1994, and as of that date is repealed.

SEC. 4. Section 631 of the Penal Code, as added by Section 4 of Chapter 111 of the Statutes of 1988, is amended to read:

631. (a) Any person who, by means of any machine, instrument, or contrivance, or in any other manner, intentionally taps, or makes any unauthorized connection, whether physically, electrically, acoustically, inductively, or otherwise, with any telegraph or telephone wire, line, cable, or instrument, including the wire, line, cable, or instrument of any internal telephonic communication system, or who willfully and without the consent of all parties to the communication, or in any unauthorized manner, reads, or attempts to read, or to learn the contents or meaning of any message, report, or communication while the same is in transit or passing over any such wire, line, or cable, or is being sent from, or received at any place within this state; or who uses, or attempts to use, in any manner, or for any purpose, or to communicate in any way, any information so obtained, or who aids, agrees with, employs, or conspires with any person or persons to unlawfully do, or permit, or cause to be done any of the acts or things mentioned above in this section, is punishable by a fine not exceeding two thousand five hundred dollars ($2,500), or by imprisonment in the county jail not

exceeding one year, or by imprisonment in the state prison, or by both a fine and imprisonment in the county jail or in the state prison. If the person has previously been convicted of a violation of this section or Section 632 or 636, he or she is punishable by a fine not exceeding ten thousand dollars ($10,000), or by imprisonment in the county jail not exceeding one year, or by imprisonment in the state prison, or by both a fine and imprisonment in the county jail or in the state prison.

(b) This section shall not apply (1) to any public utility engaged in the business of providing communications services and facilities, or to the officers, employees or agents thereof, where the acts otherwise prohibited herein are for the purpose of construction, maintenance, conduct or operation of the services and facilities of such public utility, or (2) to the use of any instrument, equipment, facility, or service furnished and used pursuant to the tariffs of such a public utility, or (3) to any telephonic communication system used for communication exclusively within a state, county, city and county, or city correctional facility.

(c) Except as proof in an action or prosecution for violation of this section, no evidence obtained in violation of this section shall be admissible in any judicial, administrative, legislative or other proceeding.

(d) This section shall become operative on January 1, 1994.

SEC. 5. Section 5 of Chapter 111 of the Statutes of 1988 is repealed.

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## CHAPTER 1374

An act to amend Section 9396 of the Welfare and Institutions Code, and to amend Section 4 of Chapter 1063 of the Statutes of 1986, relating to aging, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 25, 1988. Filed with Secretary of State September 26, 1988.]

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

SECTION 1. Section 9396 of the Welfare and Institutions Code, as amended by Assembly Bill 3542 of the 1987–88 Regular Session, is amended to read:

9396. (a) There is hereby established the Community Care Facility Demonstration Project for the Elderly in accordance with the provisions of this section. The Multipurpose Senior Services Program shall administer the Community Care Facilities Demonstration Project for the Elderly. The Multipurpose Senior Services Program may contract with the State Department of Health Services for the utilization of funds from the Health Care Deposit

Fund upon determination that the demonstration project qualifies for federal financial participation as stipulated in subdivision (e).

(b) The Multipurpose Senior Services Program shall contract with two local Multipurpose Senior Services Program sites to serve as demonstration sites. One site shall be in the northern and one in the southern part of the state. The sites shall be selected through a request for proposal process.

(c) The project shall serve a selected number of frail elderly persons, whose current medical assessment does not indicate the need for long-term intermediate or skilled nursing care. "Frail elderly persons," for purposes of this chapter, means those persons as defined in Section 9111 who meet current Medi-Cal criteria for being "certified" or "certifiable" for admission into intermediate or skilled nursing care facilities, and whom a physician has determined may remain in a community care facility with services as provided for by this section. Participating facilities shall be limited to those licensed community care facilities serving adults, as defined in Section 80001 of Title 22 of the California Administrative Code. During the demonstration project a total of 120 persons at any one time shall be served in the two local Multipurpose Senior Services Program sites selected for participation under this chapter. Personal care services shall be purchased through the use of funds appropriated for purposes of Chapter 7 (commencing with Section 14000) of Part 3 of Division 9. Participation by a person or a community care facility shall be voluntary. Personal care provided pursuant to this chapter shall supplement, and not replace, personal care provided by community care facilities pursuant to statutory and regulatory requirements which are required to be met in order to obtain and maintain a community care facility license. This supplemental care shall be provided only when the level of care needed by a person participating under this chapter exceeds that which can be provided by the community care facility pursuant to existing statutory and regulatory requirements which are required to be met in order to obtain and maintain a community care facility license. Determination as to the necessary level of care shall be based on an assessment of need performed initially, and at six-month intervals thereafter by the case manager.

(d) The pilot project shall be operated for a period of three years. The Multipurpose Senior Services Program shall submit an evaluation of this project to the Legislature not later than July 1, 1988. The evaluation shall do all of the following:

(1) Describe the service providers and the services they provide and compare them to services provided to persons within skilled nursing, intermediate care, and nonmedical community care facilities and persons receiving home health services while residing in their own homes.

(2) Describe the program participants and compare them to those residing in skilled nursing, intermediate care, and nonmedical community care facilities and persons receiving home health

services while in their own homes.

(3) Contain a description of the criteria used to select participants and compare them to criteria used to determine who would be more suitably cared for in skilled nursing or intermediate care facilities.

(4) Compare the total governmental costs incurred for persons participating in this project with the costs of care provided by skilled nursing facilities.

(5) Assess the extent to which the demonstration project, in fact, did delay or prevent care in an intermediate or skilled nursing facility and the cost effectiveness of the project.

(e) Implementation of the demonstration project is dependent upon the availability of federal financial participation for the services to be provided.

Implementation of the project shall be subject to receipt of required waivers or waiver amendments. Use of existing federal waivers and existing program authority shall be the first priority for implementation of this chapter. The Multipurpose Senior Services Program shall seek new waivers from the federal government if implementation cannot be carried out through existing waivers or existing categorical programs. The Secretary of the Health and Welfare Agency shall have the authority to waive existing state statutes or regulations at the request of the Multipurpose Senior Services Program that would prohibit or restrict the ability of the Multipurpose Senior Services Program to provide for the services authorized by this section.

(f) This section shall become inoperative on June 30, 1989, and, as of January 1, 1990, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 1990, deletes or extends the dates on which it becomes inoperative and is repealed.

This demonstration project shall not be extended or expanded unless conclusive evidence has been presented to the Legislature showing that it has been cost-effective and can be replicated.

SEC. 2. Section 4 of Chapter 1063 of the Statutes of 1986 is amended to read:

Sec. 4. The task force shall consist of eight members, to be appointed by the Joint Rules Committee. One member shall represent each of the following: the State Department of Health Services, the Triple-A Council of California, the Senior Legislature, the California Conference of Local Health Department Nursing Directors, the Health Officers Association of California, the California Medical Association, the Department of Aging, and the California Pharmacists Association. Members of the task force shall serve without compensation and shall provide for their own expenses. The task force shall be terminated on June 1, 1989.

SEC. 3. Section 1 of this act shall not become operative unless and until Assembly Bill 3542 is enacted and amends Section 9396 of the Welfare and Institutions Code.

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 timely extend the effective life of the Legislative Task Force on Medication Misuse and to provide immediate funding, upon approval of the Governor, to the Petaluma People Services Center Senior Day Program in order that the center can accurately plan its budget expenditures for the fiscal year, it is necessary that this act take effect immediately.

Furthermore, in order to clarify the law regarding various programs relating to elderly persons at the earliest possible date, it is necessary that this act take effect immediately.

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## CHAPTER 1375

An act to amend Sections 69900, 73770, 73772, 74502, 74503, 74504, 74832, and 74834 of the Government Code, relating to courts.

[Approved by Governor September 25, 1988. Filed with Secretary of State September 26, 1988.]

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

SECTION 1. Section 69900 of the Government Code is amended to read:

69900. In the City and County of San Francisco, a majority of the judges of the superior court may appoint the following employees, whose annual salaries shall be as set forth hereafter:

| Title | Class Number |
|---|---|
| One executive officer | 0555 |
| One assistant executive officer | 0584 |
| One administrative assistant | 0585 |
| One civil courts administrator | 0588 |
| One civil courts coordinator | 0588 |
| One criminal courts administrator | 0638 |
| One mental health coordinator | 0657 |
| One civil calendar coordinator | 0636 |
| One civil jury coordinator | 0586 |
| One criminal jury coordinator | 0587 |
| Ten court commissioners | 0620 |
| One director, family court services | 0640 |
| Five counselors, family court services | 0655 |
| One chief court calendar clerk | 0670 |
| One assistant court calendar clerk | 0672 |
| Three court investigators | 0648 |
| Three probate examiners | 0649 |
| Three court assistants senior | 0590 |
| Five court assistants | 0589 |

| | |
|---|---|
| One research assistant to presiding judge | 0735 |
| Eight research assistants | 0676 |
| One secretary to executive officer | 0679 |
| Four judicial secretaries | 0680 |
| Nine judicial clerks senior | 0681 |
| Two information clerks | 0705 |
| Three judicial clerks | 0697 |
| Twenty-nine court reporters | 0710 |

The class numbers set forth in the previous paragraph refer to the superior court position classifications contained in the salary ordinance of the City and County of San Francisco. Those positions shall be paid monthly the equivalent amount as specified in the salary ordinance.

All salaries for original appointments shall be at step 1, provided that on the first of the month following the first anniversary of appointment the employee shall advance to the second step, and thereafter on the first of the month following the second anniversary of appointment the employee shall advance to step 3, and thereafter on the first of the month following the third anniversary of appointment the employee shall advance to step 4, and thereafter shall be paid at the rate established by step 4.

Service in any position enumerated herein prior to the effective date of the amendments to this section enacted at the 1985–86 Regular Session of the Legislature shall constitute service for the purpose of determining the step at which the attaché is to be paid. Service in any position wherein substantially the same duties have been performed shall also be deemed service for the purpose of determining at which step the attaché is to be paid.

Employment by the court shall be deemed to be employment by the city and county, if approved by resolution of the court, for purposes of determining court employees' rights to sick leave, vacation, and holiday pay and accumulation thereof, as provided either by charter or ordinances of the city and county for miscellaneous employees.

With the approval of the board of supervisors the court may establish such additional titles and pay rates as are required and with the approval of the board of supervisors may appoint and employ such additional commissioners, officers and assistants and other employees as it deems necessary for the performance of the duties and exercise of the powers conferred by law upon it and its members.

Rates of compensation of all officers and assistants and other employees may be altered by joint action and approval of the board of supervisors and a majority of the judges of the court. Such appointments or changes in compensation made pursuant to this paragraph shall be on an interim basis and shall expire on January 1 of the second year following the date of the appointment or change in compensation unless ratified by the Legislature.

The salaries of the employees of the superior court shall be paid

by the city and county.

SEC. 2. Section 73770 of the Government Code is amended to read:

73770. This article applies to the judicial district of the Marin County Municipal Court.

SEC. 3. Section 73772 of the Government Code is amended to read:

73772. There shall be one clerk, who shall be the administrative officer of the court and who shall receive an annual salary recommended by the municipal court and approved by the board of supervisors.

SEC. 4. Section 74502 of the Government Code is amended to read:

74502. (a) Notwithstanding any other provision of this code, the municipal court positions specified in this section shall be paid at a minimum the monthly equivalent amount specified.

Whenever any vacancy occurs in a position specified in this section, the judges, or a majority of the judges of the court, shall appoint a person to the vacancy, who shall hold office at their pleasure, and who shall receive the salary specified in this section. The appointing authority, in its discretion, may appoint two part-time appointees to a class number, who shall each receive a salary equal to the pro rata share of the salary specifed in this section.

The salary at initial appointment to a class number shall be at step one during the first year of service in that class number, except the appointing authority, in its discretion and excluding positions specified in subdivision (c), when the appointee is qualified may start an appointee at a step level other than step one. After the first year of permanent certification and commencing on the first day of the month following the next anniversary of the appointment, the appointee shall advance to the next step of the class number until the top step in the class is reached.

(b) There shall be one clerk-administrator who shall serve as clerk of the court and secretary to the judges, perform duties specified in the law and those assigned by the judges, and who shall be paid a salary, as clerk class number 0210, of five thousand five hundred eighty-one dollars ($5,581) for step one, of five thousand eight hundred eighty-eight dollars ($5,888) for step two, and of six thousand one hundred forty-one dollars ($6,141) for step three.

(c) Notwithstanding the provisions of Section 72400, there shall be three traffic referees who shall have the powers and duties specified in Sections 72401, 72402, and 72403, who shall perform such duties as assigned by the presiding judge and who shall be paid a salary, as class number 0250, equal to 50 percent of the salary of a judge of the municipal court during the first year of service; subject to approval of the judges, or a majority of them, a salary equal to 65 percent of the salary of a judge of the municipal court after the first year of permanent certification, commencing on the first day of the month following the first anniversary of appointment; and subject to the

approval of the judges, or a majority of them, a maximum salary equal to 75 percent of the salary of a judge of the municipal court after the second year of permanent certification, commencing on the first day of the month following the second anniversary of appointment.

(d) There shall be two chief deputies, one with overall responsibility for the civil small claims and administrative divisions, and one with overall responsibility for the criminal and traffic divisions, each of whom shall also serve as jury commissioner and who shall exercise insofar as applicable to the municipal court, the powers of a jury commissioner of a superior court and who shall be paid a salary, as deputy class number 0220, of four thousand seven hundred seventy-six dollars ($4,776) for step one, of five thousand thirty-nine dollars ($5,039) for step two, and of five thousand three hundred sixteen dollars ($5,316) for step three.

(e) There shall be one executive assistant to the presiding judge who shall be paid a salary, as deputy clerk class number 0221, of four thousand five hundred twenty-seven dollars ($4,527) for step one, of four thousand seven hundred seventy-six dollars ($4,776) for step two, and of five thousand thirty-nine dollars ($5,039) for step three, and who shall perform such duties as are assigned by the presiding judge. When the executive assistant to the presiding judge is a member of the State Bar, the executive assistant may perform duties for the court in the field of law at the direction of the presiding judge with the concurrence of the administrative committee and be paid in addition to the salary provided by this article, the additional sum of four hundred dollars ($400) monthly.

(f) There shall be one executive secretary to the presiding judge who shall serve as confidential executive secretary to the presiding judge and the executive assistant, who shall perform such duties as assigned by the presiding judge or the executive assistant, and who shall be paid the salary, as deputy class number 0285, of three thousand one hundred thirty-nine dollars ($3,139) for step one, of three thousand three hundred twenty-seven dollars ($3,327) for step two, and of three thousand five hundred twenty-seven dollars ($3,527) for step three.

(g) There shall be one small claims legal advisor who shall be paid a salary, as deputy clerk class number 0260, of three thousand five hundred ninety-four dollars ($3,594) for step one, of three thousand seven hundred thirty-three dollars ($3,733) for step two, of three thousand nine hundred fifty-four dollars ($3,954) for step three, of four thousand one hundred forty-six dollars ($4,146) for step four, and of four thousand three hundred forty-seven dollars ($4,347) for step five, and who shall perform such duties pursuant to Section 117.18 of the Code of Civil Procedure.

(h) There shall be one deputy clerk who shall be appointed criminal courts calendar coordinator who shall be paid a salary, as deputy clerk class number 0225, of four thousand eighty-seven dollars ($4,087) for step one, of four thousand three hundred eleven dollars

($4,311) for step two, and of four thousand five hundred forty-eight dollars ($4,548) for step three, and who shall perform such duties as are assigned by the judges of the court.

SEC. 5. Section 74503 of the Government Code is amended to read:

74503. (a) Notwithstanding any other provisions of this code, the municipal court positions specified in this section shall be paid at a minimum the monthly equivalent amount specified.

Whenever any vacancy occurs in a position specified in this section, the clerk-administrator shall appoint, upon the consent of a majority of the judges, or a majority of the judges of the court may appoint, a person to the vacancy who shall hold office at the pleasure of the appointing authority, and who shall receive the salary specified in this section. The appointing authority, in its discretion, may appoint two part-time appointees to a class number, who shall each receive a salary equal to the pro rata share of the salary specified in this section.

The salary at initial appointment to a class number shall be at step one during the first year of service in that class number, except the appointing authority, in its discretion and when the appointee is so qualified, may start an appointee at a step level other than step one. After the first year of permanent certification and commencing on the first day of the month following the next anniversary of the appointment, the appointee shall advance to the next step of the class number until the top step in the class is reached.

(b) There shall be one court training coordinator who shall be paid a salary, as deputy clerk class number 0222, of four thousand eighty-seven dollars ($4,087) for step one, of four thousand three hundred eleven dollars ($4,311) for step two, and of four thousand five hundred forty-eight dollars ($4,548) for step three, and who shall perform such duties as are assigned by the clerk-administrator.

(c) There shall be one deputy clerk who shall be appointed court systems coordinator who shall be paid a salary, as deputy clerk class number 0222, of four thousand eighty-seven dollars ($4,087) for step one, of four thousand three hundred eleven dollars ($4,311) for step two, and of four thousand five hundred forty-eight dollars ($4,548) for step three, and who shall perform such duties as are assigned by the clerk-administrator.

(d) There shall be one deputy clerk who shall be appointed assistant court systems coordinator, who shall be paid a salary, as deputy clerk class number 0273, of three thousand four hundred ninety-six dollars ($3,496) for step one, of three thousand six hundred eighty-nine dollars ($3,689) for step two, and of three thousand eight hundred ninety-two dollars ($3,892) for step three, and who shall perform such duties as are assigned by the clerk-administrator.

(e) There shall be one court fiscal officer who shall be paid a salary, as deputy clerk class number 0223, of four thousand seven hundred seventy-six dollars ($4,776) for step one, of five thousand thirty-nine dollars ($5,039) for step two, and of five thousand three

hundred sixteen dollars ($5,316) for step three, and who shall perform such duties as are assigned by the clerk-administrator.

(f) There shall be one court computer system director who shall be paid a salary, as deputy clerk class number 0242, of five thousand eight hundred fifty-four dollars ($5,854) for step one, of six thousand one hundred forty-six dollars ($6,146) for step two, of six thousand four hundred fifty-four dollars ($6,454) for step three, of six thousand seven hundred seventy-two dollars ($6,772) for step four, and of seven thousand one hundred sixteen dollars ($7,116) for step five, and who shall perform such duties as assigned by the clerk-administrator.

(g) There shall be one court traffic system programmer who shall be paid a salary, as deputy clerk class number 0243, of four thousand eight hundred sixteen dollars ($4,816) for step one, of five thousand fifty-eight dollars ($5,058) for step two, of five thousand three hundred ten dollars ($5,310) for step three, of five thousand five hundred seventy-five dollars ($5,575) for step four, and of five thousand eight hundred fifty-four dollars ($5,854) for step five, and who shall perform such duties as assigned by the clerk-administrator.

(h) There shall be one court traffic senior application programmer who shall be paid a salary, as deputy clerk class number 0244, of four thousand eight hundred sixteen dollars ($4,816) for step one, of five thousand fifty-eight dollars ($5,058) for step two, of five thousand three hundred ten dollars ($5,310) for step three, of five thousand five hundred seventy-five dollars ($5,575) for step four, and of five thousand eight hundred fifty-four dollars ($5,854) for step five, and who shall perform such duties as assigned by the clerk-administrator.

(i) There shall be one court program analyst manager who shall be paid a salary, as deputy clerk class number 0240, of three thousand seven hundred fifty-three dollars ($3,753) for step one, of three thousand nine hundred forty-seven dollars ($3,947) for step two, of four thousand one hundred forty-eight dollars ($4,148) for step three, of four thousand three hundred fifty-four dollars ($4,354) for step four, and of four thousand five hundred seventy-one dollars ($4,571) for step five, and who shall perform such duties as are assigned by the clerk-administrator.

(j) There shall be one assistant court program analyst manager who shall be paid a salary, as deputy clerk class number 0278, of two thousand eight hundred sixty-three dollars ($2,863) for step one, of three thousand one hundred sixty-one dollars ($3,161) for step two, of three thousand three hundred seventeen dollars ($3,317) for step three, of three thousand four hundred eighty-three dollars ($3,483) for step four, and of three thousand six hundred sixty dollars ($3,660) for step five, and who shall perform such duties as are assigned by the clerk-administrator.

(k) There shall be one confidential administrative legal stenographer who shall be paid a salary, as deputy clerk class number 0287, of two thousand seven hundred seventy-nine dollars ($2,779)

for step one, of two thousand nine hundred forty-five dollars ($2,945) for step two, and of three thousand one hundred twenty-two dollars ($3,122) for step three, and who shall perform such duties as are assigned by the clerk-administrator.

(*l*) There shall be one personnel-payroll clerk who shall be paid a salary, as deputy clerk class number 0289 of, two thousand seven hundred seventy-nine dollars ($2,779) for step one, of two thousand nine hundred forty-five dollars ($2,945) for step two, and of three thousand one hundred twenty-two dollars ($3,122) for step three, and who shall perform such duties as are assigned by the clerk-administrator.

(m) There shall be seven information clerks who shall be paid a salary, as deputy clerk class number 0340, of one thousand seven hundred eighty-six dollars ($1,786) for step one, of two thousand twenty-nine dollars ($2,029) for step two, of two thousand two hundred eighty dollars ($2,280) for step three, and of two thousand three hundred fifty-six dollars ($2,356) for step four, and who shall perform such duties as are assigned by the clerk-administrator.

(n) There shall be one law and motion clerk who shall be paid a salary, as deputy clerk class number 0360, of two thousand seven hundred seventy-nine dollars ($2,779) for step one, of two thousand nine hundred forty-five dollars ($2,945) for step two, and of three thousand one hundred twenty-two dollars ($3,122) for step three, and who shall perform such duties as are assigned by the clerk-administrator.

SEC. 6. Section 74504 of the Government Code is amended to read:

74504. Notwithstanding any other provisions of this code, the municipal court positions specified in this section shall be paid at a minimum the monthly equivalent amount specified.

The salary at initial appointment to a class number shall be at step one during the first year of service in that class number, except when the appointee is qualified by current civil service classification for other than step one. After the first year of permanent certification and commencing on the first day of the month following the next anniversary of the appointment, the appointee shall advance to the next step of the class number until the top step in the class is reached.

The clerk-administrator shall appoint and assign the duties and responsibilities for the following:

(a) Three deputy clerks who shall be the division chiefs in the civil, criminal, and traffic divisions of the court, who shall be paid a salary, as deputy clerk class number 0230, of four thousand eighty-seven dollars ($4,087) for step one, of four thousand three hundred eleven dollars ($4,311) for step two, and of four thousand five hundred forty-eight dollars ($4,548) for step three.

(b) Seven deputy clerks who shall be assistant division chiefs and who shall be paid a salary, as deputy clerk class number 0270, of three thousand four hundred ninety-six dollars ($3,496) for step one, of three thousand six hundred eighty-nine dollars ($3,689) for step two,

and of three thousand eight hundred ninety-two dollars ($3,892) for step three.

(c) Thirty-eight deputy clerks who shall be paid a salary, as deputy clerk class number 0280, of two thousand seven hundred seventy-nine dollars ($2,779) for step one, of two thousand nine hundred forty-five dollars ($2,945) for step two, and of three thousand one hundred twenty-two dollars ($3,122) for step three.

(d) Twenty-five deputy clerks who shall be paid a salary, as deputy clerk class number 0290, of two thousand three hundred thirty-three dollars ($2,333) for step one, of two thousand four hundred seventy-four dollars ($2,474) for step two, and of two thousand six hundred twenty-one dollars ($2,621) for step three.

(e) Thirty-eight deputy clerks who shall be paid a salary, as deputy clerk class number 0320, of one thousand nine hundred fifty-eight dollars ($1,958) for step one, of two thousand seventy-six dollars ($2,076) for step two, and two thousand two hundred one dollars ($2,201) for step three.

(f) Eighty deputy clerks who shall be paid a salary, as deputy clerk class number 0330, of one thousand six hundred forty-five dollars ($1,645) for step one, of one thousand seven hundred forty-three dollars ($1,743) for step two, and of one thousand eight hundred forty-eight dollars ($1,848) for step three.

(g) Eight half-time deputy clerks who shall be paid a salary, as deputy clerk class number 0331, of eight hundred twenty-three dollars ($823) for step one, of eight hundred seventy-two dollars ($872) for step two, and of nine hundred twenty-four dollars ($924) for step three.

(h) One principal accountant who shall be paid a salary, as civil service class number 1654, of two thousand seven hundred fifty-eight dollars ($2,758) for step one, of two thousand eight hundred ninety-five dollars ($2,895) for step two, of three thousand thirty-six dollars ($3,036) for step three, of three thousand one hundred eighty-five dollars ($3,185) for step four, and of three thousand three hundred forty-three dollars ($3,343) for step five.

(i) Two accountants who shall be paid a salary, as civil service class number 1650, of one thousand eight hundred eighty-five dollars ($1,885) for step one, of one thousand nine hundred seventy-six dollars ($1,976) for step two, of two thousand seventy-one dollars ($2,071) for step three, of two thousand one hundred seventy-three dollars ($2,173) for step four, and of two thousand two hundred seventy-nine dollars ($2,279) for step five.

(j) One senior account clerk who shall be paid a salary, as civil service class number 1632, of one thousand seven hundred ninety dollars ($1,790) for step one, of one thousand eight hundred seventy-six dollars ($1,876) for step two, of one thousand nine hundred sixty-seven dollars ($1,967) for step three, of two thousand sixty-three dollars ($2,063) for step four, and of two thousand one hundred sixty-two dollars ($2,162) for step five.

(k) Two account clerks who shall be paid a salary, as civil service

class number 1630, of one thousand five hundred fifty-four dollars ($1,554) for step one, of one thousand six hundred twenty-nine dollars ($1,629) for step two, of one thousand seven hundred seven dollars ($1,707) for step three, of one thousand seven hundred ninety dollars ($1,790) for step four, and of one thousand eight hundred seventy-six dollars ($1,876) for step five.

(*l*) One deputy clerk and while assigned by the clerk-administrator as assistant personnel-payroll deputy shall be paid, in addition to the salary provided by this article, the additional sum of one hundred dollars ($100) monthly.

(m) One deputy clerk and while assigned by the clerk-administrator as budget-purchasing deputy to the court fiscal officer shall be paid, in addition to the salary provided by this article, the additional sum of fifty dollars ($50) monthly.

(n) Two deputy clerks who shall serve as master calendar clerk, civil, and master calendar clerk, criminal, and while assigned to such position by the clerk-administrator, shall be paid, in addition to the salary provided by this article, the additional sum of one hundred dollars ($100) monthly.

(o) Six deputy clerks and while assigned by the clerk-administrator and where specific duties merit may be paid at the discretion of the appointing authority, in addition to the salary provided by this article, the additional sum of fifty dollars ($50) monthly.

(p) Two deputy clerks who shall serve as master jury calendar clerk, civil, and master jury calendar clerk, criminal, and while assigned to such position by the clerk-administrator shall be paid in addition to the salary provided by this article, the additional sum of one hundred dollars ($100) monthly.

(q) Deputy clerks who are required and authorized to work more than 40 hours a week shall be entitled to overtime pay for that period in excess of the 40 hours at a rate equal to one and one-half times the amount to which they are otherwise entitled.

SEC. 7. Section 74832 of the Government Code is amended to read:

74832. There shall be one clerk of the Sutter County Municipal Court who shall be known as court administrator. The court administrator shall be appointed by the majority of the judges of the court, or in the case of an equal division of the judges of the court, the senior judge, and shall receive the salary specified in M38 of the county's salary system. The court administrator may appoint:

| Title of Job Classification | Applicable Salary Range | Number of Positions Authorized |
|---|---|---|
| Municipal court clerk III | G 31 | 2 |
| Municipal court clerk II | G 28 | 1 |
| Municipal court clerk I | G 26 | 4 |
| Municipal court clerk I or clerk typist II | G 26<br>G 25 | 1 |

SEC. 8. Section 74834 of the Government Code is amended to read:

74834. (a) Whenever a reference is made to a numbered salary range in any section of this article, the schedule of biweekly salaries found in the salary resolution for the County of Sutter in effect on July 1, 1987, shall apply.

(b) In the event the Board of Supervisors of the County of Sutter amends the resolution establishing salary ranges and biweekly salary rates for the personnel of the County of Sutter, effective on the date of this section, or adopts a new resolution which provides for a change in compensation for ranges or steps, such changes shall be effective for the municipal court employees under this article on the effective date of the action of the board of supervisors and shall remain effective only until January 1 of the second year following the year in which such change is made.

(c) Notwithstanding the provisions of this article, and in order to equalize the compensation of employees of the municipal court with the compensation paid to county employees with commensurate duties and responsibilities, upon recommendation of the judge of the court and with the approval of the Board of Supervisors of the County of Sutter, an officer or employee of this court may be paid any compensation which is within the ranges and increments set forth in this article in excess of or less than the maximum to which such officer or employee would otherwise be entitled under the salary range established for his classification by this article. Any such salary adjustment shall remain effective only until January 1 of the second year following the year in which such change is made.

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 program specified in this act.

# CHAPTER 1376

An act to amend Sections 25166, 25168.4, 25168.6, 25174, 25174.02, 25174.6, and 25201, to add Section 25358.9 to, to repeal Sections 25174.8 and 25174.9 of, and to repeal and add Article 9.1 (commencing with Section 25205.1 of Chapter 6.5 of Division 20 of, the Health and Safety Code, to amend Sections 43002, 43151, and 43551 of, and to add Sections 43152.7 and 43152.8 to, the Revenue and Taxation Code, and to amend Section 2560 of the Vehicle Code, relating to hazardous waste, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 25, 1988. Filed with Secretary of State September 26, 1988 ]

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

SECTION 1. Section 25166 of the Health and Safety Code is amended to read:

25166. (a) Each person who carries on, or engages in, the business of hauling hazardous waste or who handles hazardous waste as a part of, or incidental to, any business, for a calendar year or any portion thereof shall pay a registration fee to the department of two hundred dollars ($200) if the registered hazardous waste hauler has fewer than 10 vehicles and five hundred dollars ($500) if the registered hazardous waste hauler has 10 or more vehicles.

(b) A person whose registration has expired for a period of more than 90 days shall be considered an applicant for an original registration when the person applies for registration.

SEC. 2. Section 25168.4 of the Health and Safety Code is amended to read:

25168.4. The fee for the annual inspection of a truck, trailer, semitrailer, vacuum tank, cargo tank, or container used to transport hazardous wastes is the amount specified in Article 6 (commencing with Section 2560) of Chapter 2 of Division 2 of the Vehicle Code.

SEC. 3. Section 25168.6 of the Health and Safety Code is amended to read:

25168.6. Two-thirds of the amount of all inspection fees received shall be deposited in the Motor Vehicle Account in the State Transportation Fund. An amount equal to two-thirds of the fees collected is hereby continuously appropriated from the Motor Vehicle Account to the Department of the California Highway Patrol to reimburse the department for the inspections conducted. One-third of the amount of all inspection fees received shall be deposited in the Hazardous Waste Control Account.

SEC. 4. Section 25174 of the Health and Safety Code, as amended by Chapter 300 of the Statutes of 1988, is amended to read:

25174. (a) There is in the General Fund a Hazardous Waste Control Account which shall be administered by the director. In

addition to any other moneys transferred by the Legislature to the Hazardous Waste Control Account, all of the following amounts shall be deposited in the account:

(1) The fees collected pursuant to this section and Sections 25205.2 and 25205.5.

(2) The amount collected pursuant to Section 43100 of the Revenue and Taxation Code.

(3) The amount of fees collected pursuant to Section 2560 of the Vehicle Code, as allocated by Section 25168.6.

(4) Any interest earned upon the money deposited in the Hazardous Waste Control Account.

(5) Any moneys received from the federal government pursuant to the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Sec. 6901 et seq.).

(6) Any fines or penalties collected pursuant to this chapter.

(b) The funds deposited in the Hazardous Waste Control Account may be expended by the department, upon appropriation by the Legislature, for the following purposes:

(1) The administration of this chapter by the department.

(2) To the State Board of Equalization to pay refunds of fees collected pursuant to Sections 43051 and 43053 of the Revenue and Taxation Code.

(3) The costs of environmental epidemiology and health effects studies related to toxic substances, including extremely hazardous waste, as defined in Section 25115, and hazardous waste, as defined in Section 25117.

(4) The support of the Toxic Substance Enforcement Program in the Office of the Attorney General.

(5) The costs incurred in the administration of Section 13227 of the Water Code and costs incurred as a result of inspection of underground storage tanks and related enforcement costs pursuant to Section 13301 of the Water Code. It is the intent of the Legislature that funds be annually appropriated in the Budget Act from the Hazardous Waste Control Account to the State Water Resources Control Board for all costs incurred by the board in administering Sections 13227 and 13301 of the Water Code.

(6) The costs of water monitoring pursuant to Section 4026.1.

(7) To the Office of Emergency Services for the support of the state's program to implement the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. Sec. 11001 et seq.). It is the intent of the Legislature that the funds be annually appropriated in the Budget Act from the Hazardous Waste Control Account to the Office of Emergency Services for the costs incurred by the office in the implementation of the Emergency Planning and Community Right-to-Know Act of 1986.

(c) Each person who disposes of hazardous wastes onsite, who annually submits more than 500 pounds of hazardous waste for disposal offsite, or who submits hazardous waste for disposal outside of this state shall pay a fee directly to the State Board of Equalization

for disposal of those wastes. For purposes of this chapter, the fee imposed by this section shall be known as the disposal fee.

(d) Each operator at any facility, including, but not limited to, all Class II and Class III landfills, as defined in Sections 2532 and 2533 of Title 23 of the California Code of Regulations, at which hazardous wastes are disposed shall pay a fee directly to the State Board of Equalization for disposal of those wastes, except that the site operator is not required to pay the fee for a hazardous waste if the person submitting the waste for disposal provides the operator with a properly completed manifest for that waste which includes that person's Hazardous Waste Tax Account number, as assigned by the State Board of Equalization, and the site operator submits a copy of the manifest to the State Board of Equalization in the time and manner as it may prescribe.

(e) The State Board of Equalization shall deposit the fees collected pursuant to this section in the Hazardous Waste Control Account in the General Fund.

(f) This section shall become inoperative on July 1, 1989, and, as of January 1, 1990, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 1990, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 5. Section 25174.02 of the Health and Safety Code, as amended by Chapter 300 of the Statutes of 1988, is amended to read:

25174.02. (a) The State Board of Equalization shall set the base rate for the hazardous wastes specified in Section 25174.6 which are disposed of onsite, submitted for disposal offsite, or submitted for transport to a point outside of this state, on and after July 1, 1988, in accordance with the following formula:

$$\text{Base rate} = \frac{(0.456)\,(B) - M}{(T_1 + T_2)0.25 + (T_3 + T_4)2.00 + (T_5) + (T_6)0.50 + (T_7)0.10 + (T_8)0.05} \times (C)$$

Where all of the following apply:

(1) "B" is the amount appropriated annually by the Legislature for the Hazardous Waste Control Account including, but not limited to, any amounts appropriated for the compensation of employees. The board shall reduce the amount of "B" by any amount of the surplus in the Hazardous Waste Control Account which exceeds 5 percent of the prior year's budget.

(2) "M" is the amount of disposal fees undercollected or overcollected in the prior fiscal year from what was expected to be collected from the fees. When there is an undercollection of fees, a negative number shall be used as "M."

(3) "$T_1$" is the total amount in tons of waste specified in paragraph (1) of subdivision (a) of Section 25174.6.

(4) "$T_2$" is the total amount in tons of waste specified in paragraph (2) of subdivision (a) of Section 25174.6.

(5) "$T_3$" is the total amount in tons of waste specified in paragraph (3) of subdivision (a) of Section 25174.6.

(6) "$T_4$" is the total amount in tons of waste specified in paragraph (4) of subdivision (a) of Section 25174.6.

(7) "$T_5$" is the total amount in tons of waste specified in paragraph (5) of subdivision (a) of Section 25174.6.

(8) "$T_6$" is the total amount in tons of waste specified in paragraph (6) of subdivision (a) of Section 25174.6.

(9) "$T_7$" is the total amount in tons of waste specified in subdivision (c) of Section 25174.6.

(10) "$T_8$" is the total amount in tons of waste specified in paragraph (7) of subdivision (a) of Section 25174.6.

(11) "C" is an adjustment based on the average decline in tonnage over the past three calendar years, as determined by the State Board of Equalization in consultation with the department.

(b) The base rate specified in subdivision (a) shall apply to persons subject to the fee specified in Section 25174. Upon the enactment of the Budget Act of 1988, and upon the enactment of the annual Budget Act for each fiscal year thereafter, the State Board of Equalization shall determine the base rate, in accordance with the formula specified in subdivision (a), using the actual tonnage reported for the preceding calendar year. Within 30 days after the enactment of the annual Budget Act, the State Board of Equalization shall send a notice of the adjusted fee rate to every person subject to the fee specified in Section 25174.

(c) This section shall become inoperative on July 1, 1989, and, as of January 1, 1990, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 1990, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 6. Section 25174.6 of the Health and Safety Code, as amended by Chapter 300 of the Statutes of 1988, is amended to read:

25174.6. (a) The fee provided pursuant to Section 25174 to be paid by persons disposing of hazardous waste onsite, or submitting hazardous waste for disposal offsite, and by operators of hazardous waste disposal facilities, for each ton, or fraction thereof, of hazardous waste disposed of on land or applied to land on or after July 1, 1986, shall be determined as a percentage of the base rate, as adjusted by the State Board of Equalization, pursuant to Section 25174.02. The percentages of the base rate for determining these fees are as follows:

(1) Twenty-five percent of the base rate for each ton, or fraction thereof for up to the first 5,000 tons of hazardous waste disposed of, or submitted for offsite disposal, at each specific facility by each producer or at each specific onsite facility, per month, which is not subject to Subchapter III (commencing with Section 6921) of Chapter 82 of Title 42 of the United States Code, pursuant to subsection (b) of Section 6921 of Title 42 of the United States Code and which is not otherwise subject to the fee specified in paragraph (3) or (4), or hazardous waste for which the Administrator of the Environmental Protection Agency has determined that regulation is

unwarranted, as specified in subparagraph (C) of paragraph (2) of, and subparagraph (C) of paragraph (3) of, subsection (b) of Section 6921 of Title 42 of the United States Code and which is not otherwise subject to the fee specified in paragraph (3) or (4).

(2) Twenty-five percent of the base rate for each ton, or fraction thereof, for up to the first 5,000 tons of hazardous waste disposed of, or submitted for offsite disposal, at each specific facility by each producer or at each specific onsite facility, per month, which result from the extraction, beneficiation, and processing of ores and minerals, including phosphate rock and the overburden from the mining of uranium ore and which is not otherwise subject to the fee specified in paragraph (3) or (4).

(3) Two hundred percent of the base rate for each ton, or fraction thereof, of extremely hazardous waste.

(4) Two hundred percent of the base rate for each ton, or fraction thereof, of restricted hazardous wastes listed in Section 66900 of Title 22 of the California Code of Regulations.

(5) One hundred percent of the base rate for each ton, or fraction thereof, of hazardous waste disposed of, or submitted for offsite disposal, which is not otherwise subject to the fees specified in paragraph (1), (2), (3), or (4) of this subdivision.

(6) Fifty percent of the base rate for each ton, or fraction thereof, of hazardous waste generated in this state which is disposed of, or submitted for disposal, outside the state.

(7) Five percent of the base rate for each ton, or fraction thereof, of hazardous waste disposed of, or submitted for disposal, in the state that is a solid hazardous waste residue resulting from incineration.

(b) The amount of fees payable to the State Board of Equalization pursuant to this section shall be calculated using the total wet weight, measured in tons or fractions thereof, of the hazardous waste in the form in which the hazardous waste existed at the time of disposal, submission for disposal, or application to land using the land disposal methods defined in Section 66122 of Title 22 of the California Code of Regulations.

(c) Notwithstanding subdivision (a), the fee rate for hazardous waste disposed of, or submitted for offsite disposal, into a surface impoundment which is double lined, meets the criteria specified in paragraph (1), and for which a report has not been submitted pursuant to paragraph (2), is 10 percent of the base rate for each ton, or fraction thereof, of hazardous waste so disposed of or submitted for disposal. The owner or operator of the surface impoundment shall certify to the State Board of Equalization that the requirements of paragraph (1) have been met before the fee rate specified in this subdivision may be applied to the hazardous waste disposed of, or submitted for disposal, into the surface impoundment.

(1) This subdivision applies only to hazardous waste disposed of, or submitted for disposal, into a surface impoundment which meets all the following criteria:

(A) The surface impoundment is double lined and is equipped

with a leachate collection system which is in place and in operation, and complies with existing federal and state regulations and guidance documents published by the Environmental Protection Agency prior to July 1, 1984.

(B) The surface impoundment has in place and in operation a minimum of one upgradient and two downgradient monitoring wells capable of identifying the migration of any hazardous waste constituents disposed of into the surface impoundment.

(C) The surface impoundment has in place and in operation a vadose zone monitoring system capable of identifying the migration of any hazardous waste constituents disposed of into the surface impoundment from the impoundment into the zone between the surface and the water table.

(D) The surface impoundment has an enforceable site closure plan which initiates closure of the impoundment within 12 years after the surface impoundment is certified pursuant to this subdivision. This plan shall require the surface impoundment, and any surrounding soils contaminated by the impoundment, to be returned to a nonhazardous condition within five years of initiating closure.

(E) The owner or operator has submitted to the department and to the California regional water quality control board documentation demonstrating full compliance with subparagraphs (A), (B), (C), and (D).

(2) Upon discovering that, or receiving notification that, a surface impoundment certified for the fee rate specified in this subdivision has leaked or overflowed, and that there is migration into the vadose zone or into the waters of the state, the owner or operator of the surface impoundment shall report the migration to the department and the California regional water quality control board within 24 hours after the migration or unauthorized release has been detected. The owner or operator shall transmit a full written report to the department and the regional board within five working days after the detection of the migration. The reporting requirements imposed by this paragraph are in addition to any requirements which may be imposed by Section 13271 of the Water Code. Unless the regional board, or its executive officer, determines that the presence of the hazardous waste constituents in the migration do not pose any short-term or long-term, present or potential, hazards to human health or the environment, the regional board shall issue a cease and desist order pursuant to Section 13301 of the Water Code prohibiting any discharge into the surface impoundment and shall take any other actions which are necessary.

(3) After a surface impoundment has been the subject of a report specified in paragraph (2), the fee rate specified in this subdivision for hazardous waste disposed of, or submitted for disposal, into that surface impoundment shall not apply and the fees shall be calculated pursuant to subdivision (a). The fee rate specified in this subdivision may again be applied to the hazardous waste disposed of, or

submitted for disposal, into the surface impoundment only after the department and the California regional water quality control board determines that hazardous constituents are no longer migrating from the surface impoundment, and that there is no significant potential for them to migrate from the surface impoundment into the vadose zone or into the waters of the state, so that the presence of the hazardous constituents poses, or would pose, a present or potential hazard to human health or the environment.

(4) Hazardous waste, as used in this subdivision, includes restricted hazardous waste.

(d) All fees imposed by this section shall be paid in accordance with Part 22 (commencing with Section 43001) of Division 2 of the Revenue and Taxation Code.

(e) This section shall become inoperative on July 1, 1989, and, as of January 1, 1990, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 1990, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 7. Section 25174.8 of the Health and Safety Code is repealed.

SEC. 8. Section 25174.9 of the Health and Safety Code is repealed.

SEC. 9. Section 25201 of the Health and Safety Code is amended to read:

25201. Except as provided in Section 25358.9, no operator of a storage facility, treatment facility, waste transfer station, resource recovery facility, or waste disposal site shall accept, treat, store, or dispose of a hazardous waste at the facility, station, area, or site, unless the operator holds a hazardous waste facilities permit from the department to use and operate the facility, station, area, or site.

SEC. 10. Section 25201 of the Health and Safety Code is amended to read:

25201. (a) Except as provided in Section 25358.9, no operator of a storage facility, treatment facility, waste transfer station, resource recovery facility, or waste disposal site shall accept, treat, store, or dispose of a hazardous waste at the facility, station, area, or site, unless the operator holds a hazardous waste facilities permit or other grant of authorization from the department to use and operate the facility, station, 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 shall obtain a hazardous waste facilities permit or a permit amendment from the department prior to commencing construction.

SEC. 11. Article 9.1 (commencing with Section 25205.1) of Chapter 6.5 of Division 20 of the Health and Safety Code is repealed.

SEC. 12. Article 9.1 (commencing with Section 25205.1) is added to Chapter 6.5 of Division 20 of the Health and Safety Code, to read:

Article 9.1. Facilities and Generator Fees

25205.1. For purposes of this article the following definitions apply:

(a) "Board" means the State Board of Equalization.

(b) "Facility" means any structure, and all contiguous land, used for the treatment, transfer, storage, resource recovery, disposal, or recycling of hazardous waste, which has been issued a permit or a grant of interim status by the department pursuant to Article 9 (commencing with Section 25200) or which is operated in such a manner that the facility is required to obtain a permit or grant of interim status. "Facility" does not include any facility operated by a local government agency which is used for household hazardous waste collection or for hazardous wastes which meet the requirements of paragraph (3) of subdivision (a) of Section 25174.7.

(c) "Large storage facility" means a storage facility which stores 1,000 or more tons of hazardous waste during any one month of the state's current fiscal year commencing on or after July 1, 1988.

(d) "Large treatment facility" means a treatment facility which treats or recycles 1,000 or more tons of hazardous waste during any one month of the state's current fiscal year commencing on or after July 1, 1988.

(e) "Generator" means a person who generates volumes of hazardous waste on or after July 1, 1988, in those amounts specified in subdivision (b) of Section 25205.5 at an individual site commencing on or after July 1, 1988, and who has not paid a hazardous waste facility fee for that same individual site.

(f) "Mini storage facility" means a storage facility which stores 0.5 tons (1,000 pounds) or less of hazardous waste during any one month.

(g) "Mini treatment facility" means a treatment facility which treats or recycles 0.5 tons (1,000 pounds) or less of hazardous waste during any one month.

(h) "Site" means the location of an operation which generates hazardous wastes and which is noncontiguous to any other location of these operations owned by the generator.

(i) "Small storage facility" means a storage facility which stores more than 0.5 tons (1,000 pounds), but less than 1,000 tons, of hazardous waste during any one month.

(j) "Small treatment facility" means a treatment facility which treats or recycles more than 0.5 tons (1,000 pounds), but less than 1,000 tons, of hazardous waste during any month.

25205.2. (a) Except as provided in subdivision (c), in addition to the fees specified in Section 25174, each operator of a facility shall pay a facility fee for each state fiscal year, or any portion thereof, to the board based on the size and type of the facility, as specified in Section 25205.4. The department shall notify the board of all known facility operators by facility type and size at the time it establishes the facility fees pursuant to Section 25205.3. 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.

(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, or a person who is in a closure period approved by the department pursuant to Article 9 (commencing with Section 25200) and Article 12 (commencing with Section 25245), is not subject to the fee, for any fiscal year following the fiscal year in which the variance or closure was granted or approved by the department.

25205.3. The director shall establish the facility fees specified in Section 25205.2 according to the formula specified in Section 25205.4 within 30 days after the effective date of the enactment of the annual Budget Act. Within 30 days of the establishment of the fees, the board shall send a notice of the fees to every person subject to the fee.

25205.4. (a) The facility fee required by Section 25205.2 shall be determined on and after July 1, 1988, according to the following formula:

$$\text{Base rate} = \frac{(0.25)(B) - M}{F_1(0.25) + F_2 + F_3(2) + F_4(0.5) + F_5(2) + F_6(3) + F_7(10)}$$

For purposes of this subdivision, the following shall apply:

(1) $F_1$ equals the number of mini storage facilities.

(2) $F_2$ equals the number of small storage facilities.

(3) $F_3$ equals the number of large storage facilities.

(4) $F_4$ equals the number of mini treatment facilities.

(5) $F_5$ equals the number of small treatment facilities.

(6) $F_6$ equals the number of large treatment facilities.

(7) $F_7$ equals the number of disposal facilities.

(8) B equals the amount appropriated annually by the Legislature for the Hazardous Waste Control Account, including, but not limited to, any amount appropriated for the compensation of employees. The board shall reduce the amount of "B" by any amount of the surplus in the Hazardous Waste Control Account which exceeds 5 percent of the prior year's budget.

(9) "M" is the amount of overcollection or undercollection of the facility fees in the prior fiscal year.

(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) In computing the facility fees, all of the following shall apply:

(1) The fee provided pursuant to Section 25205.2 to be paid by a mini storage facility shall equal 25 percent of the base facility rate.

(2) The fee provided pursuant to Section 25205.2 to be paid by a small storage facility shall equal the base facility rate.

(3) The fee charged a large storage facility shall equal twice the base facility rate.

(4) The fee charged a mini treatment facility shall equal 50 percent of the base facility rate.

(5) The fee charged a small treatment facility shall equal twice the base facility rate.

(6) The fee charged a large treatment facility shall equal three times the base facility rate.

(7) The fee charged a disposal facility shall equal 10 times the base facility rate.

(d) If a facility falls into more than one category listed in subdivision (c), or multiple operations under a single hazardous waste facility permit or grant of interim status fall into more than one category listed in subdivision (c), the facility operator shall pay only the rate for the facility category which is the highest rate.

(e) 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.

25205.5. (a) In addition to the fee imposed pursuant to Section 25174, every generator of hazardous waste, in the amounts specified in subdivision (b), shall pay the board a fee for each generator site for each calendar year, or portion thereof. For purposes of this chapter, the fee imposed by this section shall be known as the generator fee.

(b) The board shall establish the generator fee specified in subdivision (a) to be paid by generators subject to this section. The fee shall be computed according to the following formula:

$$\text{Base generators rate} = \frac{(0.25)(B) - M}{G_1(0.10) + G_2(0.5) + G_3 + G_4(5) + G_5(10) + G_6(15) + G_7(20)}$$

for which all the following apply:

(1) "B" is the amount appropriated annually by the Legislature for the Hazardous Waste Control Account, including, but not limited to, any amounts appropriated for the compensation of employees. The board shall reduce the amount of "B" by any amount of the surplus in the Hazardous Waste Control Account which exceeds 5 percent of the prior year's budget.

(2) "M" is the amount of overcollection or undercollection of the generator fee in the prior fiscal year.

(3) "$G_1$" is the number of generators which generate an amount equal to, or more than, 5 tons, but less than 25 tons, of hazardous

waste during the prior calendar year.

(4) "$G_2$" is the number of generators which generate an amount equal to or more than 25 tons, but less than 50 tons, of hazardous waste during the prior calendar year.

(5) "$G_3$" is the number of generators which generate an amount equal to, or more than, 50 tons, but less than 250 tons, of hazardous waste during the prior calendar year.

(6) Category $G_4$ is the number of generators which generate an amount equal to, or more than, 250 tons, but less than 500 tons, of hazardous waste during the prior calendar year.

(7) Category $G_5$ is the number of generators which generate an amount equal to, or more than, 500 tons, but less than 1,000 tons, of hazardous waste during the prior calendar year.

(8) Category $G_6$ is the number of generators which generate an amount equal to, or more than, 1,000 tons, but less than 2,000 tons, of hazardous waste during the prior calendar year.

(9) Category $G_7$ is the number of generators which generate an amount equal to, or more than, 2,000 tons of hazardous waste during the prior calendar year.

(c) The establishment of the annual operating fee pursuant to this section is exempt from Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(d) Any generator who recycles hazardous waste as part of the line of production is not required to pay the fee imposed by this section on the hazardous waste recycled inline.

(e) 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.

25205.6. (a) The board shall set the generator fees imposed by Section 25205.5 pursuant to the formula specified in subdivision (b) of Section 25205.5 based on the number of generating sites. The board, in consultation with the department, shall determine the number of generating sites per category for the generator fees due January 31, 1989. Thereafter, the board shall base the number of generating sites per category for the generator fees based on the number reporting to the board in the prior calendar year. Within 30 days of the enactment of the annual Budget Act, the board shall establish the fees.

(b) Every generator shall pay the fee imposed by Section 25205.5 by generating site and category, in proportion to the base generator rate as follows:

(1) $G_1$ equals 10 percent of the base rate.

(2) $G_2$ equals 50 percent of the base rate.

(3) $G_3$ equals 100 percent of the base rate.

(4) $G_4$ equals five times the base rate.

(5) $G_5$ equals 10 times the base rate.

(6) $G_6$ equals 15 times the base rate.

(7) $G_7$ equals 20 times the base rate.

25205.8. (a) In addition to the fees imposed pursuant to Sections

25174, 25205.2, and 25205.5, the department shall establish fees, based on historical workload standards, to be assessed for each permit application, application renewal, facility closure, and facility variance granted when a facility requests any of these services.

(b) The total amount of fees assessed pursuant to subdivision (a) shall not exceed 5 percent of the amount appropriated by the Legislature for the Hazardous Waste Control Account in the fiscal year of the service.

(c) The department shall not charge a person a fee under this section unless written notice has been provided to that person of the department's assessment fee for that service.

(d) If any producer required to send a copy of a manifest, pursuant to Section 25160, submits an improperly completed manifest, and the department returns the manifest to the person who completed the manifest, the producer shall submit a twenty dollar ($20) fee with each resubmitted manifest.

SEC. 13. Section 25358.9 is added to the Health and Safety Code, to read:

25358.9. (a) To the extent consistent with the Resource Conservation and Recovery Act of 1976, as amended, (42 U.S.C. Sec. 6901 et seq.), the department may exclude from the hazardous waste facilities permit required by Section 25201, those portions of any removal or remedial action conducted entirely on-site which meet both of the following criteria:

(1) The removal or remedial action is selected and carried out pursuant to a remedial action plan approved by the department or a California regional water quality control board pursuant to Section 25356.1.

(2) The remedial action plan requires that the removal or remedial action complies with all laws, rules, regulations, standards, and requirements, criteria, or limitations applicable to the construction, operation, and closure of the type of facility at the hazardous substance release site and with any other condition imposed by the department as necessary to protect public health or the environment.

(b) The department may enforce in the court for the county in which a removal or remedial action exempted pursuant to subdivision (a) is located any federal or state law, rule, regulation, standard, requirements, criteria, or limitation with which the remedial or removal action is required to comply. Any consent decree entered into pursuant to an enforcement action authorized by this subdivision shall require the parties to attempt expeditiously to informally resolve any disagreements concerning the implementation of the remedial or removal action with the appropriate federal and state agencies and shall provide for administrative enforcement. The consent decree shall stipulate that the penalty for violation of the consent decree shall be in an amount of not more than twenty-five thousand dollars ($25,000) per day, which may be enforced by the state. These penalties do not impair

or affect the authority of the court to order compliance with the specific terms of the consent decree.

SEC. 14. Section 43002 of the Revenue and Taxation Code is amended to read:

43002. The collection and administration of the fees and taxes imposed by Chapter 6.5 (commencing with Section 25100) and Chapter 6.8 (commencing with Section 25300), respectively, of Division 20 of the Health and Safety Code, shall be governed by the definitions in those provisions, unless expressly superseded by the definitions contained in this part.

SEC. 15. Section 43151 of the Revenue and Taxation Code is amended to read:

43151. The fee imposed pursuant to Section 25174 of the Health and Safety Code which is a tax collected and administered under Section 43051 are due and payable to the board quarterly on or before the last day of the calendar month following the quarterly period for which the tax is due. Each taxpayer, on or before the last day of the month following the quarterly period for which the tax is due, shall make out a tax return for the preceding quarterly period, in the form as prescribed by the board, showing the total amount of hazardous waste and solid waste subject to each tax, the amount of tax for the period covered by the return, and any other information that the board deems necessary. The taxpayer shall deliver the return, together with a remittance of the amount of tax due, to the office of the board on or before the last day of the month following the quarterly period for which the tax is due.

With the approval of the board, a taxpayer who has more than one facility subject to the taxes collected and administered under this chapter, may file a combined tax return covering operations at more than one, or all, of those facilities.

SEC. 16. Section 43152.7 is added to the Revenue and Taxation Code, to read:

43152.7. (a) The fee imposed pursuant to Section 25205.5 of the Health and Safety Code which is collected and administered as a tax under Section 43053 is due and payable on the last day of the month following the end of the calendar year.

(b) Every operator subject to the tax imposed pursuant to Section 25205.5 of the Health and Safety Code shall, on forms prescribed by the board, file an annual return and pay the proper amount of fee due.

(c) The fee imposed by Section 25205.5 of the Health and Safety Code shall be offset by any fees paid by the generator during the preceding calendar year for a local hazardous waste management program conducted by a local agency pursuant to a memorandum of understanding with the department. The amount of the credit provided under this subdivision shall not exceed an amount equal to the fees paid to the local agency or the generator fee due under Section 25205.5 of the Health and Safety Code, whichever is less. The credit for local fees paid shall not include fees required under

Chapter 6.7 (commencing with Section 25280) or Chapter 6.95 (commencing with Section 25500) of Division 20 of the Health and Safety Code.

SEC. 17. Section 43152.8 is added to the Revenue and Taxation Code, to read:

43152.8. (a) The department shall notify the board of the occurrence of any of the following:

(1) The issuance of a hazardous waste facilities permit to any facility operator, who has not previously been granted interim status, within 30 days after the facility permit is issued.

(2) When any facility changes size category pursuant to Section 25205.4 of the Health and Safety Code.

(b) The board shall submit a bill to any identified or reclassified facilities for which the board is notified pursuant to this section for the fees, or difference in fees, which shall be due and payable within 30 days.

SEC. 18. Section 43551 of the Revenue and Taxation Code is amended to read:

43551. All taxes, interest, and penalties imposed and all amounts of tax required to be paid to the state pursuant to Sections 43051 and 43053, 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 payments to the State Treasurer to be deposited in the State Treasury to the credit of the Hazardous Waste Control Account.

SEC. 19. Section 2560 of the Vehicle Code is amended to read:

2560. The fee for the annual inspection of trucks, trailers, semitrailers, vacuum tanks, and cargo tanks used to transport hazardous waste is seventy-five dollars ($75). The fee for the annual inspection of containers used to transport hazardous waste is thirty-nine dollars ($39).

SEC. 20. Section 10 of this bill incorporates amendments to Section 25201 of the Health and Safety Code proposed by both this bill and AB 3383. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1989, but this bill becomes operative first, (2) each bill amends Section 25201 of the Health and Safety Code, and (3) this bill is enacted after AB 3383, in which case Section 25201 of the Health and Safety Code, as amended by Section 9 of this bill, shall remain operative only until the operative date of AB 3383, at which time Section 10 of this bill shall become operative.

SEC. 21. 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.

SEC. 22. The sum of four hundred seventy-five thousand dollars ($475,000) is hereby appropriated from the Hazardous Waste

Control Account in the General Fund to the State Department of Health Services, for encumbrance by the State Department of Health Services and the State Board of Equalization, to implement the changes in the Health and Safety Code and the Revenue and Taxation Code concerning hazardous waste fees made by this act. The State Department of Health Services shall not encumber these funds until the Department of Finance has approved the expenditure and 30 days have passed after the Department of Finance has notified the Joint Legislative Budget Committee.

SEC. 23. 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 the State Board of Equalization an opportunity to adjust their records in order to collect an adjusted fee rate from generators and facilities, thereby providing adequate funding for the state's hazardous waste control program, and to protect public health and safety and the environment, it is necessary that this act take effect immediately.

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## CHAPTER 1377

An act to amend Section 4607 of, and to add and repeal Section 4607.2 of, the Civil Code, relating to family law.

[Approved by Governor September 25, 1988 Filed with Secretary of State September 26, 1988.]

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

SECTION 1. Section 4607 of the Civil Code is amended to read:

4607. (a) In any proceeding where there is at issue the custody of or visitation with a minor child, and where it appears on the face of the petition or other application for an order or modification of an order for the custody or visitation of a child or children that either or both such issues are contested, as provided in Section 4600, 4600.1, or 4601, the matter shall be set for mediation of the contested issues prior to or concurrent with the setting of the matter for hearing. Upon the adoption of a resolution by the board of supervisors authorizing the procedure, a petition also may be filed pursuant to this section for the mediation of a dispute relating to any existing order for custody or visitation; the mediation of a dispute concerning an existing order shall be set not later than 60 days after the filing of the petition. The purpose of the mediation proceeding shall be to reduce acrimony which may exist between the parties and to develop an agreement assuring the child or children's close and continuing contact with both parents. The mediator shall use his or her best efforts to effect a settlement of the custody or visitation

dispute.

(b) Each superior court shall make available a mediator. The mediator may be a member of the professional staff of a family conciliation court, probation department, or mental health services agency, or may be any other person or agency designated by the court. In order to provide mediation services, the court shall not be required to institute a family conciliation court. The mediator shall meet the minimum qualifications required of a counselor of conciliation as provided in Section 1745 of the Code of Civil Procedure.

(c) Mediation proceedings shall be held in private and shall be confidential, and all communications, verbal or written, from the parties to the mediator made in a proceeding pursuant to this section shall be deemed to be official information within the meaning of Section 1040 of the Evidence Code.

(d) The mediator shall have the authority to exclude counsel from participation in the mediation proceedings where, in the discretion of the mediator, exclusion of counsel is deemed by the mediator to be appropriate or necessary. The mediator shall have the duty to assess the needs and interests of the child or children involved in the controversy and shall be entitled to interview the child or children when the mediator deems the interview appropriate or necessary. The mediator shall have the authority to meet with the parties separately when a request for separate mediation is made by one of the parties in any proceeding where there has been a history of domestic violence between the parties, as domestic violence is defined in subdivision (b) of Section 542 of the Code of Civil Procedure.

(e) The mediator may, consistent with local court rules, render a recommendation to the court as to the custody or visitation of the child or children. The mediator may, in cases where the parties have not reached agreement as a result of the mediation proceeding, recommend to the court that an investigation be conducted pursuant to Section 4602, or that other action be taken to assist the parties to effect a resolution of the controversy prior to any hearing on the issues. The mediator may, in appropriate cases, recommend that mutual restraining orders be issued, pending determination of the controversy, to protect the well-being of the children involved in the controversy. Any agreement reached by the parties as a result of mediation shall be reported to the court and to counsel for the parties by the mediator on the day set for mediation or any time thereafter designated by the court.

(f) Nothing in this section shall prohibit the mediator from recommending to the court that counsel be appointed pursuant to Section 4606 to represent the minor child or children. In making any recommendation, the mediator shall inform the court of the reasons why it would be in the best interests of the minor child or children to have counsel appointed.

SEC. 2. Section 4607.2 is added to the Civil Code, to read:

4607.2. (a) Notwithstanding Section 4607, in any proceeding in which mediation is required pursuant to Section 4607, where there has been a history of domestic violence between the parties, as domestic violence is defined in subdivision (b) of Section 542 of the Code of Civil Procedure, and where an order is in effect pursuant to paragraph (2) or (3) of subdivision (a) of Section 4359, Section 4516, or paragraph (1) or (2) of subdivision (a) of Section 7020 of this code, or Section 546 of the Code of Civil Procedure, at the request of the party protected by the order the parties shall meet with the mediator appointed pursuant to Section 4607 separately at separate times.

(b) This section shall remain in effect only until January 1, 1992, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1992, deletes or extends that date.

SEC. 3. Section 4607 of the Civil Code is amended to read:

4607. (a) In any proceeding where there is at issue the custody of or visitation with a minor child, and where it appears on the face of the petition or other application for an order or modification of an order for the custody or visitation of a child or children that either or both such issues are contested, as provided in Section 4600, 4600.1, or 4601, the matter shall be set for mediation of the contested issues prior to or concurrent with the setting of the matter for hearing. Upon the adoption of a resolution by the board of supervisors authorizing the procedure, a petition also may be filed pursuant to this section for the mediation of a dispute relating to any existing order for custody or visitation; the mediation of a dispute concerning an existing order shall be set not later than 60 days after the filing of the petition. The purpose of the mediation proceeding shall be to reduce acrimony which may exist between the parties and to develop an agreement assuring the child or children's close and continuing contact with both parents. The mediator shall use his or her best efforts to effect a settlement of the custody or visitation dispute that is in the best interest of the child or children, pursuant to Section 4608. Mediation shall not be denied to the parties on the basis that paternity is an issue in a proceeding before the court.

(b) Each superior court shall make available a mediator. The mediator may be a member of the professional staff of a family conciliation court, probation department, or mental health services agency, or may be any other person or agency designated by the court. In order to provide mediation services, the court shall not be required to institute a family conciliation court. The mediator shall meet the minimum qualifications required of a counselor of conciliation as provided in Section 1745 of the Code of Civil Procedure.

(c) Mediation proceedings shall be held in private and shall be confidential, and all communications, verbal or written, from the parties to the mediator made in a proceeding pursuant to this section shall be deemed to be official information within the meaning of Section 1040 of the Evidence Code.

(d) The mediator shall have the authority to exclude counsel from

participation in the mediation proceedings where, in the discretion of the mediator, exclusion of counsel is deemed by the mediator to be appropriate or necessary. The mediator shall have the duty to assess the needs and interests of the child or children involved in the controversy and shall be entitled to interview the child or children when the mediator deems the interview appropriate or necessary. The mediator shall have the authority to meet with the parties separately when a request for separate mediation is made by one of the parties in any proceeding where there has been a history of domestic violence between the parties, as domestic violence is defined in subdivision (b) of Section 542 of the Code of Civil Procedure.

(e) The mediator may, consistent with local court rules, render a recommendation to the court as to the custody or visitation of the child or children. The mediator may, in cases where the parties have not reached agreement as a result of the mediation proceeding, recommend to the court that an investigation be conducted pursuant to Section 4602, or that other action be taken to assist the parties to effect a resolution of the controversy prior to any hearing on the issues. The mediator may, in appropriate cases, recommend that mutual restraining orders be issued, pending determination of the controversy, to protect the well-being of the children involved in the controversy. Any agreement reached by the parties as a result of mediation shall be reported to counsel for the parties by the mediator on the day set for mediation or as soon thereafter as practical, but prior to its being reported to the court. The agreement shall be limited to the resolution of issues relating to parenting plans, custody, or visitation, or any combination thereof. No agreement shall be confirmed or otherwise incorporated in an order of the court unless each party, in person or by his or her counsel of record, has affirmed and assented to the agreement in open court or by written stipulation. An agreement also may be so confirmed or incorporated if a party fails to appear at a noticed hearing on the issue involved in the agreement. All such custody or visitation agreements may be modified at any time at the discretion of the court, subject to the provisions of Sections 4600, 4600.5, and 4601.

(f) Nothing in this section shall prohibit the mediator from recommending to the court that counsel be appointed pursuant to Section 4606 to represent the minor child or children. In making any recommendation, the mediator shall inform the court of the reasons why it would be in the best interests of the minor child or children to have counsel appointed.

SEC. 4. Section 3 of this bill incorporates amendments to Section 4607 of the Civil Code proposed by both this bill and SB 2510. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1989, (2) each bill amends Section 4607 of the Civil Code, and (3) this bill is enacted after SB 2510, in which case Section 1 of this bill shall not become operative.

# CHAPTER 1378

An act to amend Sections 311 and 313 of the Penal Code, relating to obscene matter.

[Approved by Governor September 25, 1988. Filed with Secretary of State September 26, 1988.]

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

SECTION 1. Section 311 of the Penal Code is amended to read:

311. As used in this chapter:

(a) "Obscene matter" means matter, taken as a whole, which to the average person, applying contemporary statewide standards, appeals to the prurient interest, and is matter which, taken as a whole, depicts or describes in a patently offensive way sexual conduct; and which, taken as a whole, lacks serious literary, artistic, political, or scientific value.

(1) When it appears from the nature of the matter or the circumstances of its dissemination, distribution or exhibition that it is designed for clearly defined deviant sexual groups, the appeal of the matter shall be judged with reference to its intended recipient group.

(2) In prosecutions under this chapter, where circumstances of production, presentation, sale, dissemination, distribution, or publicity indicate that matter is being commercially exploited by the defendant for the sake of its prurient appeal, such evidence is probative with respect to the nature of the matter and can justify the conclusion that the matter lacks serious literary, artistic, political, or scientific value.

(3) In determining whether the matter taken as a whole lacks serious literary, artistic, political, or scientific value in description or representation of such matters, the fact that the defendant knew that the matter depicts persons under the age of 16 years engaged in sexual conduct, as defined in subdivision (c) of Section 311.4, is a factor which can be considered in making that determination.

(b) "Matter" means any book, magazine, newspaper or other printed or written material or any picture, drawing, photograph, motion picture, or other pictorial representation or any statue or other figure, or any recording, transcription or mechanical, chemical or electrical reproduction or any other articles, equipment, machines or materials.

(c) "Person" means any individual, partnership, firm, association, corporation or other legal entity.

(d) "Distribute" means to transfer possession of, whether with or without consideration.

(e) "Knowingly" means being aware of the character of the matter or live conduct.

(f) "Exhibit" means to show.

(g) "Obscene live conduct" means any physical human body activity, whether performed or engaged in alone or with other persons, including but not limited to singing, speaking, dancing, acting, simulating, or pantomiming, taken as a whole, which to the average person, applying contemporary statewide standards appeals to the prurient interest, and is conduct which, taken as a whole, depicts or describes in a patently offensive way sexual conduct and which, taken as a whole, lacks serious literary, artistic, political, or scientific value.

(1) When it appears from the nature of the conduct or the circumstances of its production, presentation or exhibition that it is designed for clearly defined deviant sexual groups, the appeal of the conduct shall be judged with reference to its intended recipient group.

(2) In prosecutions under this chapter, where circumstances of production, presentation advertising, or exhibition indicate that live conduct is being commercially exploited by the defendant for the sake of its prurient appeal, that evidence is probative with respect to the nature of the conduct and can justify the conclusion that the conduct lacks serious literary, artistic, political, or scientific value.

(3) In determining whether the live conduct taken as a whole lack serious literary, artistic, political, or scientific value in description or representation of such matters, the fact that the defendant knew that the live conduct depicts persons under the age of 16 years engaged in sexual conduct, as defined in subdivision (c) of Section 311.4, is a factor which can be considered in making that determination.

SEC. 1.5. Section 311 of the Penal Code is amended to read:

311. As used in this chapter, the following definitions shall control the meaning of the respective terms:

(a) "Obscene matter" means matter taken as a whole, which to the average person, applying contemporary statewide standards, appeals to the prurient interest, and is matter which, taken as a whole, depicts or describes in a patently offensive way sexual conduct; and which, taken as a whole, lacks serious literary, artistic, political, or scientific value.

(1) When it appears from the nature of the matter or the circumstances of its dissemination, distribution or exhibition that it is designed for clearly defined deviant sexual groups, the appeal of the matter shall be judged with reference to its intended recipient group.

(2) In prosecutions under this chapter, where circumstances of production, presentation, sale, dissemination, distribution, or publicity indicate that matter is being commercially exploited by the defendant for the sake of its prurient appeal, such evidence is probative with respect to the nature of the matter and can justify the conclusion that the matter lacks serious literary, artistic, political, or scientific value.

(3) In determining whether the matter taken as a whole lacks serious literary, artistic, political, or scientific value in description or

representation of such matters, the fact that the defendant knew that the matter depicts persons under the age of 16 years engaged in sexual conduct, as defined in subdivision (c) of Section 311.4, is a factor which can be considered in making that determination.

(b) "Matter" means any book, magazine, newspaper or other printed or written material or any picture, drawing, photograph, motion picture, or other pictorial representation or any statue or other figure, or any recording, transcription or mechanical, chemical or electrical reproduction or any other articles, equipment, machines or materials. "Matter" also means live or recorded telephone messages when transmitted, disseminated, or distributed as part of a commercial transaction.

(c) "Person" means any individual, partnership, firm, association, corporation, or other legal entity.

(d) "Distribute" means to transfer possession of, whether with or without consideration.

(e) "Knowingly" means being aware of the character of the matter or live conduct.

(f) "Exhibit" means to show.

(g) "Obscene live conduct" means any physical human body activity, whether performed or engaged in alone or with other persons, including but not limited to singing, speaking, dancing, acting, simulating, or pantomiming, taken as a whole, which to the average person, applying contemporary statewide standards to the prurient interest and is conduct which, taken as a whole , depicts or describes in a patently offensive way sexual conduct and which, taken as a whole, lacks serious literary, artistic, political, or scientific value.

(1) When it appears from the nature of the conduct or the circumstances of its production, presentation or exhibition that it is designed for clearly defined deviant sexual groups, the appeal of the conduct shall be judged with reference to its intended recipient group.

(2) In prosecutions under this chapter, where circumstances of production, presentation advertising, or exhibition indicate that live conduct is being commercially exploited by the defendant for the sake of its prurient appeal, that evidence is probative with respect to the nature of the conduct and can justify the conclusion that the conduct lacks serious literary, artistic, political, or scientific value.

(3) In determining whether the live conduct taken as a whole lacks serious literary, artistic, political, or scientific value in description or representation of such matters, the fact that the defendant knew that the live conduct depicts persons under the age of 16 years engaged in sexual conduct, as defined in subdivision (c) of Section 311.4, is a factor which can be considered in making that determination.

SEC. 2. Section 313 of the Penal Code is amended to read:

313. As used in this chapter:

(a) "Harmful matter" means matter, taken as a whole, which to

the average person, applying contemporary statewide standards, appeals to the prurient interest, and is matter which, taken as a whole, depicts or describes in a patently offensive way sexual conduct and which, taken as a whole, lacks serious literary, artistic, political, or scientific value for minors.

(1) When it appears from the nature of the matter or the circumstances of its dissemination, distribution or exhibition that it is designed for clearly defined deviant sexual groups, the appeal of the matter shall be judged with reference to its intended recipient group.

(2) In prosecutions under this chapter, where circumstances of production, presentation, sale, dissemination, distribution, or publicity indicate that matter is being commercially exploited by the defendant for the sake of its prurient appeal, that evidence is probative with respect to the nature of the matter and can justify the conclusion that the matter lacks serious literary, artistic, political, or scientific value for minors.

(b) "Matter" means any book, magazine, newspaper, or other printed or written material or any picture, drawing, photograph, motion picture, or other pictorial representation or any statue or other figure, or any recording, transcription, or mechanical, chemical, or electrical reproduction or any other articles, equipment, machines, or materials.

(c) "Person" means any individual, partnership, firm, association, corporation, or other legal entity.

(d) "Distribute" means to transfer possession of, whether with or without consideration.

(e) "Knowingly" means being aware of the character of the matter.

(f) "Exhibit" means to show.

(g) "Minor" means any natural person under 18 years of age.

SEC. 2.5. Section 313 of the Penal Code is amended to read:

313. As used in this chapter, the following definitions shall control the meaning of the respective terms:

(a) "Harmful matter" means matter, taken as a whole, which to the average person, applying contemporary statewide standards, appeals to the prurient interest, and is matter which, taken as a whole, depicts or describes in a patently offensive way sexual conduct and which, taken as a whole, lacks serious literary, artistic, political, or scientific value for minors.

(1) When it appears from the nature of the matter or the circumstances of its dissemination, distribution or exhibition that it is designed for clearly defined deviant sexual groups, the appeal of the matter shall be judged with reference to its intended recipient group.

(2) In prosecutions under this chapter, where circumstances of production, presentation, sale, dissemination, distribution, or publicity indicate that matter is being commercially exploited by the defendant for the sake of its prurient appeal, that evidence is

probative with respect to the nature of the matter and can justify the conclusion that the matter lacks serious literary, artistic, political, or scientific value for minors.

(b) "Matter" means any book, magazine, newspaper, or other printed or written material or any picture, drawing, photograph, motion picture, or other pictorial representation or any statue or other figure, or any recording, transcription, or mechanical, chemical, or electrical reproduction or any other articles, equipment, machines, or materials. "Matter" also includes live or recorded telephone messages when transmitted, disseminated, or distributed as part of a commercial transaction.

(c) "Person" means any individual, partnership, firm, association, corporation, or other legal entity.

(d) "Distribute" means to transfer possession of, whether with or without consideration.

(e) "Knowingly" means being aware of the character of the matter.

(f) "Exhibit" means to show.

(g) "Minor" means any natural person under 18 years of age.

SEC. 2.6. This act shall be known, and may be cited, as the Deddeh-Polanco Anti-Obscenity Act of 1988.

SEC. 3. Section 1.5 of this bill incorporates amendments to Section 311 of the Penal Code proposed by both this bill and AB 3568. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1989, (2) each bill amends Section 311 of the Penal Code, and (3) this bill is enacted after AB 3568, in which case Section 1 of this bill shall not become operative.

SEC. 4. Section 2.5 of this bill incorporates amendments to Section 313 of the Penal Code proposed by both this bill and AB 3568. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1989, (2) each bill amends Section 313 of the Penal Code, and (3) this bill is enacted after AB 3568, 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.

## CHAPTER 1379

An act to amend Section 1264 of the Unemployment Insurance Code, relating to unemployment insurance, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 26, 1988. Filed with Secretary of State September 27, 1988.]

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

SECTION 1. Section 1264 of the Unemployment Insurance Code is amended to read:

1264. (a) Unemployment compensation benefits, extended duration benefits, and federal-state extended benefits shall not be payable on the basis of services performed by an alien unless the alien is an individual who was lawfully admitted for permanent residence at the time the services were performed, was lawfully present for purposes of performing the services, or was permanently residing in the United States under color of law at the time the services were performed, including an alien who was lawfully present in the United States as a result of the application of the provisions of Section 203(a)(7) or Section 212(d)(5) of the Immigration and Nationality Act.

(b) Any data or information required of individuals applying for benefits specified by subdivision (a) to determine whether these benefits are not payable to them because of their alien status shall be uniformly required from all applicants for these benefits.

(c) In the case of an individual whose application for benefits specified by subdivision (a) would otherwise be approved, no determination by the department, an administrative law judge, or the appeals board that these benefits to the individual are not payable because of his or her alien status shall be made except upon a preponderance of the evidence.

(d) If an alien presents evidence that the Immigration and Naturalization Service has granted the alien employment authorization as a result of the alien's application for temporary residence status under the federal Immigration Reform and Control Act of 1986 (Public Law 99-603), pending a final determination on this application the department shall not do either of the following:

(1) Commence or continue to pursue any administrative or judicial action to collect benefits where there has been a final determination that these benefits have been overpaid or chargeable to the alien, because of the alien's immigration status at the time he or she performed the services compensated by his or her base period wages.

(2) Determine that the alien was overpaid benefits in the current benefit year or in any prior benefit year, if the basis for the determination is the assumption that because the alien is an

applicant for temporary resident status he or she was not, while performing the services compensated by base period wages, lawfully admitted for permanent residence, lawfully present for purposes of performing the services that were compensated by his or her base period wages, or permanently residing in the United States under color of law.

(e) If the Immigration and Naturalization Service grants the application and adjusts the alien's status to that of lawful temporary resident, the department shall not take any action described in paragraph (1) of subdivision (d) or make any determination described in paragraph (2) of subdivision (d). If an alien is not in the status of being lawfully admitted for permanent residence, lawfully present for the purpose of performing the services compensated by his or her base period wages, or permanently residing in the United States under color of law, at the time the alien's lawful temporary permanent status terminates, then compensation shall not be payable on the basis of services performed by the alien after the termination.

(f) Nothing in subdivision (d) shall be construed to require the department to do any of the following:

(1) Repay any amounts collected under any present or past action as described in paragraph (1) of subdivision (d).

(2) Redetermine the eligibility for unemployment compensation benefits of any alien who the department originally determined to be ineligible because of the alien's status at the time he or she performed the services compensated by his or her base period wages and with respect to whom the determination has become final.

(3) Apply subdivision (d) or (e) retroactively.

(g) If the United States Secretary of Labor finds that subdivisions (d) and (e) are not in conformity with the federal Unemployment Tax Act, and effective as of the date that this finding becomes final, subdivisions (d), (e), and (f) shall be inoperative and of no legal force or effect.

(h) Unless subdivisions (d), (e), and (f) have earlier become inoperative and of no legal force of effect pursuant to a finding by the Secretary of Labor under subdivision (g), subdivisions (d), (e), (f), and (g) shall remain in effect only until September 30, 1989, and as of that date shall become inoperative, unless a later enacted statute which is chaptered before September 30, 1989, deletes or extends that date. Notwithstanding this subdivision, however, the department shall not take any action to collect benefits from an individual when the collection against that individual was suspended pursuant to subdivision (e) prior to September 30, 1989.

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 the procedures prescribed by this act to become operative as soon as possible, and to facilitate the orderly operation

of the unemployment compensation system, it is necessary that this act take effect immediately.

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## CHAPTER 1380

An act to amend Section 25190 of, and to add Section 25189.6 to, the Health and Safety Code, relating to hazardous waste.

[Approved by Governor September 26, 1988. Filed with Secretary of State September 27, 1988.]

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

SECTION 1. Section 25189.6 is added to the Health and Safety Code, to read:

25189.6. Any person who knowingly, or with reckless disregard for the risk, treats, handles, transports, or stores any hazardous waste in a manner which causes any unreasonable risk of fire, explosion, serious injury, or death is guilty of a public offense and shall, upon conviction, be punished by a fine of not less than five thousand dollars ($5,000) or more than one hundred thousand dollars ($100,000) for each day of violation, or by imprisonment in the county jail for not more than one year or by imprisonment in the state prison for 16, 24, or 36 months, or by both the fine and imprisonment. Each day or partial day that a violation occurs is a separate violation of this section.

SEC. 2. Section 25190 of the Health and Safety Code is amended to read:

25190. Except as otherwise provided in Sections 25189.5, 25189.6, 25191, and 25195, any person who violates any provision of this chapter, or any permit, rule, regulation, standard, or requirement issued or adopted pursuant to this chapter, is, upon conviction, guilty of a misdemeanor.

If the conviction is for a second or subsequent violation, the person shall, upon conviction, be punished by imprisonment in the county jail for not more than one year or by imprisonment in the state prison for 16, 20, or 24 months. The court shall also impose upon the person a fine of not less than five thousand dollars ($5,000) or more than twenty-five thousand dollars ($25,000).

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.

## CHAPTER 1381

An act to add and repeal Section 30156.1 of the Public Resources Code, relating to excess highway property.

[Approved by Governor September 26, 1988. Filed with Secretary of State September 27, 1988.]

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

SECTION 1. (a) Upon the condition of nonstate funds becoming available to the Department of Fish and Game for the purposes of this act, the Department of Transportation shall transfer to the Department of Fish and Game for a consideration at least equal to the acquisition cost paid by the state, that parcel of property excess to the needs of the Department of Transportation, located east of State Highway Route 1 in the City of Pacifica in San Mateo County, consisting of approximately 11 acres described in Directors Deed DD-028764-01-01, and situated in the coastal zone pursuant to Section 30156.1 of the Public Resources Code.

(b) Notwithstanding any other provision of law, the Department of Fish and Game, using nonstate funds made available to it for that purpose, may acquire from the Department of Transportation the real property described in subdivision (a) and may sell that property for a consideration at least equal to its cost of acquisition to a public or private entity. It is the intent of the Legislature that, with the concurrence of the City of Pacifica, the property described in subdivision (a) be made available to the Secretary of the Interior as an addition to the Golden Gate National Recreation Area.

(c) The transfers described in subdivisions (a) and (b) shall be accomplished without cost to the state.

SEC. 2. Section 30156.1 is added to the Public Resources Code, to read:

30156.1. In San Mateo County, in the City of Pacifica, approximately 11 acres situated east of State Highway Route 1 and described in Director's Deed DD-028764-01-01 from the Director of Transportation, is included, as specifically shown on Map 5.

SEC. 3. As to any property transferred pursuant to Section 1 of this act consisting of 15 acres or less, the Director of Transportation shall except and reserve to the state all mineral deposits, as defined in Section 6407 of the Public Resources Code, below a depth of 500 feet, without surface rights of entry. As to property sold pursuant to Section 1 of this act consisting of more than 15 acres, the Director of Transportation shall except and reserve to the state all mineral deposits, as defined in Section 6407 of the Public Resources Code, together with the right to prospect for, mine, and remove the deposits. The rights to prospect for, mine, and remove the deposits shall be limited to those areas of the property conveyed which the director, after consultation with the State Lands Commission,

determines to be reasonably necessary for the removal of the deposits.

SEC. 4. If the real property described in Section 1 of this act has not been transferred to the Secretary of the Interior, by January 1, 1994, Sections 1, 2, and 3 of this act shall be repealed as of January 1, 1994, unless a later enacted statute extends or deletes that date.

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## CHAPTER 1382

An act to amend Sections 226 and 226a of the Civil Code, and to amend Sections 1510 and 2250 of the Probate Code, relating to minors.

[Approved by Governor September 26, 1988. Filed with Secretary of State September 27, 1988.]

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

SECTION 1. Section 226 of the Civil Code is amended to read:

226. Any person desiring to adopt a child may for that purpose petition the superior court of the county in which the petitioner resides and the clerk of the court shall immediately notify the State Department of Social Services at Sacramento in writing of the pendency of the action, of any subsequent action taken, and of the date on which an interlocutory decree has become a final decree of adoption. The notification shall not be required where the petition is by a stepparent, where one natural or adoptive parent retains his or her custody and control of the child. In all cases in which consent is required, except in the case of an adoption by a stepparent where one natural or adoptive parent retains his or her custody and control of the child, unless an agency licensed by the State Department of Social Services to find homes for children and place children in homes for adoption joins in the petition for adoption, the petition shall contain an allegation that the petitioners will file promptly with the department, the county adoption agency, or, in the case of an intercountry adoption, the private adoption agency licensed to provide intercountry adoption services, information required by the department in the investigation of the proposed adoption. The omission of the allegation from a petition so filed shall not, however, affect the jurisdiction of the court to proceed, nor shall it have heretofore affected the jurisdiction of any court to have proceeded, upon the petition omitting the allegation, in any manner provided in this chapter or otherwise, nor shall the omission have affected or affect the validity of any decree of adoption or other order heretofore or hereafter made by any court with respect to a petition omitting the allegation.

The caption of the petition for adoption of a minor shall contain the name or names of the petitioners but shall not contain the name

of the minor. The petition shall contain the sex and date of birth of the minor. The name that the minor had prior to adoption shall appear in the petition or, in the case where a licensed adoption agency joins in the petition, the name may appear in the joinder signed by the adoption agency. The decree of adoption shall contain the adopted name of the minor but shall not contain the name that the minor had prior to adoption.

If the minor is the subject of a guardianship petition, the petition shall so state and shall include the caption and docket number or have attached a copy of the letters of the guardianship or temporary guardianship. The court shall be notified by petitioners of any petition for guardianship or temporary guardianship filed subsequent to the adoption petition. The guardianship proceeding shall be consolidated with the adoption proceeding.

SEC. 2. Section 226a of the Civil Code is amended to read:

226a. Once given, consent of the natural parents to the adoption of the child by the person or persons to whose adoption of the child the consent was given, may not be withdrawn except with court approval. Request for such approval may be made by motion, or a natural parent seeking to withdraw such consent may file with the clerk of the superior court where the petition is pending, a petition for approval of withdrawal thereof, without the necessity of payment of any fee for the filing of such petition. The petition or motion shall be in writing, and shall set forth the reasons for withdrawal of consent, but otherwise may be in any form.

The clerk of the court shall set the matter for hearing, and shall give notice thereof to the State Department of Social Services, to the persons to whose adoption of the child the consent was given, and to the natural parent or parents by certified mail to the address of each as shown in the proceeding, at least 10 days before the time set for hearing.

The State Department of Social Services or the licensed county adoption agency shall, prior to the hearing of the motion or petition for withdrawal, file a full report with the court and shall appear at the hearing to represent the interests of the child.

At the hearing, the parties may appear in person or with counsel. The hearing shall be held in chambers, but the court reporter shall report the proceedings and his or her fee therefor shall be paid from the county treasury on order of the court. If the court finds that withdrawal of the consent to adoption is reasonable in view of all the circumstances, and that withdrawal of the consent will be for the best interests of the child, the court shall approve the withdrawal of the consent; otherwise the court shall withhold its approval. Consideration of the best interests of the child shall include, but not be limited to, an assessment of the child's age, the extent of bonding with the prospective adoptive parent or parents, the extent of bonding or the potential to bond with the natural parent or parents, and the ability of the natural parent or parents to provide adequate and proper care and guidance to the child. If the court approves the

withdrawal of consent, the adoption proceedings shall be dismissed.

Any order of the court granting or withholding approval of a withdrawal of a consent to an adoption may be appealed from in the same manner as an order of the juvenile court declaring any person to be a ward of the juvenile court.

SEC. 3. Section 1510 of the Probate Code is amended to read:

1510. (a) A relative or other person on behalf of the minor, or the minor if 14 years of age or older, may file a petition for the appointment of a guardian of the minor.

(b) The petition shall request that a guardian of the person or estate of the minor, or both, be appointed, shall specify the name and address of the proposed guardian and the name and date of birth of the proposed ward, and shall state that such appointment is necessary or convenient.

(c) The petition shall set forth, so far as is known to the petitioner, the names and addresses of all of the following:

(1) The parents of the proposed ward.

(2) The person having legal custody of the proposed ward and, if that person does not have the care of the proposed ward, the person having the care of the proposed ward.

(3) The relatives of the proposed ward within the second degree.

(4) In the case of a guardianship of the estate, the spouse of the proposed ward.

(5) Any person nominated as guardian for the proposed ward under Section 1500 or 1501.

(d) If the proposed ward is a patient in or on leave of absence from a state institution under the jurisdiction of the State Department of Mental Health or the State Department of Developmental Services and that fact is known to the petitioner, the petition shall state that fact and name the institution.

(e) The petition shall state, so far as is known to the petitioner, whether or not the proposed ward is receiving or is entitled to receive benefits from the Veterans Administration and the estimated amount of the monthly benefit payable by the Veterans Administration for the proposed ward.

(f) If the petitioner has knowledge of any pending adoption, juvenile court, marriage dissolution, domestic relations, custody, or other similar proceeding affecting the proposed ward, the petition shall disclose such pending proceeding.

(g) If the petitioners have accepted or intend to accept physical care or custody of the child with intent to adopt, whether formed at the time of placement or formed subsequent to placement, the petitioners shall so state in the guardianship petition, whether or not an adoption petition has been filed.

(h) If the proposed ward is or becomes the subject of an adoption petition, the court shall order the guardianship petition consolidated with the adoption petition.

SEC. 4. Section 2250 of the Probate Code is amended to read:

2250. (a) On or after the filing of a petition for appointment of

a guardian or conservator, any person entitled to petition for appointment of the guardian or conservator may file a petition for appointment of:

(1) A temporary guardian of the person or estate or both.

(2) A temporary conservator of the person or estate or both.

(b) The petition shall state facts which establish good cause for appointment of the temporary guardian or temporary conservator. The court, upon such petition or other showing as it may require, may appoint a temporary guardian of the person or estate or both, or a temporary conservator of the person or estate or both, to serve pending the final determination of the court upon the petition for the appointment of the guardian or conservator.

(c) Unless the court for good cause otherwise orders, not less than five days before the appointment of the temporary guardian or temporary conservator, notice of the proposed appointment shall be personally delivered to the proposed ward if 14 years of age or older or to the proposed conservatee, and to the natural parent or parents if the proposed ward is a minor. The appointment of the temporary guardian or temporary conservator may be made with or without notice to other persons as the court may require.

(d) One petition may request the appointment of a guardian or conservator and also the appointment of a temporary guardian or conservator or such appointments may be requested in separate petitions.

(e) If the court suspends powers of the guardian or conservator under Section 2334 or 2654 or under any other provision of this division, the court may appoint a temporary guardian or conservator to exercise those powers until the powers are restored to the guardian or conservator or a new guardian or conservator is appointed.

SEC. 5. Section 2250 of the Probate Code is amended to read:

2250. (a) On or after the filing of a petition for appointment of a guardian or conservator, any person entitled to petition for appointment of the guardian or conservator may file a petition for appointment of:

(1) A temporary guardian of the person or estate or both.

(2) A temporary conservator of the person or estate or both.

(b) The petition shall state facts which establish good cause for appointment of the temporary guardian or temporary conservator. The court, upon such petition or other showing as it may require, may appoint a temporary guardian of the person or estate or both, or a temporary conservator of the person or estate or both, to serve pending the final determination of the court upon the petition for the appointment of the guardian or conservator.

(c) Unless the court for good cause otherwise orders, not less than five days before the appointment of the temporary guardian or temporary conservator, notice of the proposed appointment shall be personally delivered to the proposed ward if 14 years of age or older or to the proposed conservatee, and to the natural parent or parents

if the proposed ward is a minor. The appointment of the temporary guardian or temporary conservator may be made with or without notice to other persons as the court may require.

(d) One petition may request the appointment of a guardian or conservator and also the appointment of a temporary guardian or conservator or such appointments may be requested in separate petitions.

(e) If the court suspends powers of the guardian or conservator under Section 2334 or 2654 or under any other provision of this division, the court may appoint a temporary guardian or conservator to exercise those powers until the powers are restored to the guardian or conservator or a new guardian or conservator is appointed.

(f) If for any reason a vacancy occurs in the office of guardian or conservator, the court, on a petition filed under subdivision (a) or on its own motion, may appoint a temporary guardian or conservator to exercise the powers of the guardian or conservator until a new guardian or conservator is appointed.

SEC. 6. Section 5 of this bill incorporates amendments to Section 2250 of the Probate Code proposed by both this bill and AB 2841. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1989, (2) each bill amends Section 2250 of the Probate Code, and (3) this bill is enacted after AB 2841, in which case Section 4 of this bill shall not become operative.

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## CHAPTER 1383

An act to amend Section 43156 of the Health and Safety Code, relating to vehicles.

[Approved by Governor September 26, 1988. Filed with Secretary of State September 27, 1988.]

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

SECTION 1. Section 43156 of the Health and Safety Code is amended to read:

43156. (a) For purposes of this article, it is conclusively presumed that the equitable or legal title to any motor vehicle with an odometer reading of 7,500 miles or more, has been transferred to an ultimate purchaser, except as provided in subdivision (b), and that the equitable or legal title to any motor vehicle with an odometer reading of less than 7,500 miles, has not been transferred to an ultimate purchaser.

(b) For purposes of this article, it is conclusively presumed that the equitable and legal title to any new direct import vehicle, as defined by Section 43203.5, which is less than two years old, has not been transferred to an ultimate purchaser and that the equitable or

legal title to any new direct import motor vehicle, which is at least two years old, has been transferred to an ultimate purchaser.

For purposes of this subdivision, the age of a motor vehicle shall be determined by the following, in descending order of preference:

(1) From the first calendar day of the model year as indicated in the vehicle identification number.

(2) From the last calendar day of the month the vehicle was delivered by the manufacturer as shown on the foreign title document.

(3) From January 1 of the same calendar year as the model year shown on the foreign title document.

(4) From the last calendar day of the month the foreign title document was issued.

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## CHAPTER 1384

An act to amend Sections 290, 31618, 32002, and 40000.19 of, to amend and repeal Section 31302 of, to add Division 14.3 (commencing with Section 32100) to, the Vehicle Code, relating to inhalation hazards, and making an appropriation therefor.

[Approved by Governor September 26, 1988. Filed with Secretary of State September 27, 1988 ]

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

SECTION 1. Section 290 of the Vehicle Code is amended to read:

290. "Department" means the Department of Motor Vehicles except, when used in Chapter 2 (commencing with Section 2100) of Division 2 and in Divisions 11 (commencing with Section 21000), 12 (commencing with Section 24000), 13 (commencing with Section 29000), 14 (commencing with Section 31600), 14.1 (commencing with Section 32000), 14.3 (commencing with Section 32100), 14.5 (commencing with Section 33000), 14.7 (commencing with Section 34000), and 14.8 (commencing with Section 34500), it shall mean the Department of the California Highway Patrol.

SEC. 2. Section 31302 of the Vehicle Code is amended to read:

31302. (a) Although not classified as explosives, anhydrous hydrazine, fuming nitric acid, and liquid nitrogen tetroxide, when transported in cargo tanks, shall be subject to Sections 31602, 31607, 31608, 31609, 31611, 31615, and 31618 and subdivisions (a), (b), (c), and (g) of Section 31614.

(b) This section shall remain in effect only until January 1, 1992, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1992, deletes or extends that date.

SEC. 3. Section 31618 of the Vehicle Code is amended to read:

31618. Where not specifically provided otherwise, it is a misdemeanor for any person to violate any provision of this division.

Every person convicted of a misdemeanor for a violation of any of the provisions of this division shall be punished as follows:

(a) For a first violation, by a fine of not less than one thousand dollars ($1,000), or by imprisonment for not more than six months, or by both fine and imprisonment.

(b) For a second or subsequent violation, by a fine of not less than two thousand dollars ($2,000) or by imprisonment for not more than six months, or by both fine and imprisonment.

SEC. 4. Section 32002 of the Vehicle Code is amended to read:

32002. (a) The commissioner may adopt any regulations that are necessary to administer this division. It is a misdemeanor for any motor carrier to violate this division or regulations adopted pursuant to this division.

(b) Notwithstanding subdivision (a), it is unlawful for the motor carrier or the person who directs the driver to operate a vehicle transporting hazardous material, when that transportation requires a license pursuant to this division, to cause the operation of the vehicle unless the motor carrier holds a valid license for the transportation of hazardous materials. A violation of this subdivision shall be punished as follows:

(1) For a first violation, by a fine of not less than two thousand dollars ($2,000).

(2) For a second or subsequent violation, by a fine of not less than four thousand dollars ($4,000).

SEC. 5. Division 14.3 (commencing with Section 32100) is added to the Vehicle Code, to read:

## DIVISION 14.3. TRANSPORTATION OF INHALATION HAZARDS

32100. It is the intent of the Legislature, in enacting this division, to create a special category of inhalation hazards and poison gases and to establish special safeguards for their transportation.

These materials are highly toxic, spread rapidly, and require rapid and widespread evacuation if there is loss of containment or a fire. For these reasons, the Legislature intends to more rigorously restrict and otherwise control the transportation of these materials.

32100.5. This division applies to the transportation of inhalation hazards in bulk packaging, except when that packaging contains only residue.

32101. As used in this division:

(a) "Inhalation hazard" means any material defined as "Poison A" pursuant to Section 173.326 of Title 49 of the Code of Federal Regulations or for which a "Poison-Inhalation Hazard" or "Inhalation Hazard" shipping paper description is required pursuant to Section 172.203 of Title 49 of the Code of Federal Regulations.

(b) "Bulk packaging" means the same as defined in Section 171.8 of Title 49 of the Code of Federal Regulations.

(c) "Residue" means the same as defined in Section 171.8 of Title

49 of the Code of Federal Regulations.

(d) "Inspection stop" means any location designated as such in regulations adopted pursuant to this division or any safe stopping place.

(e) "Safe parking place" means any loading or unloading facility or motor carrier terminal where the driver may safely and lawfully park and leave the vehicle unattended when authorized by the owner or person in charge of the facility or terminal.

(f) "Safe stopping place" means any place designated by the department pursuant to this division where a driver may stop for food, fuel, or any other necessary reason, provided the vehicle is attended at all times. A vehicle is "attended" when the driver or person in charge of it is awake and occupies any part of it except the sleeper berth, or is within 100 feet of the vehicle and has an unobstructed view of it.

32102. (a) The department may adopt any regulations that are necessary to administer this division. It is a misdemeanor for any person to violate this division or regulations adopted pursuant to this division.

(b) The department shall, by regulation, designate through routes in this state which are to be used for the transportation of inhalation hazards. The Department of Transportation shall assist the department in developing the recommended routes. The department shall hold public hearings in each field operation division of the department in which are located proposed routes. In recommending the through routes, the department shall:

(1) Perform a risk assessment which shall include, but not be limited to, consideration of the population density, capabilities of the emergency response personnel near the proposed routes, and the safety of the roadways.

(2) Consult with officials having the responsibility for the prevention and suppression of fire in communities in which are located the proposed routes, the representatives of persons engaged in the transportation of inhalation hazards, manufacturers of inhalation hazards, and the State Fire Marshal.

(c) The department shall prepare for distribution to persons engaged in the transportation of inhalation hazards maps which clearly indicate the routes which are to be used for the transportation of inhalation hazards.

(d) The department shall prepare for distribution to persons engaged in the transportation of inhalation hazards a list of locations of required inspection stops and safe stopping places and shall revise the list to keep it current.

32103. (a) Every motor carrier shall make available in each vehicle used in the transportation of inhalation hazards the latest map showing the routes to be used for the transportation of inhalation hazards and a list of the safe stopping places and inspection stops for vehicles transporting inhalation hazards as prescribed by regulations of the department. The carrier shall

require that the driver be thoroughly familiar with this division before operating any vehicle in the transportation of inhalation hazards.

(b) This section shall become operative on January 1, 1992.

32104. (a) It is unlawful for the motor carrier or its authorized agent to drive or to permit the driving of any vehicle transporting inhalation hazards, or for the driver to drive the vehicle, upon any public highway not designated in regulations adopted by the department as a route for the transportation of inhalation hazards. This subdivision shall not apply when the use of the highway is required (1) to permit delivery of, or the loading of, inhalation hazards at a point not on a highway designated as a route for the transportation of inhalation hazards, or (2) to permit the vehicle to proceed to, and return from, an inspection stop, safe stopping place, or safe parking place.

(b) It is unlawful for the driver of any vehicle transporting inhalation hazards to stop at any place other than a safe stopping place, safe parking place, or an inspection stop unless the vehicle is disabled or except when necessary to avoid conflict with other traffic or to comply with the orders of a peace officer or an official traffic control device.

(c) This section shall become operative on January 1, 1992.

32105. (a) Unless there is no practicable alternative, every driver of a vehicle transporting inhalation hazards shall avoid, by prearrangement of routes, driving into or through heavily populated areas, congested thoroughfares, or places where crowds are assembled. Operating convenience is not a basis for determining whether it is practicable to operate a vehicle in accordance with this subdivision.

(b) No vehicle transporting inhalation hazards shall be left unattended upon any street or highway.

(c) Inspection of the following items of equipment shall be made immediately preceding the actual transportation of an inhalation hazard:

(1) Brakes and the brake system.

(2) Steering, connection devices, and lighting systems.

(3) All tires.

(4) All supplemental equipment as required by Section 32106.

(d) En route inspection of tires and brakes on vehicles transporting inhalation hazards shall be performed at the following locations:

(1) At an inspection stop at least every four hours or 150 miles traveled, whichever occurs first, or as close thereto as is practicable, depending upon the proximity of those inspection stops.

(2) Regardless of elapsed time or miles traveled, at the top of and prior to descending any grade upon which the Department of Transportation has declared a speed limit for trucks of less than 55 miles per hour as provided by Section 22407. The inspection shall be made off the roadway.

(3) Regardless of elapsed time or miles traveled, at any location designated in regulations of the department as a required inspection stop.

(e) (1) Every person operating a vehicle transporting an inhalation hazard shall complete a record of every inspection which is required pursuant to this section in the form approved by the department showing the time and place of every inspection.

(2) The record of every inspection shall be made at the time the inspection is conducted.

(3) The person making the inspection shall certify the fact in the record.

(f) This section shall become operative on January 1, 1992.

32106. Every vehicle used in the transportation of an inhalation hazard, in addition to any other equipment required by law, shall be equipped and maintained as required by this section.

(a) Brakes and the brake system shall be maintained in good and safe operating condition.

(b) Steering, connection devices, and lighting systems shall be maintained in good operating condition.

(c) All tires shall be in good condition, properly matched and inflated. Except as may be necessary to cause immediate replacement, no vehicle shall be driven unless all tires in actual use on the vehicle are properly inflated.

(d) Fire extinguishers and other safety equipment prescribed by regulations adopted by the department pursuant to Section 34501 shall be carried in each vehicle or combination of vehicles.

32107. Every vehicle, or combination of vehicles, transporting an inhalation hazard shall contain a self-contained breathing apparatus and equipment capable of immediate communication with emergency personnel.

32108. The department shall adopt regulations prescribing the conditions under which the transportation of an inhalation hazard shall be accompanied by an escort vehicle provided by the shipper, with a driver qualified to drive the vehicle carrying the inhalation hazard.

32109. Nothing in this division exempts any vehicle transporting inhalation hazards and subject to this division, or the owner or any other person, from other provisions of this code. All those other provisions relating to the driving and movement of vehicles, and the size, weight and equipment thereof, shall apply as applicable to each and every vehicle engaged in transporting inhalation hazards subject to this division.

SEC. 6. Section 40000.19 of the Vehicle Code is amended to read:

40000.19. A violation of any of the following provisions is a misdemeanor, and not an infraction:

(a) Section 31303, relating to transportation of hazardous waste.

(b) Division 14 (commencing with Section 31600), relating to transportation of explosives.

(c) Division 14.1 (commencing with Section 32000), relating to

the transportation of hazardous material.

(d) Division 14.3 (commencing with Section 32100), relating to transportation of inhalation hazards.

(e) Division 14.5 (commencing with Section 33000), relating to transportation of radioactive materials.

(f) Division 14.7 (commencing with Section 34001), relating to flammable liquids.

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.

SEC. 8. The sum of four hundred ten thousand five hundred dollars ($410,500) is hereby appropriated from the Motor Vehicle Account in the State Transportation Fund to the Department of the California Highway Patrol to administer Division 14.3 (commencing with Section 32100) of the Vehicle Code during the 1988–89 fiscal year.

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## CHAPTER 1385

An act to amend Sections 10542, 10546, and 10548 of, and to add Sections 10550 and 10551 to, the Government Code, relating to state employees.

[Approved by Governor September 26, 1988 Filed with Secretary of State September 27, 1988.]

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

SECTION 1. Section 10542 of the Government Code is amended to read:

10542. For the purposes of this chapter:

(a) "Employee" means any individual appointed by the Governor or employed or holding office in a state department or agency.

(b) "Improper governmental activity" means any activity by a state agency or by an employee which is undertaken in the performance of the employee's official duties, whether or not such action is within the scope of his employment, and which is (1) in violation of any state or federal law or regulation, including, but not limited to, corruption, malfeasance, bribery, theft of government property, fraudulent claims, fraud, coercion, conversion, malicious prosecution, misuse of government property, or willful omission to perform duty, or (2) is economically wasteful, or involves gross misconduct, incompetency, or inefficiency.

For purposes of Sections 10544, 10545, 10550, and 10551, "improper governmental activity or activities" includes any activity by the

University of California or by an employee, including an officer or faculty member, which otherwise meets the criteria of this subdivision.

(c) "Person" means any individual, corporation, trust, association, any state or local government, or any agency or instrumentality of any of the foregoing.

(d) "State agency" includes, but is not limited to, the University of California for purposes of Sections 10545 to 10547, inclusive.

(e) "Committee" means the Joint Legislative Audit Committee.

SEC. 1.5. Section 10546 of the Government Code is amended to read:

10546. The committee or the Auditor General may request the assistance of any state department, agency, or employee in conducting any investigative audit required by this article. If an investigative audit conducted by the committee or the Auditor General involves access to confidential academic peer review records of University of California academic personnel, access to these records shall be governed by any present or future disclosure agreements as exist or shall exist between the University of California and the Department of Fair Employment and Housing. No information obtained from the Auditor General by any department, agency, or employee as a result of the Auditor General's request for assistance, nor any information obtained thereafter as a result of further investigation, shall be divulged or made known to any person without the prior approval of the committee.

SEC. 2. Section 10548 of the Government Code is amended to read:

10548. (a) A state employee or applicant for state employment who files a written complaint with his or her supervisor, manager, or the appointing power alleging actual or attempted acts of reprisal, retaliation, threats, coercion, or similar improper acts prohibited by Section 10543, may also file a copy of the written complaint with the State Personnel Board, together with a sworn statement that the contents of the written complaint are true, or are believed by the affiant to be true, under penalty of perjury. The complaint filed with the board, shall be filed within 12 months of the most recent act of reprisal complained about.

(b) Any person who intentionally engages in acts of reprisal, retaliation, threats, coercion, or similar acts against a state employee or applicant for state employment for having disclosed improper governmental activities, is subject to a fine not to exceed ten thousand dollars ($10,000), and imprisonment in the county jail for up to a period of one year. Any state civil service employee who intentionally engages in that conduct shall also be disciplined by adverse action as provided by Section 19572. If no adverse action is instituted by the appointing power, the State Personnel Board shall invoke adverse action as provided in Section 19583.5.

(c) In addition to all other penalties provided by law, any person who intentionally engages in acts of reprisal, retaliation, threats,

coercion, or similar acts against a state employee or applicant for state employment for having disclosed improper governmental activities shall be liable in an action for damages brought against him or her by the injured party. Punitive damages may be awarded by the court where the acts of the offending party are proven to be malicious. Where liability has been established, the injured party shall also be entitled to reasonable attorney's fees as provided by law. However, any action for damages shall not be available to the injured party unless the injured party has first filed a complaint with the State Personnel Board pursuant to subdivision (a) of this section, and the board has failed to reach a decision regarding any hearing conducted pursuant to Section 19683.

(d) This section is not intended to prevent an appointing power, manager, or supervisor from taking, directing others to take, recommending, or approving any personnel action or from taking or failing to take a personnel action with respect to any state employee or applicant for state employment if the appointing power, manager, or supervisor reasonably believes any action or inaction is justified on the basis of evidence separate and apart from the fact that the person has disclosed improper governmental activities, as defined in subdivision (b) of Section 10542.

SEC. 3. Section 10550 is added to the Government Code, to read:

10550. (a) A University of California employee, including an officer or faculty member, or applicant for employment may file a written complaint with his or her supervisor or manager, or with any other university officer designated for that purpose by the regents, alleging actual or attempted acts of reprisal, retaliation, threats, coercion, or similar improper acts for having disclosed improper governmental activities, together with a sworn statement that the contents of the written complaint are true, or are believed by the affiant to be true, under penalty of perjury. The complaint shall be filed within 12 months of the most recent act of reprisal complained about.

(b) Any person who intentionally engages in acts of reprisal, retaliation, threats, coercion, or similar acts against a University of California employee, including an officer or faculty member, or applicant for employment for having disclosed improper governmental activities, is subject to a fine not to exceed ten thousand dollars ($10,000) and imprisonment in the county jail for up to a period of one year. Any university employee, including an officer or faculty member, who intentionally engages in that conduct shall also be subject to discipline by the university.

(c) In addition to all other penalties provided by law, any person who intentionally engages in acts of reprisal, retaliation, threats, coercion, or similar acts against a university employee, including an officer or faculty member, or applicant for employment for having disclosed improper governmental activities shall be liable in an action for damages brought against him or her by the injured party. Punitive damages may be awarded by the court where the acts of the

offending party are proven to be malicious. Where liability has been established, the injured party shall also be entitled to reasonable attorney's fees as provided by law. However, any action for damages shall not be available to the injured party unless the injured party has first filed a complaint with the university officer identified pursuant to subdivision (a), and the university has failed to reach a decision regarding that complaint within the time limits established for that purpose by the regents.

(d) This section is not intended to prevent a manager or supervisor from taking, directing others to take, recommending, or approving any personnel action or from taking or failing to take a personnel action with respect to any university employee, including an officer or faculty member, or applicant for employment if the manager or supervisor reasonably believes any action or inaction is justified on the basis of evidence separate and apart from the fact that the person has disclosed improper governmental activities.

SEC. 4. Section 10551 is added to the Government Code, to read:

10551. (a) A University of California employee, including an officer or faculty member, may not directly or indirectly use or attempt to use the official authority or influence of the employee for the purpose of intimidating, threatening, coercing, commanding, or attempting to intimidate, threaten, coerce, or command any person for the purpose of interfering with the right of that person to disclose to a University of California official, designated for that purpose by the regents, or the Joint Legislative Audit Committee or the Auditor General matters within the scope of this article.

(b) For the purpose of subdivision (a), "use of official authority or influence" includes promising to confer, or conferring, any benefit; effecting, or threatening to effect, any reprisal; or taking or directing others to take, or recommending, processing, or approving, any personnel action, including, but not limited to, appointment, promotion, transfer, assignment, performance evaluation, suspension, or other disciplinary action.

(c) Any employee who violates subdivision (a) may be liable in an action for civil damages brought against the employee by the offended party.

(d) Nothing in this section shall be construed to authorize an individual to disclose information otherwise prohibited by or under law.

# CHAPTER 1386

An act to amend Sections 140 and 12072 of, to add Section 12553 to, to repeal Section 12021.5 of, and to add Article 7 (commencing with Section 12100) to Chapter 1 of Title 2 of Part 4 of, the Penal Code, relating to firearms.

[Approved by Governor September 26, 1988. Filed with Secretary of State September 27, 1988.]

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

SECTION 1. Section 140 of the Penal Code is amended to read:

140. (a) Except as provided in Section 139, every person who willfully threatens to use force or violence upon the person of a witness to a crime or a victim of a crime or any other person, or to take, damage, or destroy any property of any witness, victim, or any other person, because the witness, victim, or informant has provided any assistance or information to a law enforcement officer, or to a public prosecutor in a criminal proceeding or juvenile court proceeding, is guilty of a misdemeanor.

(b) Any person who commits a misdemeanor violation of subdivision (a) or (d) of Section 243, subdivision (a) of Section 417, Section 418, Section 467, paragraph (2) of subdivision (b) of Section 594, Section 626.10, Section 12021, Section 12021.1, Section 12025, Section 12031, or subdivision (a) of Section 12101 while committing a violation of subdivision (a), is punishable by imprisonment in a county jail for a period of not more than one year or by imprisonment in the state prison.

SEC. 1.5. Section 12021.5 of the Penal Code is repealed.

SEC. 2. Section 12072 of the Penal Code, as amended by Chapter 163 of the Statutes of 1988, is amended to read:

12072. (a) No person, corporation, or dealer shall sell, deliver, or otherwise transfer any pistol, revolver, or other firearm capable of being concealed upon the person to any person whom he or she has cause to believe to be within any of the classes prohibited by Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code from owning or possessing these firearms.

(b) No dealer shall sell, deliver, or transfer any firearm capable of being concealed upon the person to any person under the age of 21 years.

(c) In no event shall any of these firearms be delivered to the purchaser within 15 days of the application for the purchase thereof, or, after notice by the department pursuant to subdivision (c) of Section 12076, within 15 days of the submission to the department of corrected copies of the register or within 15 days of the submission to the department of any fee required pursuant to subdivision (d) of Section 12076, whichever is later and when delivered the firearm shall be either securely wrapped or in a locked container and shall

be unloaded.

(d) Where neither party to the transaction holds a dealer's license, no person shall sell or otherwise transfer any such firearm to any other person within this state who is not personally known to the vendor.

(e) Any violation of this section is a misdemeanor. A second or subsequent violation of subdivision (b) shall be punished in accordance with the penalty and probation provisions of subdivision (c) of Section 12100 concerning subsequent convictions and probation.

SEC. 2.5. Section 12072 of the Penal Code, as amended by Chapter 163, of the Statutes of 1988, is amended to read:

12072. (a) No person, corporation, or dealer shall sell, deliver, or otherwise transfer any pistol, revolver, or other firearm capable of being concealed upon the person to any person whom he or she has cause to believe to be within any of the classes prohibited by Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code from owning or possessing these firearms.

(b) No person licensed under Section 12071 shall sell, deliver, or transfer any firearm capable of being concealed upon the person to any person under the age of 21 years.

(c) No dealer licensed pursuant to Section 12071, whether or not acting pursuant to Section 12082, shall deliver a pistol, revolver, or other firearm capable of being concealed upon the person to a transferee, as follows:

(1) Within 15 days of the application for the purchase, or, after notice by the department pursuant to subdivision (c) of Section 12076, within 15 days of the submission to the department of corrected copies of the register or within 15 days of the submission to the department of any fee required pursuant to subdivision (d) of Section 12076, whichever is later.

(2) Unless unloaded and securely wrapped or unloaded and in a locked container.

(3) Unless the purchaser or transferee presents clear evidence of his or her identity, as defined in Section 12071, to the dealer or is personally known to the dealer.

(4) Whenever the dealer is notified by the Department of Justice that a purchaser is in a prohibited class described in Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

(d) Where neither party to the transaction holds a dealer's license issued pursuant to Section 12071, in order for a person to sell or otherwise transfer a pistol, revolver, or other firearm capable of being concealed upon the person, the parties to the transaction shall have the following alternatives to lawfully complete the transaction:

(1) They may complete the transaction through a licensed dealer pursuant to Section 12082; or

(2) They may comply with subdivision (e).

(e) Where neither party to the transaction holds a dealer's license

issued pursuant to Section 12071 and the parties do not elect to conduct the transaction through a dealer acting pursuant to Section 12082, all of the following apply:

(1) No person shall sell or otherwise transfer any such firearm to any other person within this state if the purchaser or transferee is not personally known to the seller or transferor.

(2) The seller or transferor shall allow 15 days to elapse from the date the agreement is made to sell the firearm or the decision is made to transfer prior to delivery of the firearm to the purchaser or transferee.

(3) When delivered, the firearm shall be securely wrapped and unloaded or contained in a locked container and unloaded.

(f) A violation of this section is a misdemeanor. A second or subsequent violation of subdivision (b) shall be punished in accordance with the penalty and probation provisions of subdivision (c) of Section 12100 concerning subsequent convictions and probation.

SEC. 3. Article 7 (commencing with Section 12100) is added to Chapter 1 of Title 2 of Part 4 of the Penal Code, to read:

## Article 7. Juveniles

12100. (a) No person or corporation shall sell any pistol, revolver, or other firearm capable of being concealed upon the person to any minor .

(b) No person or corporation shall furnish, give, or otherwise transfer possession of any pistol, revolver, or other firearm capable of being concealed upon the person to any minor without the prior written consent or implied permission of a parent or legal guardian. The written consent shall be presented to the person or corporation at the time of the furnishing, giving, or other transfer of legal possession.

(c) Every person who violates this section is guilty of a misdemeanor. Every person who violates this section or Section 12072 is punishable upon the second and each subsequent conviction by imprisonment in a state prison or in a county jail not exceeding one year. Every person who violates this section or Section 12072 and who has been convicted previously of a crime set forth in subdivision (b) of Section 12021.1 or in Section 12020, 12220, 12520, or 12560 is punishable by imprisonment in a state prison or in a county jail not exceeding one year. A person convicted of a second or subsequent violation of this section or Section 12072 may be granted probation only in an unusual case where the interests of justice would best be served. When probation is granted, the court shall specify on the record and shall enter in the minutes the circumstances indicating that the interests of justice would best be served by that disposition. Except as provided in this paragraph, probation shall not be granted, nor shall the execution or imposition of sentence be suspended for persons who have previously been convicted of this section or

Section 12072.

12101. (a) A minor may not possess a pistol, revolver, or other firearm capable of being concealed upon the person unless he or she has the written consent of his or her parent or legal guardian or unless he or she is accompanied by his or her parent or legal guardian, while he or she has such firearm in his or her possession.

(b) A minor may not possess live ammunition unless he or she has the written consent of his or her parent or legal guardian or is accompanied by his or her parent or legal guardian, except while going to or from an organized lawful recreational or competitive shooting activity or lawful hunting activity.

(c) Every minor who violates this section is guilty of a misdemeanor. Every minor who violates this section is punishable upon the second and each subsequent conviction by imprisonment in a state prison or in a county jail not exceeding one year. Every minor who violates this section, upon a second or subsequent conviction, and every minor who violates this section and who has been convicted previously of a crime set forth in subdivision (b) of Section 12021.1 or in Section 12020, 12220, 12520, or 12560, is punishable by imprisonment in a state prison or in a county jail not exceeding one year.

SEC. 4. Section 12553 is added to the Penal Code, to read:

12553. As used in this article, "firearm" means any firearm except any pistol, revolver, or other firearm capable of being concealed upon the person.

SEC. 5. Section 2.5 of this bill incorporates amendments to Section 12072 of the Penal Code proposed by both this bill and AB 3707. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1989, (2) each bill amends Section 12072 of the Penal Code, and (3) this bill is enacted after AB 3707, in which case Section 2 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.

## CHAPTER 1387

An act to amend Sections 25155.10, 25187, 25189.3, 25355.5, and 25356 of the Health and Safety Code, relating to hazardous substances.

[Approved by Governor September 26, 1988. Filed with Secretary of State September 27, 1988.]

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

SECTION 1. Section 25155.10 of the Health and Safety Code is amended to read:

25155.10. (a) The owner or operator of every commercial offsite multiuser hazardous waste disposal facility shall develop a proposed monitoring plan, in writing, for the monitoring of the ambient air downwind and upwind from the facility. The plan shall include all of the following:

(1) An identification of the constituents of hazardous wastes accepted in the past and present which will be monitored. These constituents shall be selected on the basis of pertinent factors, which may include degree of toxicity, relative and absolute volume, the potential for the constituent to volatilize or otherwise become airborne, and the method by which the constituent is or was handled, treated, and disposed.

(2) The type, procedures, and location of air sampling equipment and the type and procedures of analytical equipment.

(3) The duration of each sampling period in hours, and the number and time of sampling periods over a 12-month period.

(b) The proposed monitoring plan developed pursuant to subdivision (a) shall be submitted to the department on or before October 1, 1987, and shall be updated as required by the department.

(c) The department, in consultation with the applicable air pollution control district or air quality management district, shall review and approve or require modification of the proposed monitoring plan submitted pursuant to this section. The department shall provide, in writing, a notice of any deficiencies in the plan to the person who submitted the plan, who shall revise the plan to address the noted deficiencies within 60 days after receiving the department's comments.

(d) If the department determines that a hazardous waste facility which is required to develop a plan pursuant to subdivision (a) is the source of a substance in the ambient air which poses a significant threat to the public health or affects the quality of the environment in such a way that could significantly threaten public health, the department shall, pursuant to Section 25187, require the facility operator to do both of the following:

(1) Develop a corrective action plan and submit the plan to the department for approval or modification, within a schedule specified

by the department.

(2) Implement the corrective action plan, as approved by the department, within the period specified by the department.

SEC. 2. Section 25187 of the Health and Safety Code is amended to read:

25187. (a) Whenever the department determines that any person has violated, or is in violation of, this chapter, Chapter 6.8 (commencing with Section 25300), or Article 3 (commencing with Section 25810) of Chapter 7.6, of this division, or threatens, as defined in subdivision (e) of Section 13304 of the Water Code to violate this chapter, Chapter 6.8 (commencing with Section 25300), or Article 3 (commencing with Section 25810) of Chapter 7.6, of this division, or any permit, rule, regulation, standard, or requirement issued or adopted pursuant to this chapter, Chapter 6.8 (commencing with Section 25300), or Article 3 (commencing with Section 25810) of Chapter 7.6, of this division, or the department determines that there is or has been a release, as defined in Chapter 6.8 (commencing with Section 25300), of hazardous waste or constituents into the environment from a hazardous waste facility, the department may issue an order specifying a schedule for compliance or correction. An order issued pursuant to this section shall include a requirement that the person take corrective action with respect to hazardous waste, including the cleanup of the hazardous waste, abatement of the effects thereof, and any other necessary remedial action. An order issued pursuant to this section which requires corrective action at a hazardous waste facility shall require that corrective action be taken beyond the facility boundary, where necessary to protect human health or the environment . The order shall incorporate as a condition of the order any applicable waste discharge requirements issued by the State Water Resources Control Board or a California regional water quality control board, and shall be consistent with 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 and 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 existing at the time of the issuance of the order, to the extent that the department determines that those plans and policies are not less stringent than this chapter and regulations adopted pursuant to this chapter. The department may also include any more stringent requirement which the department determines is necessary or appropriate to protect water quality. Persons who are subject to an order pursuant to this section include present and prior owners, lessees, or operators of the property where the hazardous waste is located, present or past generators, storers, treaters, transporters, disposers, and handlers of hazardous waste, and persons who arrange, or have arranged, by contract or other agreement, to store, treat, transport, dispose of, or otherwise handle hazardous waste.

(b) Any order issued pursuant to subdivision (a) shall be served

by personal service or certified mail and shall inform the person so served of the right to a hearing.

(c) Any person served with an order pursuant to subdivision (b) who has been unable to resolve any violation or deficiency on an informal basis with the department may, within 10 days after service of the order, request a hearing by filing with the department a notice of defense. A notice of defense shall be deemed filed within the 10-day period provided by this subdivision if it is postmarked within that 10-day period. If no notice of defense is filed within the time limits provided by this subdivision, the order shall become final.

(d) Any hearing requested under subdivision (c) shall be conducted by an independent hearing officer, in accordance with the procedures specified in Sections 11507 to 11517, inclusive, of the Government Code, except as otherwise specified in this section. In making a determination, the hearing officer shall take into consideration the nature, circumstances, extent, and gravity of the violation and the various abatement and cleanup remedies which are appropriate in the given circumstances and which are consistent with the primary emphasis of protecting the public health and safety and the environment. After conducting any hearing requested under subdivision (c), the hearing officer shall, within 30 days after the case is submitted, issue a decision, including any order, if appropriate. The hearing officer's decision, including any order issued therewith, shall be served by the department on each party by personal service or by certified mail.

(e) Any provision of an order issued under subdivision (a) shall take effect upon issuance by the department if the department finds that the violation or violations of law associated with that provision may pose an imminent and substantial endangerment to the public health or safety or the environment, and a request for a hearing shall not stay the effect of that provision of the order pending a decision by the hearing officer under subdivision (d). However, in the event that the department determines that any or all provisions of the order are so related that the public health or safety or the environment can be protected only by immediate compliance with the order as a whole, then the order as a whole shall take effect upon issuance by the department and a request for a hearing shall not stay the effect of the order as a whole pending a decision by the hearing officer under subdivision (d). Any order issued after a hearing requested under subdivision (c) shall take effect upon issuance by the hearing officer.

(f) Within 30 days after service of a copy of a decision issued by the hearing officer, any person so served may file with the superior court a petition for writ of mandate for review of the decision. Any person who fails to file the petition within this 30-day period may not challenge the reasonableness or validity of a decision or order of the hearing officer in any judicial proceedings brought to enforce the decision or order or for other remedies. Except as otherwise specified in this section, Section 1094.5 of the Code of Civil Procedure

shall govern the proceedings conducted pursuant to this subdivision. In all proceedings pursuant to this subdivision, the court shall uphold the decision of the hearing officer if the decision is based upon substantial evidence in the whole record. The filing of a petition for writ of mandate shall not stay any corrective action required pursuant to this chapter or the accrual of any penalties assessed pursuant to this chapter. This subdivision does not prohibit the court from granting any appropriate relief within its jurisdiction.

SEC. 3. Section 25189.3 of the Health and Safety Code is amended to read:

25189.3. (a) The department may issue a complaint to any person on whom civil liability may be imposed pursuant to Section 25189.2. The complaint shall allege the acts or failures to act that constitute a basis for liability and the amount of the proposed civil liability. The complaint shall be served by personal service or certified mail and shall inform the party so served of the right to a hearing. Any person served with a complaint pursuant to this subdivision may, within 10 days after service of the complaint, request a hearing by filing with the department a notice of defense. A notice of defense is deemed to be filed within the 10-day period if it is postmarked within the 10-day period. If a hearing is requested by the respondent, it shall be conducted within 90 days after receipt of the notice of defense by the department. If no notice of defense is filed within 10 days after service of the complaint, the department shall issue an order setting liability in the amount proposed in the complaint unless the department and the party have entered into a settlement agreement, in which case the department shall issue an order setting liability in the amount specified in the settlement agreement. Where the party has not filed a notice of defense or where the department and the party have entered into a settlement agreement, the order shall not be subject to review by any court or agency.

(b) Any hearing required under this section shall be conducted by an independent hearing officer according to the procedures specified in Sections 11507 to 11517, inclusive, of the Government Code, except as otherwise specified in this section. In making a determination, the hearing officer shall take into consideration the nature, circumstances, extent, and gravity of the violation, the violator's past and present efforts to prevent, abate, or clean up conditions posing a threat to the public health or safety or the environment, the violator's ability to pay the proposed civil penalty, and the prophylactic effect that imposition of the proposed penalty will have on both the violator and on the regulated community as a whole. After conducting any hearing required under this section, the hearing officer shall, within 30 days after the case is submitted, issue a decision, including an order setting the amount of civil penalty to be imposed.

(c) Orders setting civil liability issued under this section shall become effective and final upon issuance thereof, and payment shall

be made within 30 days of issuance. Copies of these orders shall be served by personal service or by certified mail upon the party served with the complaint and upon other persons who appeared at the hearing and requested a copy.

(d) Within 30 days after service of a copy of a decision issued by the hearing officer, any person so served may file with the superior court a petition for writ of mandate for review of the decision. Any person who fails to file the petition within this 30-day period may not challenge the reasonableness or validity of a decision or order of the hearing officer in any judicial proceedings brought to enforce the decision or order or for other remedies. Except as otherwise provided in this section, Section 1094.5 of the Code of Civil Procedure shall govern any proceedings conducted pursuant to this subdivision. In all proceedings pursuant to this subdivision, the court shall uphold the decision of the hearing officer if the decision is based upon substantial evidence in the whole record. The filing of a petition for writ of mandate shall not stay any corrective action required pursuant to this chapter or the accrual of any penalties assessed pursuant to this chapter. This subdivision does not prohibit the court from granting any appropriate relief within its jurisdiction.

(e) All penalties collected under this section shall be placed in a separate subaccount in the Hazardous Waste Control Account and shall be available for expenditure by the department only upon appropriation by the Legislature.

SEC. 4. Section 25355.5 of the Health and Safety Code is amended to read:

25355.5. (a) Except as provided in subdivisions (b), (c), and (d), no money shall be expended from the Hazardous Substance Account or the Hazardous Substance Cleanup Fund for removal or remedial actions on any site selected for inclusion on the list established pursuant to Section 25356, unless the department first takes both of the following actions:

(1) The department issues one of the following orders or enters into the following agreement:

(A) The department issues an order specifying a schedule for compliance or correction pursuant to Section 25187.

(B) The department issues an order establishing a schedule for removing or remedying the release of a hazardous substance at the site, or for correcting the conditions that threaten the release of a hazardous substance. The order shall include, but is not limited to, requiring specific dates by which necessary corrective actions shall be taken to remove the threat of a release, or dates by which the nature and extent of a release shall be determined and the site adequately characterized, a remedial action plan shall be prepared, the remedial action plan shall be submitted to the department for approval, and a removal or remedial action shall be completed.

(C) The department enters into an enforceable agreement with a potentially responsible party for the site which requires the party to take necessary corrective action to remove the threat of the

release, or to determine the nature and extent of the release and adequately characterize the site, prepare a remedial action plan, and complete the necessary removal or remedial actions, as required in the approved remedial action plan.

(2) The department determines, in writing, that the potentially responsible party or parties for the hazardous substance release site have not complied with all of the terms of an order issued pursuant to subparagraph (A) or (B) of paragraph (1) or an agreement entered into pursuant to subparagraph (C) of paragraph (1). Before the department determines that a potentially responsible party is not in compliance with the order or agreement, the department shall give the potentially responsible party written notice of the proposed determination and an opportunity to correct the noncompliance or show why the order should be modified. After the department has made the final determination that a potentially responsible party is not in compliance with the order or agreement, the department may expend money from the Hazardous Substance Account or the Hazardous Substance Cleanup Fund for a removal or remedial action.

(b) Subdivision (a) does not apply, and money from the Hazardous Substance Account or the Hazardous Substance Cleanup Fund shall be available, upon appropriation by the Legislature, for removal or remedial actions, if any of the following conditions apply:

(1) The department, after a reasonable effort, is unable to identify a potential responsible party for the hazardous substance release site.

(2) The department determines that immediate corrective action is necessary, as provided in Section 25354.

(3) The director determines that removal or remedial action at a site is necessary because there may be an imminent and substantial endangerment to the public health or welfare or to the environment.

(c) Notwithstanding subdivision (a), the department may expend funds, upon appropriation by the Legislature, from the Hazardous Substance Cleanup Fund or the Hazardous Substance Account to conduct activities necessary to verify that an uncontrolled release of hazardous substances has occurred at a suspected hazardous substance release site, to issue an order or enter into an enforceable agreement pursuant to paragraph (1) of subdivision (a), and to review, comment upon, and approve or disapprove remedial action plans submitted by potentially responsible parties subject to the orders or the enforceable agreement.

(d) Notwithstanding subdivision (a), the department may expend funds, upon appropriation by the Legislature, from the Hazardous Substance Cleanup Fund or the Hazardous Substance Account, to provide for oversight of removal and remedial actions, or, if the site is also listed on the federal act (42 U.S.C. Sec. 9604(c)(3)), to provide the state's share of a removal or remedial action.

(e) A responsible party who fails, as determined by the department in writing, to comply with an order issued pursuant to

subparagraph (A) or (B) of paragraph (1) of subdivision (a), or to comply with all of the terms of an enforceable agreement entered into pursuant to subparagraph (C) of paragraph (1) of subdivision (a), shall be deemed, for purposes of subdivision (b) of Section 25355, to have failed to take action properly and in a timely fashion with respect to a hazardous substance release or a threatened release.

SEC. 5. Section 25355.5 of the Health and Safety Code is amended to read:

25355.5. (a) Except as provided in subdivisions (b), (c), (d), and (e), no money shall be expended from the Hazardous Substance Account or the Hazardous Substance Cleanup Fund for removal or remedial actions on any site selected for inclusion on the list established pursuant to Section 25356, unless the department first takes both of the following actions:

(1) The department issues one of the following orders or enters into the following agreement:

(A) The department issues an order specifying a schedule for compliance or correction pursuant to Section 25187.

(B) The department issues an order establishing a schedule for removing or remedying the release of a hazardous substance at the site, or for correcting the conditions that threaten the release of a hazardous substance. The order shall include, but is not limited to, requiring specific dates by which necessary corrective actions shall be taken to remove the threat of a release, or dates by which the nature and extent of a release shall be determined and the site adequately characterized, a remedial action plan shall be prepared, the remedial action plan shall be submitted to the department for approval, and a removal or remedial action shall be completed.

(C) The department enters into an enforceable agreement with a potentially responsible party for the site which requires the party to take necessary corrective action to remove the threat of the release, or to determine the nature and extent of the release and adequately characterize the site, prepare a remedial action plan, and complete the necessary removal or remedial actions, as required in the approved remedial action plan.

(2) The department determines, in writing, that the potentially responsible party or parties for the hazardous substance release site have not complied with all of the terms of an order issued pursuant to subparagraph (A) or (B) of paragraph (1) or an agreement entered into pursuant to subparagraph (C) of paragraph (1). Before the department determines that a potentially responsible party is not in compliance with the order or agreement, the department shall give the potentially responsible party written notice of the proposed determination and an opportunity to correct the noncompliance or show why the order should be modified. After the department has made the final determination that a potentially responsible party is not in compliance with the order or agreement, the department may expend money from the Hazardous Substance Account or the Hazardous Substance Cleanup Fund for a removal or remedial

action.

(b) Money from the Hazardous Substance Account or the Hazardous Substance Cleanup Fund shall be available, upon appropriation by the Legislature, for removal or remedial actions, if any of the following conditions apply:

(1) The department, after a reasonable effort, is unable to identify a potential responsible party for the hazardous substance release site.

(2) The department determines that immediate corrective action is necessary, as provided in Section 25354.

(3) The director determines that removal or remedial action at a site is necessary because there may be an imminent and substantial endangerment to the public health or welfare or to the environment.

(c) The department may expend funds, upon appropriation by the Legislature, from the Hazardous Substance Cleanup Fund or the Hazardous Substance Account to conduct activities necessary to verify that an uncontrolled release of hazardous substances has occurred at a suspected hazardous substance release site, to issue an order or enter into an enforceable agreement pursuant to paragraph (1) of subdivision (a), and to review, comment upon, and approve or disapprove remedial action plans submitted by potentially responsible parties subject to the orders or the enforceable agreement.

(d) The department may expend funds, upon appropriation by the Legislature, from the Hazardous Substance Cleanup Fund or the Hazardous Substance Account to provide for oversight of removal and remedial actions, or, if the site is also listed on the federal act (42 U.S.C. Sec. 9604(c)(3)), to provide the state's share of a removal or remedial action.

(e) The department may expend funds, upon appropriation by the Legislature, from the Hazardous Substance Cleanup Fund or the Hazardous Substance Loan Subaccount, to provide funds for loans to persons for removal or remedial actions pursuant to Article 7.9 (commencing with Section 25394).

(f) A responsible party who fails, as determined by the department in writing, to comply with an order issued pursuant to subparagraph (A) or (B) of paragraph 1) of subdivision (a), or to comply with all of the terms of an enforceable agreement entered into pursuant to subparagraph (C) of paragraph (1) of subdivision (a), shall be deemed, for purposes of subdivision (b) of Section 25355, to have failed to take action properly and in a timely fashion with respect to a hazardous substance release or a threatened release.

SEC. 6. Section 25356 of the Health and Safety Code is amended to read:

25356. (a) The department shall adopt, by regulation, the criteria for the selection and for the priority ranking of sites pursuant to subdivision (b), for removal and remedial action under this chapter, and shall adopt criteria for the assignment of sites to one of the three tiers pursuant to subdivision (c). The criteria shall take into account the pertinent factors relating to the public health and the

environment, which shall include, but are not limited to, potential hazards to public health and environment, the risk of fire or explosion, toxic hazards, the extent to which the deferral of a remedial action will result, or is likely to result, in a rapid increase in cost, or in hazard to human health and the environment, and the criteria established pursuant to Section 105(8) of the federal act (42 U.S.C. Sec. 9605(8)). The criteria may include a minimum hazard threshold, below which sites shall not be listed pursuant to this section, if the sites are subject to the authority of the department to order removal or remedial action, or similar action, pursuant to Chapter 6.5 (commencing with Section 25100).

(b) The department shall publish and revise, at least annually, a listing of the sites subject to this chapter. The sites shall be categorized and placed on one of the following lists:

(1) A list of the hazardous substance release sites for which the department has identified a responsible party, and the responsible party is in compliance, as determined by the department, with an order issued, or an enforceable agreement entered into, pursuant to subdivision (a) of Section 25355.5. The department shall publish the list of sites under this paragraph in an appendix to the site-specific plan of expenditures prepared pursuant to Section 25334.5.

(2) A list of the hazardous substance release sites for which all of the following apply:

(A) The department has not been able to identify a responsible party or the responsible party is not in compliance, as determined by the department, with an order issued, or an enforceable agreement entered into, pursuant to subdivision (a) of Section 25355.5.

(B) The nature and extent of the hazardous substance release at the site has not been adequately characterized by the responsible party or the department.

The department shall characterize a site on the list before ranking the site on the list described in paragraph (3).

(3) A list of the hazardous substance release sites which were previously listed pursuant to paragraph (1), if the sites have been adequately characterized but the responsible parties are not in compliance with an order or enforceable agreement issued or entered into pursuant to subdivision (a) of Section 25355.5, or sites which were previously listed pursuant to paragraph (2) but which have since been adequately characterized by the department. Sites on the list specified in this paragraph shall be ranked numerically in accordance with the criteria adopted for the priority ranking of sites.

(c) The department shall assign each site listed pursuant to paragraphs (2) and (3) of subdivision (b), sites listed on the National Priorities List pursuant to the federal act, and sites which are federal military facilities to one of three tiers for the purpose of informing the public of the relative hazard of the sites. The listing of sites by tiers shall be widely disseminated to the public. The "priority one" tier shall include any site that poses a known or probable immediate threat to public health through direct human contact, explosions,

fires, or acutely serious air emissions, has a high potential to contaminate or to continue to contaminate groundwater resources that are present or possible future sources of drinking water, or any site for which the costs for removal and remedial action pose the risk of increasing rapidly if removal or remedial action is deferred. The "priority two" tier shall include any site that poses a substantial but less immediate threat to public health and safety or the environment. The "priority three" tier shall include any site that will require removal and remedial action, but presents only a limited and defined threat to human health or the environment. Priority two and three tiers may contain sites formerly listed in tiers one or two for which direct human health threats have been removed and at which physical deterioration in environmental quality has been stabilized. For the purpose of this subdivision, in informing the public of the relative environmental and public health threats posed by a site, the department shall list sites alphabetically within each of the three tiers. The department shall periodically update the list of sites by tiers to reflect new information regarding existing sites or the addition of new sites requiring removal and remedial action. No site listed pursuant to paragraph (1) of subdivision (b) shall be listed pursuant to this subdivision.

(d) The department's development and publication of the listings of sites, pursuant to subdivision (b) and the adoption of a minimum hazard threshold and the classification of a site as within that threshold pursuant to subdivision (a), are not subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(e) Funds appropriated to the department for remedial action shall be expended in conformance with the priority ranking of sites, as established on the list of sites specified in paragraph (3) of subdivision (b), except that funds appropriated for remedial action may be expended without conforming to the priority ranking if either of the following apply:

(1) The funds are necessary to monitor removal or remedial actions conducted by private parties listed pursuant to paragraph (1) of subdivision (b) or the state funds are necessary for the state share of a removal or remedial action pursuant to Section 104(c)(3) of the federal act (42 U.S.C. Sec. 9604(c)(3)).

(2) The funds are used for either of the following purposes:

(A) To assess, evaluate, and characterize the nature and extent of a hazardous substance release on sites listed pursuant to paragraph (2) of subdivision (b).

(B) To carry out activities pursuant to paragraph (2) or (3) of subdivision (b), or subdivision (c) or (d) of, Section 25355.5.

(f) Funds may be expended on more than one site on the list specified in paragraphs (2) and (3) of subdivision (b) at any one time. In addition, funds may be expended for oversight of any activities conducted by a responsible party on more than one site on the list specified in paragraph (1) of subdivision (b) at any one time.

(g) This section does not require the department to characterize every site listed pursuant to paragraph (2) of subdivision (b) before the department may begin removal or remedial actions at sites listed pursuant to paragraph (3) of subdivision (b).

SEC. 7. Section 5 of this bill incorporates amendments to Section 25355.5 of the Health and Safety Code proposed by this bill and AB 1453. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1989, (2) each bill amends Section 25355.5 of the Health and Safety Code, and (3) this bill is enacted after AB 1453, in which case Section 25355.5 of the Health and Safety Code, as amended by AB 1453, shall remain operative only until the operative date of this bill, at which time Section 5 of this bill shall become operative, and Section 4 of this bill shall not become operative.

SEC. 8. Section 2 of this bill, which amends Section 25187 of the Health and Safety Code, shall not become operative if AB 4636 is enacted and becomes effective January 1, 1989, and amends Section 25187 of the Health and Safety Code.

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## CHAPTER 1388

An act to amend Section 1365 of the Civil Code and to amend Section 66411 of the Government Code, relating to common interest developments.

[Approved by Governor September 26, 1988. Filed with Secretary of State September 27, 1988.]

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

SECTION 1. Section 1365 of the Civil Code is amended to read:

1365. Unless the declaration imposes more stringent standards, financial statements shall be prepared by the association and distributed to all its members as follows:

(a) A pro forma operating budget shall be distributed not less than 45 days nor more than 60 days prior to the beginning of the association's fiscal year. The budget shall include all of the following:

(1) The estimated revenue and expenses on an accrual basis.

(2) The identification of the total cash reserves currently set aside.

(3) An estimate of the current replacement costs of the estimated remaining useful life of, and the methods of funding used to defray the future repair, replacement, or additions to, those major components which the association is obligated to maintain.

(4) A general statement addressing the procedures used for the calculation and establishment of those reserves to defray the future repair, replacement, or additions to those major components that the association is obligated to maintain.

(b) A review of the financial statement of the association shall be

prepared in accordance with generally accepted accounting principles by a licensee of the California State Board of Accountancy for any fiscal year in which the gross income to the association exceeds seventy-five thousand dollars ($75,000). A copy of the review of the financial statement shall be distributed within 120 days after the close of each fiscal year.

(c) A statement describing the association's policies and practices in enforcing lien rights or other legal remedies for default in payment of its assessments against its members shall be annually delivered to the members during the 60-day period immediately preceding the beginning of the association's fiscal year.

SEC. 2. Section 1365 of the Civil Code is amended to read:

1365. Unless the declaration imposes more stringent standards, financial statements shall be prepared by the association and distributed to all its members as follows:

(a) A pro forma operating budget shall be distributed not less than 45 days nor more than 60 days prior to the beginning of the association's fiscal year. The budget shall include all of the following:

(1) The estimated revenue and expenses on an accrual basis.

(2) The identification of the total cash reserves currently set aside.

(3) An estimate of the current replacement costs of the estimated remaining life of, and the methods of funding used to defray the future repair, replacement, or additions to, those major components which the association is obligated to maintain.

(4) A general statement addressing the procedures used for the calculation and establishment of those reserves to defray the future repair, replacement, or additions to those major components that the association is obligated to maintain.

(b) A review of the financial statement of the association shall be prepared in accordance with generally accepted accounting principles by a licensee of the California State Board of Accountancy for any fiscal year in which the gross income to the association exceeds seventy-five thousand dollars ($75,000). A copy of the review of the financial statement shall be distributed within 120 days after the close of each fiscal year.

(c) In lieu of the distribution of the financial statement required by subdivision (b), the board of directors may elect to distribute a summary of the statement to all its members with a written notice that the statement is available at the business office of the association or at another suitable location within the boundaries of the development and that copies will be provided upon request and at the expense of the association. If any member requests a copy of the financial statement required by subdivision (b) to be mailed to the member, the association shall provide the copy to the member by first-class United States mail at the expense of the association and delivered within five days. The written notice that is distributed to each of the association members shall be at least 10-point bold type on the front page of the summary of the statement.

(d) A statement describing the association's policies and practices

in enforcing lien rights or other legal remedies for default in payment of its assessments against its members shall be annually delivered to the members during the 60-day period immediately preceding the beginning of the association's fiscal year.

SEC. 3. Section 66411 of the Government Code is amended to read:

66411. Regulation and control of the design and improvement of subdivisions are vested in the legislative bodies of local agencies. Each local agency shall, by ordinance, regulate and control the initial design and improvement of common interest developments as defined in Section 1351 of the Civil Code and subdivisions for which this division requires a tentative and final or parcel map. In the development, adoption, revision, and application of such ordinance, the local agency shall comply with the provisions of Section 65913.2. The ordinance shall specifically provide for proper grading and erosion control, including the prevention of sedimentation or damage to offsite property. Each local agency may by ordinance regulate and control other subdivisions, provided that the regulations are not more restrictive than the regulations for those subdivisions for which a tentative and final or parcel map are required by this division, and provided further that the regulations shall not be applied to short-term leases (terminable by either party on not more than 30 days' notice in writing) of a portion of the operating right-of-way of a railroad corporation as defined by Section 230 of the Public Utilities Code unless a showing is made in individual cases, under substantial evidence, that public policy necessitates the application of the regulations to those short-term leases in individual cases.

SEC. 4. Section 2 of this bill incorporates amendments to Section 1365 of the Civil Code proposed by both this bill and AB 4426. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1989, (2) each bill amends Section 1365 of the Civil Code, and (3) this bill is enacted after AB 4426, in which case Section 1 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 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.

# CHAPTER 1389

An act to amend Sections 25135.3, 25135.6, 25135.7, 25199.1, 25199.6, and 25199.7 of the Health and Safety Code, relating to hazardous waste, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 26, 1988 Filed with Secretary of State September 27, 1988.]

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

SECTION 1. Section 25135.3 of the Health and Safety Code is amended to read:

25135.3. The Association of Bay Area Governments, the Southern California Association of Governments, the Sacramento Area Council of Governments, and the Association of Monterey Bay Area Governments may, at the discretion of their governing boards, prepare a regional hazardous waste management plan to serve as a resource document and to identify hazardous waste management issues, needs, and solutions at the regional level. A council of governments specified in this subdivision shall include in the regional plan additional counties affected by the regional plan, at the request of the councils of governments for those counties. A council of governments shall prepare the regional plan pursuant to the following procedure:

(a) A council of governments specified in this subdivision may apply to the department for funding pursuant to paragraph (3) of subdivision (b) of Section 25135.8.

(b) On or before December 31, 1987, a council of governments which receives funding from the department shall prepare a draft regional hazardous waste management plan and submit the draft plan to the department. If a council of governments shows the department that it has made substantial compliance towards completing the draft regional hazardous waste management plan and needs additional time to complete the draft regional plan, the department may extend, to March 31, 1988, the date by which the draft regional plan is required to be submitted. The council of governments shall involve the public with the preparation of the draft plan, to the fullest extent possible, by public hearings, informational meetings, and other appropriate forums that offer the public the opportunity to respond to clearly defined alternative objectives, policies, and actions.

(c) From January 1, 1988, to March 31, 1988, or, if the department has given the council of governments a time extension pursuant to subdivision (b), on or before June 30, 1988, the council of governments shall conduct hearings on the draft regional hazardous waste management plan, in the number determined appropriate by the council of governments. The council of governments shall provide affected local jurisdictions, the public, industry, business

organizations, and the hazardous waste management industry with a full opportunity to comment orally and in writing on the draft plan.

(d) On or before March 31, 1988, or, if the department has given the council of governments a time extension pursuant to subdivision (b), on or before June 30, 1988, the department shall review the draft plan, and provide the council of governments with comments on the draft plan.

(e) After conducting the review and comment period required by subdivision (c), the council of governments shall revise, as appropriate, the draft regional hazardous waste management plan.

(f) On or before September 30, 1988, or, on or before January 31, 1989, if the council of governments is given a time extension pursuant to subdivision (g), the council of governments shall complete and adopt the plan.

(g) On or before October 1, 1988, the council of governments shall submit the final regional hazardous waste management plan adopted by its governing board to the department for review and approval. If a council of governments shows the department that the council of governments has made substantial progress towards completing the regional hazardous waste management plan and needs more time to complete the plan, the department may extend this date to February 1, 1989. The department shall approve the regional plan if the department determines that all of the following requirements are met:

(1) The regional plan is consistent with the guidelines for the preparation of regional hazardous waste management plans adopted by the department.

(2) The regional plan applies the methods, techniques, and policies established by the department to analyze the waste stream and to determine whether there is a need for additional or expanded hazardous waste facilities to safely manage and properly dispose of the hazardous waste produced within the region.

(h) Throughout the process of preparing a regional hazardous waste management plan, a council of governments shall cooperate and consult with representatives and staff of affected counties and cities.

(i) Notwithstanding subdivisions (a) to (h), inclusive, of this section, if, pursuant to Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code, a joint powers agreement provides for the creation of the Southern California Hazardous Waste Management Authority, the Southern California Association of Governments shall, if it has elected to prepare a regional hazardous waste management plan pursuant to this section, transfer the responsibility for preparing the regional hazardous waste management plan and all funds received pursuant to subdivision (b) of Section 25135.8 to the authority, if the governing board of the authority requests the transfer by the adoption of a resolution. If the transfer takes place, the authority shall comply with this section in the same manner as this section applies to the

association. If the transfer of responsibility and funds authorized by this subdivision takes place and the authority is dissolved at any time before the regional hazardous waste management plan is approved by the department, the association shall prepare the regional hazardous waste management plan and any remaining funds received pursuant to subdivision (b) of Section 25135.8 shall be transferred back to the association.

SEC. 2. Section 25135.6 of the Health and Safety Code is amended to read:

25135.6. (a) A county shall prepare, review, and adopt the county hazardous waste management plan pursuant to the schedule specified in this section.

(b) On or before December 31, 1987, each county, with the cooperation of affected local jurisdictions and the advisory committee established pursuant to Section 25135.2, shall prepare a draft county hazardous waste management plan and submit the draft plan to the department. If a county shows to the department that the county has made substantial compliance towards completing the draft county hazardous waste management plan and needs additional time to complete the draft plan, the department may extend to March 31, 1988, the date by which the draft plan is required to be submitted. The county shall involve the public with the preparation of the draft plan, to the fullest extent possible, by public hearings, informational meetings, and other appropriate forums that offer the public the opportunity to respond to clearly defined alternative objectives, policies, and actions.

(c) On or before March 31, 1988, or, if the department has given the county a time extension pursuant to subdivision (b), on or before June 30, 1988, the county shall conduct hearings on the draft county hazardous waste management plan, in the number determined appropriate by the county. The county shall provide affected local jurisdictions, the public, industry, business organizations, and the hazardous waste management industry with the full opportunity to comment orally and in writing on the draft county hazardous waste management plan.

(d) On or before March 31, 1988, or, if the department has given the county a time extension pursuant to subdivision (b), on or before June 30, 1988, the department shall review the draft plan, and provide each county with comments which specify the changes or additions which are required to be made to the draft plan to result in a final plan which can be approved by the department pursuant to Section 25135.7.

(e) After conducting the review and comment period required by subdivision (c), each county shall revise, as appropriate, the draft county hazardous waste management plan.

(f) The revised county hazardous waste management plan shall be approved by a majority of the cities within the county which contain a majority of the population of the incorporated area of the county, subject to subdivision (g).

(g) The revised county hazardous waste management plan shall be submitted to each city within the county for their approval. Each city shall act upon the revised county hazardous waste management plan within 90 days after the city has received the plan. If a city fails to act upon the plan within 90 days of receiving the plan, the city shall be deemed to have approved the plan as submitted.

(h) On or before September 30, 1988, or, on or before January 31, 1989, if the county is given an extension pursuant to subdivision (a) of Section 25135.7, the county shall adopt the revised county hazardous waste management plan as the final county hazardous waste management plan.

SEC. 3. Section 25135.7 of the Health and Safety Code is amended to read:

25135.7. (a) A county shall submit the final county hazardous waste management plan adopted by the county to the department for review and approval on or before October 1, 1988. If a county shows the department that the county has made substantial progress towards completing the county hazardous waste management plan and needs more time to complete the plan, the department may extend this date to February 1, 1989. The department shall, on or before December 31, 1988, or on or before July 31, 1989, if the county is given a time extension, review and either approve or disapprove the county hazardous waste management plan. The department shall approve the county hazardous waste management plan if the department makes all of the following determinations:

(1) The plan substantially complies with the guidelines for the preparation of hazardous waste management plans adopted by the department.

(2) The plan applies the methods, techniques, and policies established by the department to analyze the waste stream and to determine whether there is a need for additional or expanded hazardous waste facilities to safely manage and properly dispose of the hazardous waste generated within the county.

(3) If the plan contains a determination pursuant to paragraph (5) of subdivision (d) of Section 25135.1 that there is a need for additional or expanded hazardous waste facilities, the plan proposes general areas, or, as determined appropriate by the county, proposes specific sites which may be suitable locations for a facility. However, if the plan instead contains siting criteria for selecting sites for new hazardous waste facilities, the plan shall propose general areas where the criteria might be applicable.

(4) If the county preparing the plan has entered into a formal agreement with other counties to manage hazardous waste, the agreement is documented.

(b) Within 180 days after the department approves a county hazardous waste management plan, the county shall either incorporate the applicable portions of the plan, by reference, into the county's general plan, or enact an ordinance which requires that all applicable zoning, subdivision, conditional use permit, and variance

decisions are consistent with the portions of the county hazardous waste management plan which identify specific sites or siting criteria for hazardous waste facilities.

(c) Within 180 days after receiving written notification from the department that it has approved the county hazardous waste management plan, each city within that county shall do one of the following:

(1) Adopt a city hazardous waste management plan containing all of the elements required by subdivision (d) of Section 25135.1 which shall be consistent with the approved county hazardous waste management plan.

(2) Incorporate the applicable portions of the approved county plan, by reference, into the city's general plan.

(3) Enact an ordinance which requires that all applicable zoning, subdivision, conditional use permit, and variance decisions are consistent with the portions of the approved county plan which identify general areas or siting criteria for hazardous waste facilities.

(d) This section does not limit the authority of any city to attach appropriate conditions to the issuance of any land use approval for a hazardous waste facility in order to protect the public health, safety, or welfare, and does not limit the authority of a city to establish more stringent planning requirements or siting criteria than those specified in the county hazardous waste management plan.

(e) Any amendment to an adopted county hazardous waste management plan requires the approval of the department, the county, and a majority of the cities within the county which contain a majority of the population of the incorporated area of the county.

SEC. 4. Section 25199.1 of the Health and Safety Code is amended to read:

25199.1. Unless the context otherwise requires, the following definitions govern the construction of this article:

(a) "Appeal board" means an appeal board established pursuant to Section 25199.10.

(b) "Hazardous waste facility project" means a project undertaken for the purpose of siting and constructing a new hazardous waste facility that will require a hazardous waste facilities permit issued pursuant to Section 25200, or for the purpose of significantly expanding or modifying an existing hazardous waste facility that is being used or operated under a permit issued pursuant to Section 25200 or a grant of interim status pursuant to Section 25200.5. Unless expressly provided otherwise, "hazardous waste facility project" includes a specified hazardous waste facility project.

(c) "Interested person" means a person who participated in one or more public meetings or hearings held to consider an application for a land use decision for a specified hazardous waste facility project. "Participation" includes, but is not limited to, the giving of oral or written testimony at a meeting or hearing, submission of questions at a meeting or hearing, or attendance at the meeting or hearing.

(d) "Land disposal facility" means a hazardous waste facility where hazardous waste is disposed in, on, under, or to the land.

(e) "Land use decision" means a discretionary decision of a local agency concerning a hazardous waste facility project, including the issuance of a land use permit or a conditional use permit, the granting of a variance, the subdivision of property, and the modification of existing property lines pursuant to Title 7 (commencing with Section 65000) of the Government Code.

(f) "Lead agency" means the public agency that has the principal responsibility for approving a hazardous waste facility project.

(g) "Local agency" means any public agency, other than a state agency.

(h) "Permit" means a permit, license, certificate, requirement, or other entitlement for use required to site or construct a hazardous waste facility. "Permit" includes, but is not limited to, all of the following:

(1) A hazardous waste facility permit issued by the department pursuant to this chapter.

(2) Waste discharge requirements issued by a California regional water quality control board pursuant to Article 4 (commencing with Section 13260) of Chapter 4 of Division 7 of the Water Code.

(3) An authority to construct permit issued by an air pollution control district or air quality management district pursuant to Division 26 (commencing with Section 39000).

(4) A solid waste facilities permit issued by the enforcement agency pursuant to Article 2 (commencing with Section 66796.30) of Chapter 3 of Title 7.3 of the Government Code.

(i) "Proponent" means any person applying to a public agency for a permit or a land use decision concerning a specified hazardous waste facility project.

(j) "Public agency" means any state agency or any local agency.

(k) "Responsible agency" means any public agency, other than the lead agency, which has the authority to issue a permit or make a land use decision.

(*l*) "Significantly expand or modify" means to expand or modify an existing hazardous waste facility, including a specified hazardous waste facility, in a manner so that a land use decision and an environmental impact report are required.

(m) "Specified hazardous waste facility" means an offsite facility which serves more than one producer of hazardous waste.

(n) "Specified hazardous waste facility project" means a project undertaken for the purpose of siting and constructing a new specified hazardous waste facility or for the purpose of significantly expanding or modifying an existing specified hazardous waste facility that is being used or operated under a permit issued pursuant to Section 25200 or a grant of interim status pursuant to Section 25200.5.

(o) "State agency" means any agency, board, or commission of state government. "State agency" also includes an air pollution control district and an air quality management district.

(p) "Technical review" means the review of an application for a hazardous waste facility project by a state agency to determine if the facility meets the applicable statutes and regulations.

SEC. 5. Section 25199.6 of the Health and Safety Code is amended to read:

25199.6. (a) Notwithstanding Section 65952 of the Government Code, any public agency which is a responsible agency for a hazardous waste facility project that is a land disposal facility shall approve or disapprove the project within one of the following periods of time, whichever is longer:

(1) Within one year from the date on which the lead agency approved or disapproved the project.

(2) Within one year from the date on which the completed application for the project has been received, and accepted as complete, by that responsible agency.

(b) Notwithstanding Section 65952 of the Government Code and Section 25199.2, any public agency which is a responsible agency for a hazardous waste facility project that is not a land disposal facility shall approve or disapprove the project within one of the following periods of time, whichever is longer:

(1) Within 180 days from the date on which the lead agency approved or disapproved the project.

(2) Within 180 days from the date on which the completed application for the project has been received, and accepted as complete, by that responsible agency.

(c) Subdivision (b) of Section 65956 of the Government Code does not apply to the failure of a lead agency or responsible agency to approve or disapprove a permit for a hazardous waste facility project within the time limits established by Sections 65950 and 65952 of the Government Code and subdivisions (a) and (b) of this section. If a lead agency or a responsible agency fails to act within those time limits, the applicant may file an action pursuant to Section 1085 of the Code of Civil Procedure to compel the agency to approve or disapprove the permit for the project within a reasonable time, as the court may determine.

SEC. 6. Section 25199.7 of the Health and Safety Code is amended to read:

25199.7. (a) At least 90 days before filing an application for a land use decision for a specified hazardous waste facility project with a local agency, the proponent shall file a notice of intent to make the application with the Office of Permit Assistance in the Office of Planning and Research and with the applicable city or county. The notice of intent shall contain a complete description of the nature, function, and scope of the project. The Office of Permit Assistance shall immediately notify affected state agencies of the notice of intent. The local agency shall publish a notice in a newspaper of general circulation in the area affected by the proposed project, shall post notices in the location where the proposed project is located, and shall notify, by a direct mailing, the owners of contiguous

property, as shown in the latest equalized assessment role. The local agency shall impose a fee upon a project applicant equal to the cost of notification required by this section.

(b) A proponent may not file an application for a land use decision for a specified hazardous waste facility project with a local agency unless the proponent has first complied with subdivision (a).

(c) Within 90 days after a notice of intent is filed with the Office of Permit Assistance pursuant to subdivision (a), the office shall convene a public meeting in the affected city or county to inform the public on the nature, function, and scope of the proposed specified hazardous waste facility project and the procedures that are required for approving applications for the project.

(d) Within 90 days after receiving a notice of the filing of a notice of intent, the legislative body of the affected local agency shall appoint a seven member local assessment committee.

(1) The membership of the committee shall be broadly constituted to reflect the makeup of the community, and shall include three representatives of the community at large, two representatives of environmental or public interest groups, and two representatives of affected businesses and industries. Members of local assessment committees selected pursuant to this subdivision shall have no direct financial interest, as defined in Section 87103 of the Government Code, in the proposed specified hazardous waste facility project.

(2) The local assessment committee shall do all of the following:

(A) Negotiate with the proponent for the proposed hazardous waste facility project on the detailed terms of, provisions of, and conditions for, project approval which would protect the public health, safety, and welfare, and the environment of the city or county and would promote the fiscal welfare of the city or county through special benefits and compensation.

(B) Represent generally, in negotiation with the project proponent, the interests of the residents of the city or county and the interests of adjacent communities.

(C) Receive and expend the technical assistance grants made available pursuant to subdivision (g).

(D) Adopt rules and procedures which are necessary to perform its duties.

(E) Advise the legislative body of the city or county of the terms, provisions, and conditions for project approval which have been agreed upon by the committee and the proponent, and of any additional information which the committee deems appropriate. The legislative body of the city or county may use this advice for its independent consideration of the project.

(3) The legislative body of the affected jurisdiction shall provide staff resources to assist the local assessment committee in performing its duties.

(4) A local assessment committee established pursuant to this subdivision shall cease to exist after final administrative action by

state and local agencies has been taken on the permit applications for the project for which the committee was convened.

(e) A local agency shall notify the Office of Permit Assistance within 10 days after an application for a land use decision for a specified hazardous waste facility project is accepted as complete by the local agency and, within 60 days after receiving this notice, the Office of Permit Assistance shall convene a meeting of the lead and responsible agencies for the project, the proponent, the local assessment committee, and the interested public, for the purpose of determining the issues which concern the agencies that are required to approve the project and the issues which concern the public. The meeting shall take place in the jurisdiction where the application has been filed.

(f) Following the meeting required by subdivision (e), the proponent and the local assessment committee appointed pursuant to subdivision (d) shall meet and confer on the specified hazardous waste facility project proposal for the purpose of establishing the terms and conditions under which the project will be acceptable to the community.

(g) A proponent for a specified hazardous waste facility project shall pay a fee, established by the local agency, equal to the cost of hiring independent consultants to review the project. The local agency shall create an account in the city or county treasury for receipt of these funds, to make technical assistance grants to the local assessment committee to enable the committee to hire an independent consultant to assist the committee in reviewing the project and negotiating terms and conditions with the proponent. If an account is established by the local agency to receive funds from the project proponent, the fees shall be used to review the project pursuant to this section, and the local agency shall maintain records of all expenditures from the account. The local agency shall return any unused funds and accrued interest to the project proponent upon completion of the project review.

(h) If the local assessment committee and the proponent cannot resolve any differences through the meetings, the Office of Permit Assistance may recommend the use of a mediator. The proponent shall pay one-half of the costs of this mediation and the remaining costs shall be paid, upon appropriation by the Legislature, from the General Fund.

(i) This section applies only to a specified hazardous waste facility project.

SEC. 7. 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 five hundred thousand dollars ($500,000), reimbursement shall be made from the State Mandates

Claims Fund.

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 provide adequate opportunity for review by the cities in the adoption of the county hazardous management plan, and to make necessary, related changes, thereby protecting the public health and safety, it is necessary that this act take effect immediately.

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## CHAPTER 1390

An act to amend Sections 1797.176, 1797.210, 1797.220, 1798, 1798.2, 1798.100, 1798.101, and 1798.200 of, and to add Sections 1797.53, 1798.3, and 1798.105 to, and to repeal Sections 1797.665 and 1798.4 of, the Health and Safety Code, relating to emergency services.

[Approved by Governor September 26, 1988. Filed with Secretary of State September 27, 1988.]

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

SECTION 1. Section 1797.53 is added to the Health and Safety Code, to read:

1797.53. "Alternative base station" means a facility or service operated and directly supervised by, or directly supervised by, a physician and surgeon who is trained and qualified to issue advice and instructions to prehospital emergency medical care personnel, which has been approved by the medical director of the local EMS agency to provide medical direction to advanced life support or limited advanced life support personnel responding to a medical emergency as part of the local EMS system, when no qualified hospital is available to provide that medical direction.

SEC. 2. Section 1797.665 of the Health and Safety Code is repealed.

SEC. 3. Section 1797.176 of the Health and Safety Code is amended to read:

1797.176. The authority shall establish the minimum standards for the policies and procedures necessary for medical control of the EMS system.

SEC. 4. Section 1797.210 of the Health and Safety Code is amended to read:

1797.210. The medical director of the local EMS agency shall issue a certificate to an individual upon proof of satisfactory completion of an approved training program and passage of the examination for competence. The certificate shall be proof of the individual's initial competence to perform at the designated level. The medical director of the local EMS agency shall recertify EMT-I's, EMT-II's, and

EMT-P's through passage of an examination for competency at an interval specified by the authority.

SEC. 5. Section 1797.220 of the Health and Safety Code is amended to read:

1797.220. The local EMS agency, using state minimum standards, shall establish policies and procedures approved by the medical director of the local EMS agency to assure medical control of the EMS system. The policies and procedures approved by the medical director may require basic life support emergency medical transportation services to meet any medical control requirements including dispatch, patient destination policies, patient care guidelines, and quality assurance requirements.

SEC. 6. Section 1798 of the Health and Safety Code is amended to read:

1798. (a) The medical direction and management of an emergency medical services system shall be under the medical control of the medical director of the local EMS agency. This medical control shall be maintained in accordance with standards for medical control established by the authority.

(b) Medical control shall be within an EMS system which complies with the minimum standards adopted by the authority, and which is established and implemented by the local EMS agency.

(c) In the event a medical director of a base station questions the medical effect of a policy of a local EMS agency, the medical director of the base station shall submit a written statement to the medical director of the local EMS agency requesting a review by a panel of medical directors of other base stations. Upon receipt of the request, the medical director of a local EMS agency shall promptly convene a panel of medical directors of base stations to evaluate the written statement. The panel shall be composed of all the medical directors of the base stations in the region, except that the local EMS medical director may limit the panel to five members.

This subdivision shall remain in effect only until the authority adopts more comprehensive regulations that supersede this subdivision.

SEC. 7. Section 1798.2 of the Health and Safety Code is amended to read:

1798.2. The base hospital shall implement the policies and procedures established by the local EMS agency and approved by the medical director of the local EMS agency for medical direction of prehospital emergency medical care personnel.

SEC. 8. Section 1798.3 is added to the Health and Safety Code, to read:

1798.3. Advanced life support and limited advanced life support personnel may receive medical direction from an alternative base station in lieu of a base hospital when the following conditions are met:

(a) The alternative base station has been designated by the local EMS agency and approved by the medical director of the local EMS

agency, pursuant to Section 1798.105, to provide medical direction to prehospital personnel because no base hospital is available to provide medical direction for the geographical area assigned.

(b) The medical direction is provided by either of the following:

(1) A physician and surgeon who is trained and qualified to issue advice and instructions to prehospital emergency medical care personnel.

(2) A mobile intensive care nurse who has been authorized by the medical director of the local EMS agency, pursuant to Section 1797.56, as qualified to issue instructions to prehospital emergency medical care personnel.

SEC. 9. Section 1798.4 of the Health and Safety Code is repealed.

SEC. 10. Section 1798.100 of the Health and Safety Code is amended to read:

1798.100. In administering the EMS system, the local EMS agency, with the approval of its medical director, may designate and contract with hospitals or other entities approved by the medical director of the local EMS agency pursuant to Section 1798.105 to provide medical direction of prehospital emergency medical care personnel, within its area of jurisdiction, as either base hospitals or alternative base stations, respectively. Hospitals or other entities so designated and contracted with as base hospitals or alternative base stations shall provide medical direction of prehospital emergency medical care provided for the area defined by the local EMS agency in accordance with policies and procedures established by the local EMS agency and approved by the medical director of the local EMS agency pursuant to Sections 1797.220 and 1798.

SEC. 11. Section 1798.101 of the Health and Safety Code is amended to read:

1798.101. (a) In rural areas, as determined by the authority, where the use of a base hospital having a basic emergency medical service special permit pursuant to subdivision (c) of Section 1277 is precluded because of geographic or other extenuating circumstances, a local EMS agency, in order to assure medical direction to prehospital emergency medical care personnel, may utilize other hospitals which do not have a basic emergency medical service permit but which have been approved by the medical director of the local EMS agency for utilization as a base hospital, if both of the following apply:

(1) Medical control is maintained in accordance with policies and procedures established by the local EMS agency, with the approval of the medical director of the local EMS agency.

(2) Approval is secured from the authority.

(b) (1) In rural areas, as determined by the authority, when the use of a hospital having a basic emergency medical service special permit is precluded because of geographic or other extenuating circumstances, as determined by the authority, the medical director of the local EMS agency may authorize another facility which does not have this special permit to receive patients requiring emergency

medical services if the facility has adequate staff and equipment to provide these services, as determined by the medical director of the local EMS agency.

(2) A local EMS agency which utilizes in its EMS system any facility which does not have a special permit to receive patients requiring emergency medical care pursuant to paragraph (1) shall submit to the authority, as part of the plan required by Section 1797.254, protocols approved by the medical director of the local EMS agency to ensure that the use of that facility is in the best interests of patient care. The protocols addressing patient safety and the use of the nonpermit facility shall take into account, but not be limited to, the following:

(A) The medical staff, and the availability of the staff at various times to care for patients requiring emergency medical services.

(B) The ability of staff to care for the degree and severity of patient injuries.

(C) The equipment and services available at the facility necessary to care for patients requiring emergency medical services and the severity of their injuries.

(D) The availability of more comprehensive emergency medical services and the distance and travel time necessary to make the alternative emergency medical services available.

(E) The time of day and any limitations which may apply for a nonpermit facility to treat patients requiring emergency medical services.

(3) Any change in the status of a nonpermit facility, authorized pursuant to this subdivision to care for patients requiring emergency medical services, with respect to protocols and the facility's ability to care for the patients shall be reported by the facility to the local EMS agency.

SEC. 12. Section 1798.105 is added to the Health and Safety Code, to read:

1798.105. The medical director of the local EMS agency may approve an alternative base station, as defined in Section 1798.53, to provide medical direction to advanced life support or limited advanced life support personnel for an area of the local EMS system for which no qualified base hospital is available, to provide that medical direction, providing that both the following conditions are met:

(a) Medical control is maintained in accordance with policies and procedures established by the local EMS agency, with the approval of the medical director of the local EMS agency.

(b) Any responsibilities of a base station hospital, including review of run reports or provision of continuing education, which are not assigned to the alternative base station, are assigned to either the local EMS agency, a base hospital for another area of the local EMS system, or a receiving hospital which has been approved by the medical director to, and has agreed to, assume the responsibilities.

SEC. 13. Section 1798.200 of the Health and Safety Code is

amended to read:

1798.200. The medical director of the local EMS agency may place on probation any certificate holder or suspend or revoke any certificate issued under this division and in accordance with guidelines established by the authority upon the finding by that medical director of an imminent threat to the public health and safety as evidenced by the occurrence of any of the following actions:

(a) Fraud in the procurement of any certification under this division.

(b) Gross negligence.

(c) Repeated negligent acts.

(d) Incompetence.

(e) The commission of any fraudulent, dishonest, or corrupt act which is substantially related to the qualifications, functions, and duties of prehospital personnel.

(f) Conviction of any crime which is substantially related to the qualifications, functions, and duties of prehospital personnel. The record of conviction or a certified copy of the record shall be conclusive evidence of such conviction.

(g) Violating or attempting to violate directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provision of this division or the regulations promulgated by the authority pertaining to prehospital personnel.

(h) Violating or attempting to violate any federal or state statute or regulation which regulates narcotics, dangerous drugs, or controlled substances.

(i) Addiction to the excessive use of, or the misuse of, alcoholic beverages, narcotics, dangerous drugs, or controlled substances.

(j) Functioning outside the supervision of medical control in the field care system operating at the local level, except as authorized by any other license or certification.

(k) Demonstration of irrational behavior or occurrence of a physical disability to the extent that a reasonable and prudent person would have reasonable cause to believe that the ability to perform the duties normally expected may be impaired.

SEC. 14. 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.

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 five hundred thousand dollars ($500,000), reimbursement shall be made from the State Mandates

Claims Fund.

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## CHAPTER 1391

An act to amend Sections 66780, 66780.2, and 66799.3 of the Government Code, and to amend Section 15036 of the Public Resources Code, as added by Assembly Bill 3298 of the 1987–88 Regular Session, relating to solid waste.

[Approved by Governor September 26, 1988. Filed with Secretary of State September 27, 1988.]

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

SECTION 1. Section 66780 of the Government Code is amended to read:

66780. (a) The Legislature finds that decisions involving the establishment or expansion of solid waste facilities should be guided by an effective planning process, including meaningful public and private solid waste industry participation.

(b) It is, therefore, the policy of the state and the intent of the Legislature that solid waste management plans prepared pursuant to this chapter shall be consistent with the general plan required by Article 5 (commencing with Section 65300) of Chapter 3 of Division 1 of Title 7, and that these solid waste management plans shall accomplish both of the following:

(1) Identify and reserve areas for the establishment or expansion of solid waste facilities.

(2) Ensure that land uses adjacent to or near those areas are compatible with the solid waste facilities.

(c) The Legislature further declares that it is the policy of the state and the intent of the Legislature that each state, regional, and local agency concerned with the solid waste facility planning and siting process involve the public through public hearings and informative meetings and that, at those hearings and other public forums, the public be granted the opportunity to respond to clearly defined alternative objectives, policies, and actions.

(d) The Legislature further declares that it is the policy of the state and the intent of the Legislature, as stated in Section 4271 of the Health and Safety Code, to foster and encourage private solid waste enterprises. In furtherance of that policy, it is the intent of the Legislature that each state, regional, and local agency concerned with the solid waste facility planning and siting process involve the private solid waste industry, and that the hazardous waste disposal industry also be involved in the review of the hazardous waste portion of county solid waste management plans, as specified in Section 66780.7 of the Government Code.

SEC. 2. Section 66780.2 of the Government Code is amended to

read:

66780.2. (a) With each revision of a county solid waste management plan occurring on or after January 1, 1988, the plan shall indicate the remaining combined capacity of existing solid waste facilities, in cubic yards and years, to accept solid waste generated in the county. If the county determines that the remaining combined capacity of existing solid waste facilities will be exhausted within eight years, then, except as provided in paragraphs (1) and (2) and notwithstanding any other provision of law, the revision of the plan shall reserve an area or areas for the location of a new solid waste facility or the expansion of an existing solid waste facility.

(1) If the county determines that there is no area available for the location of a new solid waste facility or the expansion of an existing facility which is consistent with the applicable city or county general plan pursuant to subdivision (b), the county is not required to reserve that area in the revision of the plan, but the revision of the plan shall instead include a specific program for the handling and disposal of solid waste generated in the county in excess of its remaining solid waste facility capacity, subject to approval by the board.

(2) If a county reserved a site expansion or a potential site for a solid waste facility in its solid waste management plan prior to January 1, 1988, that site reservation may be deemed an area reservation for the purposes of compliance with this subdivision and subdivision (b).

(b) A county shall reserve an area or areas for the location of a new solid waste facility or the expansion of an existing facility in its solid waste management plan which is consistent with the applicable city or county general plan. An area is consistent with the general plan if all of the following requirements are met:

(1) The city or county has adopted a general plan which complies with the requirements of Article 5 (commencing with Section 65300) of Chapter 3 of Division 1 of Title 7.

(2) The area reserved for a new solid waste facility or the expansion of an existing solid waste facility is located in or coextensive with a land use area designated or authorized for solid waste facilities in the applicable city or county general plan.

(3) The land uses authorized in the applicable city or county general plan adjacent to or near the area reserved for the establishment or expansion are compatible with the establishment or expansion of a solid waste facility.

(c) A county may tentatively reserve an area or areas for the location of a new solid waste facility or the expansion of an existing facility in its solid waste management plan even though that reservation of an area or areas is not consistent with the applicable city or county general plan. A reserved area in a solid waste management plan is tentative until it is made consistent with the applicable city or county general plan. If a county has tentatively identified a site expansion or a potential site for a solid waste facility

in its solid waste management plan, that tentative site identification may be deemed a tentative area reservation for the purposes of subdivisions (d) and (e).

(d) An area tentatively reserved for the establishment or expansion of a solid waste facility shall be removed from the county solid waste management plan for either of the following reasons:

(1) A city or county fails or has failed to make the finding that the area is consistent with the general plan or has made a finding that the area should not be used for the location of a solid waste facility.

(2) The board refuses to concur in the issuance of a solid waste facility permit for the site because of the city's or county's failure to make the finding that the area in which the site is located is consistent with the general plan.

(e) The removal of a tentatively reserved area from the county solid waste management plan, pursuant to subdivision (d), shall be accomplished by either of the following methods:

(1) The county shall remove the area at the time of the next revision of the plan.

(2) The local agency having jurisdiction over the area shall request the county to remove the designation at the time of the next revision of the plan.

(f) For purposes of this section and Sections 66796.32, 66796.34, 66796.41, and 66796.42, the term "city" or "county" means the city or county in which the solid waste facility, or the area reserved for a new solid waste facility or the expansion of an existing facility, is located.

(g) Notwithstanding Section 66720.1, for purposes of this section, "solid waste facility" does not include facilities for the conversion of waste to energy, except that a county solid waste management plan may identify areas for these facilities.

SEC. 3. Section 66799.3 of the Government Code is amended to read:

66799.3. As used in this chapter, the following definitions apply:

(a) "Account" means the Solid Waste Disposal Site Cleanup and Maintenance Account in the General Fund.

(b) "Closure plan" means a plan prepared by the owner or operator of a solid waste landfill to close the landfill in accordance with permit conditions and standards as may be required by a regional board, an enforcement agency, and the board.

(c) "Committee" means the Solid Waste Cleanup and Advisory Committee.

(d) "Corrective action" means any action, required or approved by an enforcement agency, or the board pursuant to Chapter 3 (commencing with Section 66795), a regional board, or an air quality management district or air pollution control district, to abate a nuisance or prevent the migration of methane gas or contaminated ground or surface water as necessary to protect human health and the environment.

(e) "Inert waste" means a nonliquid waste including, but not

limited to, soil and concrete, that does not contain hazardous waste or soluble pollutants at concentrations in excess of water quality objectives established by a regional board pursuant to Division 7 (commencing with Section 13000) of the Water Code and does not contain significant quantities of decomposable waste.

(f) "Postclosure plan" means a plan prepared by the owner or operator of a solid waste landfill to maintain the landfill for at least 30 years after closure in accordance with any permit conditions and standards which may be required by a regional board, an enforcement agency, or the board.

(g) "Regional board" means a California Regional Water Quality Control Board.

(h) "Solid waste landfill" means a disposal facility, as defined in Section 66714, that accepts solid waste, as defined in Section 66719, and which meets the requirements of a class III landfill pursuant to Sections 2533 and 2541 of Title 23 of the California Code of Regulations. "Solid waste landfill" does not include a facility which receives only wastes generated by the landfill owner or operator in the extraction, beneficiation, or processing of ores and minerals.

(i) "State board" means the State Board of Equalization.

SEC. 4. Section 15036 of the Public Resources Code, as added by Assembly Bill 3298 of the 1987–88 Regular Session, is amended to read:

15036. (a) A local agency shall establish special fees on generators of solid waste to cover its costs in preparing, adopting, and implementing the plan required by this division if the department has not granted the local agency a time extension or an exemption for violations specified in Section 15046. The fees shall be established in relation to the types and amounts of solid waste generated and shall generate revenue to pay the estimated costs in preparing, adopting, or implementing the plan.

(b) Each local agency which is directed by the department to establish fees pursuant to this chapter shall establish a waste reduction and recycling escrow account. All revenues collected as a result of special fees shall be deposited into the waste reduction and recycling escrow account. The local agency may use all revenues deposited in its account to implement a waste reduction and recycling plan upon approval by the department of the local agency's plan of correction for violations specified in Section 15046.

SEC. 5. Section 4 of this act shall become operative only if Assembly Bill 3298 of the 1987–88 Regular Session is enacted and adds Section 15036 to the Public Resources Code.

SEC. 6. 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.

# CHAPTER 1392

An act to amend Sections 311, 311.2, 313, and 313.1 of the Penal Code, relating to crime.

[Approved by Governor September 26, 1988. Filed with Secretary of State September 27, 1988.]

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

SECTION 1. Section 311 of the Penal Code is amended to read:

311. As used in this chapter, the following definitions shall control the meaning of the respective terms:

(a) "Obscene matter" means matter taken as a whole, the predominant appeal of which to the average person, applying contemporary statewide standards, is to prurient interest, meaning a shameful or morbid interest in nudity, sex, or excretion; and is matter which taken as a whole goes substantially beyond customary limits of candor in description or representation of such matters; and is matter which taken as a whole lacks significant literary, artistic, political, educational, or scientific value.

(1) The predominant appeal to prurient interest of the matter is judged with reference to average adults unless it appears from the nature of the matter or the circumstances of its dissemination, distribution or exhibition, that it is designed for clearly defined deviant sexual groups, in which case the predominant appeal of the matter shall be judged with reference to its intended recipient group.

(2) In prosecutions under this chapter, where circumstances of production, presentation, sale, dissemination, distribution, or publicity indicate that matter is being commercially exploited by the defendant for the sake of its prurient appeal, that evidence is probative with respect to the nature of the matter and can justify the conclusion that the matter lacks significant literary, artistic, political, educational, or scientific value.

(3) In determining whether the matter taken as a whole goes substantially beyond customary limits of candor in description or representation of such matters, the fact that the defendant knew that the matter depicts persons under the age of 16 years engaged in sexual conduct, as defined in subdivision (c) of Section 311.4, is a factor which can be considered in making that determination.

(b) "Matter" means any book, magazine, newspaper or other printed or written material or any picture, drawing, photograph, motion picture, or other pictorial representation or any statue or other figure, or any recording, transcription or mechanical, chemical or electrical reproduction or any other articles, equipment, machines or materials. "Matter" also means live or recorded telephone messages when transmitted, disseminated, or distributed as part of a commercial transaction.

(c) "Person" means any individual, partnership, firm, association, corporation, or other legal entity.

(d) "Distribute" means to transfer possession of, whether with or without consideration.

(e) "Knowingly" means being aware of the character of the matter or live conduct.

(f) "Exhibit" means to show.

(g) "Obscene live conduct" means any physical human body activity, whether performed or engaged in alone or with other persons, including, but not limited to, singing, speaking, dancing, acting, simulating, or pantomiming, where, taken as a whole, the predominant appeal of the conduct to the average person, applying contemporary statewide standards is to prurient interest, meaning a shameful or morbid interest in nudity, sex, or excretion; and is conduct which taken as a whole goes substantially beyond customary limits of candor in description or representation of these matters; and is conduct which taken as a whole lacks significant literary, artistic, political, educational, or scientific value.

(1) The predominant appeal to prurient interest of the conduct is judged with reference to average adults unless it appears from the nature of the conduct or the circumstances of its production, presentation or exhibition, that it is designed for clearly defined deviant sexual groups, in which case the predominant appeal of the conduct shall be judged with reference to its intended recipient group.

(2) In prosecutions under this chapter, where circumstances of production, presentation advertising, or exhibition indicate that live conduct is being commercially exploited by the defendant for the sake of its prurient appeal, that evidence is probative with respect to the nature of the conduct and can justify the conclusion that the conduct lacks significant literary, artistic, political, educational, or scientific value.

(3) In determining whether the live conduct taken as a whole goes substantially beyond customary limits of candor in description or representation of such matter, the fact that the defendant knew that the live conduct depicts persons under the age of 16 years engaged in sexual conduct, as defined in subdivision (c) of Section 311.4, is a factor which can be considered in making that determination.

SEC. 2. Section 311 of the Penal Code is amended to read:

311. As used in this chapter, the following definitions shall control the meaning of the respective terms:

(a) "Obscene matter" means matter taken as a whole, which to the average person, applying contemporary statewide standards, appeals to the prurient interest, and is matter which, taken as a whole, depicts or describes in a patently offensive way sexual conduct; and which, taken as a whole, lacks serious literary, artistic, political, or scientific value.

(1) When it appears from the nature of the matter or the

circumstances of its dissemination, distribution or exhibition that it is designed for clearly defined deviant sexual groups, the appeal of the matter shall be judged with reference to its intended recipient group.

(2) In prosecutions under this chapter, where circumstances of production, presentation, sale, dissemination, distribution, or publicity indicate that matter is being commercially exploited by the defendant for the sake of its prurient appeal, such evidence is probative with respect to the nature of the matter and can justify the conclusion that the matter lacks serious literary, artistic, political, or scientific value.

(3) In determining whether the matter taken as a whole lacks serious literary, artistic, political, or scientific value in description or representation of such matters, the fact that the defendant knew that the matter depicts persons under the age of 16 years engaged in sexual conduct, as defined in subdivision (c) of Section 311.4, is a factor which can be considered in making that determination.

(b) "Matter" means any book, magazine, newspaper or other printed or written material or any picture, drawing, photograph, motion picture, or other pictorial representation or any statue or other figure, or any recording, transcription or mechanical, chemical or electrical reproduction or any other articles, equipment, machines or materials. "Matter" also means live or recorded telephone messages when transmitted, disseminated, or distributed as part of a commercial transaction.

(c) "Person" means any individual, partnership, firm, association, corporation, or other legal entity.

(d) "Distribute" means to transfer possession of, whether with or without co"ideration.

(e) "Knowingly" means being aware of the character of the matter or live conduct.

(f) "Exhibit" means to show.

(g) "Obscene live conduct" means any physical human body activity, whether performed or engaged in alone or with other persons, including but not limited to singing, speaking, dancing, acting, simulating, or pantomiming, taken as a whole, which to the average person, applying contemporary statewide standards to the prurient interest and is conduct which, taken as a whole , depicts or describes in a patently offensive way sexual conduct and which, taken as a whole, lacks serious literary, artistic, political, or scientific value.

(1) When it appears from the nature of the conduct or the circumstances of its production, presentation or exhibition that it is designed for clearly defined deviant sexual groups, the appeal of the conduct shall be judged with reference to its intended recipient group.

(2) In prosecutions under this chapter, where circumstances of production, presentation advertising, or exhibition indicate that live conduct is being commercially exploited by the defendant for the

sake of its prurient appeal, that evidence is probative with respect to the nature of the conduct and can justify the conclusion that the conduct lacks serious literary, artistic, political, or scientific value.

(3) In determining whether the live conduct taken as a whole lacks serious literary, artistic, political, or scientific value in description or representation of such matters, the fact that the defendant knew that the live conduct depicts persons under the age of 16 years engaged in sexual conduct, as defined in subdivision (c) of Section 311.4, is a factor which can be considered in making that determination.

SEC. 3. Section 311.2 of the Penal Code is amended to read:

311.2. (a) Every person who knowingly sends or causes to be sent, or brings or causes to be brought, into this state for sale or distribution, or in this state possesses, prepares, publishes, or prints, with intent to distribute or to exhibit to others, or who offers to distribute, distributes, or exhibits to others, any obscene matter is for a first offense, guilty of a misdemeanor. If the person has previously been convicted of any violation of this section, the court may, in addition to the punishment authorized in Section 311.9, impose a fine not exceeding fifty thousand dollars ($50,000).

(b) Every person who knowingly sends or causes to be sent, or brings or causes to be brought, into this state for sale or distribution, or in this state possesses, prepares, publishes, develops, duplicates, or prints, with intent to distribute or to exhibit to, or to exchange with, others for commercial consideration, or who offers to distribute, distributes, or exhibits to, or exchanges with, others for commercial consideration, any obscene matter, knowing that the matter depicts a person under the age of 18 years personally engaging in or personally simulating sexual conduct, as defined in Section 311.4, is guilty of a felony and shall be punished by imprisonment in state prison for two, three, or six years, or by a fine not exceeding one hundred thousand dollars ($100,000), in the absence of a finding that the defendant would be incapable of paying such a fine, or by both such fine and imprisonment.

(c) Every person who knowingly sends or causes to be sent, or brings or causes to be brought, into this state for sale or distribution, or in this state possesses, prepares, publishes, develops, duplicates, or prints, with intent to distribute or to exhibit to, or to exchange with, a person 18 years of age or older, or who offers to distribute, distributes, or exhibits to, or exchanges with, a person 18 years of age or older any matter, knowing that the matter depicts a person under the age of 17 years personally engaging in or personally simulating sexual conduct, as defined in Section 311.4, is guilty of a misdemeanor and shall be punished by imprisonment in the county jail for up to one year, or by a fine not exceeding two thousand dollars ($2,000), or by both such fine and imprisonment. It is not necessary to prove commercial consideration or that the matter is obscene in order to establish a violation of this subdivision. If a person has been previously convicted of a violation of this subdivision, he or she is

guilty of a felony.

(d) Every person who knowingly sends or causes to be sent, or brings or causes to be brought, into this state for sale or distribution, or in this state possesses, prepares, publishes, develops, duplicates, or prints, with intent to distribute or to exhibit to, or to exchange with, a person under 18 years of age, or who offers to distribute, distributes, or exhibits to, or exchanges with, a person under 18 years of age any matter, knowing that the matter depicts a person under the age of 17 years personally engaging in or personally simulating sexual conduct, as defined in Section 311.4, is guilty of a felony. It is not necessary to prove commercial consideration or that the matter is obscene in order to establish a violation of this subdivision.

(e) Subdivisions (a) to (d), inclusive, shall not apply to the activities of law enforcement and prosecuting agencies in the investigation and prosecution of criminal offenses or to legitimate medical, scientific, or educational activities, or to lawful conduct between spouses.

(f) This section shall not apply to matter which depicts a child under the age of 18, which child is legally emancipated, including lawful conduct between spouses when one or both are under the age of 18.

(g) It does not constitute a violation of this section for a telephone corporation, as defined by Section 234 of the Public Utilities Code, to carry or transmit messages described in this chapter or perform related activities in providing telephone services.

SEC. 4. Section 313 of the Penal Code is amended to read:

313. As used in this chapter, the following definitions shall control the meaning of the respective terms:

(a) "Harmful matter" means matter taken as a whole, the predominant appeal of which to the average person, applying contemporary statewide standards, is to prurient interest, meaning a shameful or morbid interest in nudity, sex, or excretion, and is patently offensive to the prevailing standards in the adult community as a whole with respect to what is suitable material for minors, and lacks significant literary, artistic, political, educational, or scientific value for minors.

(1) When it appears from the nature of the matter or the circumstances of its dissemination, distribution or exhibition that it is designed for clearly defined deviant sexual groups, the predominant appeal of the matter shall be judged with reference to its intended recipient group.

(2) In prosecutions under this chapter, where circumstances of production, presentation, sale, dissemination, distribution, or publicity indicate that matter is being commercially exploited by the defendant for the sake of its prurient appeal, that evidence is probative with respect to the nature of the matter and can justify the conclusion that the matter lacks significant literary, artistic, political, educational, or scientific value for minors.

(b) "Matter" means any book, magazine, newspaper, or other

printed or written material or any picture, drawing, photograph, motion picture, or other pictorial representation or any statue or other figure, or any recording, transcription, or mechanical, chemical, or electrical reproduction or any other articles, equipment, machines, or materials. "Matter" also includes live or recorded telephone messages when transmitted, disseminated, or distributed as part of a commercial transaction.

(c) "Person" means any individual, partnership, firm, association, corporation, or other legal entity.

(d) "Distribute" means to transfer possession of, whether with or without consideration.

(e) "Knowingly" means being aware of the character of the matter.

(f) "Exhibit" means to show.

(g) "Minor" means any natural person under 18 years of age.

SEC. 5. Section 313 of the Penal Code is amended to read:

313. As used in this chapter, the following definitions shall control the meaning of the respective terms:

(a) "Harmful matter" means matter, taken as a whole, which to the average person, applying contemporary statewide standards, appeals to the prurient interest, and is matter which, taken as a whole, depicts or describes in a patently offensive way sexual conduct and which, taken as a whole, lacks serious literary, artistic, political, or scientific value for minors.

(1) When it appears from the nature of the matter or the circumstances of its dissemination, distribution or exhibition that it is designed for clearly defined deviant sexual groups, the appeal of the matter shall be judged with reference to its intended recipient group.

(2) In prosecutions under this chapter, where circumstances of production, presentation, sale, dissemination, distribution, or publicity indicate that matter is being commercially exploited by the defendant for the sake of its prurient appeal, that evidence is probative with respect to the nature of the matter and can justify the conclusion that the matter lacks serious literary, artistic, political, or scientific value for minors.

(b) "Matter" means any book, magazine, newspaper, or other printed or written material or any picture, drawing, photograph, motion picture, or other pictorial representation or any statue or other figure, or any recording, transcription, or mechanical, chemical, or electrical reproduction or any other articles, equipment, machines, or materials. "Matter" also includes live or recorded telephone messages when transmitted, disseminated, or distributed as part of a commercial transaction.

(c) "Person" means any individual, partnership, firm, association, corporation, or other legal entity.

(d) "Distribute" means to transfer possession of, whether with or without consideration.

(e) "Knowingly" means being aware of the character of the

matter.

(f) "Exhibit" means to show.

(g) "Minor" means any natural person under 18 years of age.

SEC. 6. Section 313.1 of the Penal Code is amended to read:

313.1. (a) Every person who, with knowledge that a person is a minor, or who fails to exercise reasonable care in ascertaining the true age of a minor, knowingly distributes, sends, causes to be sent, exhibits, or offers to distribute or exhibit by any means, including, but not limited to, live or recorded telephone messages, any harmful matter to the minor is guilty of a misdemeanor.

It does not constitute a violation of this section for a telephone corporation, as defined by Section 234 of the Public Utilities Code, to carry or transmit messages described in this chapter or perform related activities in providing telephone services.

(b) Every person who misrepresents himself to be the parent or guardian of a minor and thereby causes the minor to be admitted to an exhibition of any harmful matter is guilty of a misdemeanor.

(c) Any person who, within 500 meters of any elementary school, junior high school, high school, or public playground, or any part thereof, knowingly sells or offers to sell, in any coin- or slug-operated vending machine or mechanically or electronically controlled vending machine which is located on a public sidewalk, any harmful matter displaying to the public view photographs or pictorial representations of the commission of the following acts, is guilty of a misdemeanor: sodomy, oral copulation, sexual intercourse, masturbation, bestiality, or a photograph of an exposed penis in an erect and turgid state.

(d) Nothing in this section invalidates or prohibits the adoption of an ordinance by a city, county, or city and county which restricts the display of material which is harmful to minors, as defined in this chapter, in a public place, other than a public place from which minors are excluded, by requiring the placement of devices commonly known as blinder racks in front of the material, so that the lower two-thirds of the material is not exposed to view.

(e) It shall be a defense in any prosecution for a violation of subdivision (a) by a person who knowingly distributed any harmful matter by the use of telephones or telephone facilities to any person under the age of 18 years that the defendant has taken either of the following measures to restrict access to the harmful matter by persons under 18 years of age:

(1) Required the person receiving the harmful matter to use an authorized access or identification code, as provided by the information provider, before transmission of the harmful matter begins, where the defendant has previously issued the code by mailing it to the applicant after taking reasonable measures to ascertain that the applicant was 18 years of age or older and has established a procedure to immediately cancel the code of any person after receiving notice, in writing or by telephone, that the code has been lost, stolen, or used by persons under the age of 18

years or that the code is no longer desired.

(2) Required payment by credit card before transmission of the matter.

(f) Any list of applicants or recipients compiled or maintained by an information-access service provider for purposes of compliance with paragraph (1) of subdivision (e) is confidential and shall not be sold or otherwise disseminated except upon order of the court.

SEC. 7. Section 313.1 of the Penal Code is amended to read:

313.1. (a) Every person who, with knowledge that a person is a minor, or who fails to exercise reasonable care in ascertaining the true age of a minor, knowingly distributes, sends, causes to be sent, exhibits, or offers to distribute or exhibit by any means, including, but not limited to, live or recorded telephone messages, any harmful matter to the minor is guilty of a misdemeanor.

It does not constitute a violation of this section for a telephone corporation, as defined by Section 234 of the Public Utilities Code, to carry or transmit messages described in this chapter or perform related activities in providing telephone services.

(b) Every person who misrepresents himself to be the parent or guardian of a minor and thereby causes the minor to be admitted to an exhibition of any harmful matter is guilty of a misdemeanor.

(c) Any person who knowingly displays, sells, or offers to sell in any coin- or slug-operated vending machine or mechanically or electronically controlled vending machine which is located in a public place, other than a public place from which minors are excluded, any harmful matter displaying to the public view photographs or pictorial representations of the commission of any of the following acts is guilty of a misdemeanor: sodomy, oral copulation, sexual intercourse, masturbation, bestiality, or a photograph of an exposed penis in an erect and turgid state.

(d) Nothing in this section invalidates or prohibits the adoption of an ordinance by a city, county, or city and county which restricts the display of material which is harmful to minors, as defined in this chapter, in a public place, other than a public place from which minors are excluded, by requiring the placement of devices commonly known as blinder racks in front of the material, so that the lower two-thirds of the material is not exposed to view.

(e) It shall be a defense in any prosecution for a violation of subdivision (a) by a person who knowingly distributed any harmful matter by the use of telephones or telephone facilities to any person under the age of 18 years that the defendant has taken either of the following measures to restrict access to the harmful matter by persons under 18 years of age:

(1) Required the person receiving the harmful matter to use an authorized access or identification code, as provided by the information provider, before transmission of the harmful matter begins, where the defendant has previously issued the code by mailing it to the applicant after taking reasonable measures to ascertain that the applicant was 18 years of age or older and has

established a procedure to immediately cancel the code of any person after receiving notice, in writing or by telephone, that the code has been lost, stolen, or used by persons under the age of 18 years or that the code is no longer desired.

(2) Required payment by credit card before transmission of the matter.

(f) Any list of applicants or recipients compiled or maintained by an information-access service provider for purposes of compliance with paragraph (1) of subdivision (e) is confidential and shall not be sold or otherwise disseminated except upon order of the court.

SEC. 8. (a) Section 2 of this bill incorporates amendments to Section 311 of the Penal Code proposed by both this bill and SB 5. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1989, (2) each bill amends Section 311 of the Penal Code, and (3) this bill is enacted after SB 5, in which case Section 1 of this bill shall not become operative.

SEC. 9. Section 5 of this bill incorporates amendments to Section 313 of the Penal Code proposed by both this bill and SB 5. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1989, (2) each bill amends Section 313 of the Penal Code, and (3) this bill is enacted after SB 5, in which case Section 4 of this bill shall not become operative.

SEC. 10. Section 7 of this bill incorporates amendments to Section 313.1 of the Penal Code proposed by both this bill and AB 2093. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1989, (2) each bill amends Section 313.1 of the Penal Code, and (3) this bill is enacted after AB 2093, in which case Section 6 of this bill shall not become operative.

SEC. 11. This act shall be known as and may be cited as the Polanco-Deddeh Anti-Obscenity Act of 1988.

SEC. 12. 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.

## CHAPTER 1393

An act to add Section 7015 to the Penal Code, relating to the City of Folsom.

[Approved by Governor September 26, 1988. Filed with Secretary of State September 27, 1988.]

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

SECTION 1. The Legislature finds and declares that currently Sections 4700.1, 4750, and 4751 of the Penal Code provide for the state to reimburse local agencies for the costs incurred in transporting and detaining state prison inmates for purposes of criminal trials for crimes which were committed while incarcerated in state prison. State prison inmates incarcerated at Folsom State Prison who are tried for new crimes committed while incarcerated, must be transported along with their witnesses to the court facilities in the City of Sacramento which is more than 40 miles from the City of Folsom. The transportation not only incurs substantial costs for the state, but also results in substantial diversion of local law enforcement efforts. It would be cost beneficial for the state to assist the City of Folsom to build and finance a courthouse immediately adjacent to the prison, thereby reducing transportation costs and detention costs which the state otherwise would have to reimburse the County of Sacramento.

SEC. 2. Section 7015 is added to the Penal Code, to read:

7015. (a) Except as provided in subdivision (b), the Department of Corrections may contract with the City of Folsom for the construction of a courthouse and related facilities, not to exceed one million nine hundred thousand dollars ($1,900,000) in costs. Under this contract, the Department of Corrections is authorized to make payments to the City of Folsom in consideration for the construction of the courthouse, provided that the sums paid to the city are realized from savings to the department by the location of the courthouse in the immediate proximity of Folsom Prison.

Under this contract, the Department of Corrections is authorized to make annual payments to the City of Folsom in an amount not to exceed the approximate savings realized in each fiscal year. These funds shall come from the operating budget of the department.

In negotiating this contract, the Department of Corrections shall note the extent to which the courthouse will serve the interests of the County of Sacramento independent of matters pertaining to individuals in state custody and shall seek appropriate participation in the funding of the courthouse from the county.

(b) The Department of Corrections may not contract with the City of Folsom for a court facility unless a majority of the members of the Sacramento County Board of Supervisors, the presiding judge of the Sacramento County Municipal Court, and the presiding judge

of the Sacramento County Superior Court all agree, in writing, to operate a court facility in the City of Folsom as provided by subdivision (a).

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## CHAPTER 1394

An act to amend Sections 1203.4a, 12021.1, 12073, 12080, and 12305 of, to repeal Sections 12079 and 12306 of, and to repeal and add Section 12077 of, the Penal Code, relating to crime.

[Approved by Governor September 26, 1988. Filed with Secretary of State September 27, 1988.]

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

SECTION 1. Section 1203.4a of the Penal Code is amended to read:

1203.4a. (a) Every defendant convicted of a misdemeanor and not granted probation shall, at any time after the lapse of one year from the date of pronouncement of judgment, if he or she has fully complied with and performed the sentence of the court, is not then serving a sentence for any offense and is not under charge of commission of any crime and has, since the pronouncement of judgment, lived an honest and upright life and has conformed to and obeyed the laws of the land, be permitted by the court to withdraw his or her plea of guilty or nolo contendere and enter a plea of not guilty; or if he or she has been convicted after a plea of not guilty, the court shall set aside the verdict of guilty; and in either case the court shall thereupon dismiss the accusatory pleading against such defendant, who shall thereafter be released from all penalties and disabilities resulting from the offense of which he has been convicted, except as provided in Section 12021.1 of this code or Section 13555 of the Vehicle Code. The defendant shall be informed of the provisions of this section, either orally or in writing, at the time he or she is sentenced. The defendant may make such application and change of plea in person or by attorney, or by the probation officer authorized in writing; provided, that in any subsequent prosecution of such defendant for any other offense, the prior conviction may be pleaded and proved and shall have the same effect as if relief had not been granted pursuant to this section.

This subdivision applies to convictions which occurred before as well as those occurring after, the effective date of this section.

(b) Subdivision (a) does not apply to any misdemeanor falling within the provisions of subdivision (b) of Section 42001 of the Vehicle Code, or to any infraction.

(c) A person who petitions for a dismissal of a charge under this section may be required to reimburse the county for the cost of services rendered at a rate to be determined by the county board of

supervisors not to exceed sixty dollars ($60), and to reimburse any city for the cost of services rendered at a rate to be determined by the city council not to exceed sixty dollars ($60). Ability to make this reimbursement shall be determined by the court using the standards set forth in paragraph (2) of subdivision (f) of Section 987.8 and shall not be a prerequisite to a person's eligibility under this section. The court may order reimbursement in any case in which the petitioner appears to have the ability to pay, without undue hardship, all or any portion of the cost for services established pursuant to this subdivision.

SEC. 2. Section 12021.1 of the Penal Code is amended to read:

12021.1. (a) Notwithstanding the provisions of subdivision (a) of Section 12021, any person who has been previously convicted of any of the offenses listed in subdivision (b) and who owns or has in his possession or under his custody or control any pistol, revolver, or other firearm capable of being concealed upon the person is guilty of a public offense, and shall be punished by imprisonment in a county jail for at least six months and not exceeding one year, or by imprisonment in the state prison. A dismissal of an accusatory pleading pursuant to Section 1203.4a involving an offense set forth in subdivision (b) does not affect the finding of a previous conviction. If probation is granted, or if the imposition or execution of sentence is suspended, it shall be a condition of the probation or suspension that the defendant serve at least six months in a county jail.

(b) As used in this section, a violent offense includes any of the following:

(1) Murder or voluntary manslaughter.

(2) Mayhem.

(3) Rape.

(4) Sodomy by force, violence, duress, menace, or threat of great bodily harm.

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

(6) Lewd acts on a child under the age of 14 years.

(7) Any felony punishable by death or imprisonment in the state prison for life.

(8) Any other felony in which the defendant inflicts great bodily injury on any person, other than an accomplice, which has been charged and proven, or any felony in which the defendant uses a firearm which use has been charged and proven.

(9) Attempted murder.

(10) Assault with intent to commit rape or robbery.

(11) Assault with a deadly weapon or instrument on a peace officer.

(12) Assault by a life prisoner on a noninmate.

(13) Assault with a deadly weapon by an inmate.

(14) Arson.

(15) Exploding a destructive device or any explosive with intent to injure.

(16) Exploding a destructive device or any explosive causing great bodily injury.

(17) Exploding a destructive device or any explosive with intent to murder.

(18) Robbery.

(19) Kidnapping.

(20) Taking of a hostage by an inmate of a state prison.

(21) Attempt to commit a felony punishable by death or imprisonment in the state prison for life.

(22) Any felony in which the defendant personally used a dangerous or deadly weapon.

(23) Escape from a state prison by use of force or violence.

(24) Assault with a deadly weapon or force likely to produce great bodily injury.

(25) Any attempt to commit a crime listed in this subdivision other than an assault.

(26) Any offense enumerated in Section 12001.6.

(c) Any person previously convicted of any of the offenses listed in subdivision (b) which conviction results from certification by the juvenile court for prosecution as an adult in adult court under the provisions of Section 707 of the Welfare and Institutions Code, who owns or has in his or her possession or under his or her custody or control any pistol, revolver, or other firearm capable of being concealed upon the person is guilty of a public offense, and shall be punished by imprisonment in a county jail for at least six months and not exceeding one year, or by imprisonment in the state prison. If probation is granted, or if the imposition or execution of sentence is suspended, it shall be a condition of the probation or suspension that the defendant serve at least six months in a county jail.

(d) The court shall apply the minimum sentence as specified in subdivisions (a) and (c) except in unusual cases where the interests of justice would best be served by granting probation or suspending the imposition or execution of sentence without the imprisonment required by subdivisions (a) and (c), or by granting probation or suspending the imposition or execution of sentence with conditions other than those set forth in subdivisions (a) and (c), in which case the court shall specify on the record and shall enter on the minutes the circumstances indicating that the interests of justice would best be served by such a disposition.

SEC. 3. Section 12073 of the Penal Code is amended to read:

12073. (a) Every person in the business of selling, leasing or otherwise transferring a pistol, revolver or other firearm, capable of being concealed upon the person, whether the seller, lessor, or transferor is a retail dealer, pawnbroker, or otherwise, except as provided by this chapter, shall keep a register in which shall be entered the information prescribed in Section 12077.

(b) This section shall not apply to wholesale dealers in their business intercourse with retail dealers, nor to wholesale or retail dealers in the regular or ordinary transport of unloaded firearms as

merchandise to other wholesale or retail dealers by mail, express or other mode of shipment, to points outside of the city or county wherein they are situated.

SEC. 4. Section 12077 of the Penal Code is repealed.

SEC. 5. Section 12077 is added to the Penal Code, to read:

12077. (a) The Department of Justice shall prescribe the form of the register described in Section 12074. Information contained in the register shall be the date and time of sale, make of firearm, peace officer exemption status pursuant to Section 12078 and the agency name, manufacturer's name if stamped on the firearm, model name or number, if stamped on the firearm, if applicable, serial number, other number (if more than one serial number is stamped on the firearm), caliber, type of firearm, if the firearm is new or used, barrel length, color of the firearm, full name of purchaser, purchaser's complete date of birth, purchaser's local address, if current address is temporary, complete permanent address of purchaser, identification of purchaser, purchaser's place of birth (state or country), purchaser's complete telephone number, purchaser's occupation, purchaser's sex, purchaser's physical description, yes or no answer to questions that prohibit purchase including conviction of a felony as described in Section 12021 or an offense described in Section 12021.1, purchaser's status as a mental patient, or whether purchaser is on leave of absence from a mental hospital pursuant to Section 8100 of the Welfare and Institutions Code, whether purchaser is a person who has been adjudicated by a court to be a danger to others or found not guilty by reason of insanity, whether purchaser is a person who has been found incompetent to stand trial or placed under conservatorship by a court pursuant to Section 8103 of the Welfare and Institutions Code, signature of purchaser, signature of salesperson (as a witness to the purchaser's signature), name and complete address of the dealer or firm selling the firearm as shown on the dealers license, the establishment number, if assigned, the dealer's complete business telephone number, and a statement that any person signing a fictitious name or address or knowingly affixing an incorrect birth date is guilty of a misdemeanor.

(b) (1) The original of each dealer's record of sale of a pistol, revolver, or other firearm capable of being concealed upon the person document shall be retained by the dealer in consecutive order. Each book of fifty originals shall become the permanent register of transactions that shall be retained for not less than three years from the date of last transaction and shall be provided for the inspection of any peace officer, Department of Justice employee designated by the Attorney General or agents of the federal Bureau of Alcohol, Tobacco, and Firearms upon the presentation of proper identification.

(2) Dealers shall use ink to complete each document.

(3) The dealer or salesperson making a sale shall ensure that all information is provided legibly. The dealer and salespersons shall be informed that incomplete or illegible information will delay sales.

(4) Each original shall contain instructions regarding the procedure for completion of the form and routing of the form. Dealers shall comply with these instructions which shall include the information set forth in this subdivision.

(5) One firearm transaction shall be reported on each record of sale document.

SEC. 6. Section 12079 of the Penal Code is repealed.

SEC. 7. Section 12080 of the Penal Code is amended to read:

12080. The Department of Justice shall prepare a pamphlet which summarizes California firearms laws as they pertain to persons other than law enforcement officers or members of the armed services. The summary may include such matters as lawful possession, licensing procedures, transportation and use of firearms, acquisition of hunting licenses and the availability of safety training programs. The department shall offer copies of the summary at actual cost to retail firearms dealers who shall have copies of the most current version available for sale to retail purchasers of firearms. Other interested parties may purchase copies directly from the Department of General Services. The pamphlet shall declare that it is merely intended to provide a general summary of laws applicable to firearms and is not designed to provide individual guidance for specific areas. Individuals having specific questions shall be directed to contact their local law enforcement agency or private counsel. The Department of Justice or any other public entity shall be immune from any liability arising from the drafting, publication or dissemination of the pamphlet or any reliance upon it. All receipts from the sale of these pamphlets shall be deposited as reimbursements to the support appropriation for the Department of Justice.

SEC. 8. 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, firearm, 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.

(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. 9. Section 12306 of the Penal Code is repealed.

SEC. 10. The Legislature does not intend, by repealing Section 12079 of the Penal Code, to prohibit an individual from ordering a firearm through the mail.

SEC. 11. This act shall only become operative if Assembly Bill 3707 of the 1987–88 Regular Session is also chaptered.

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## CHAPTER 1395

An act to add Section 4726.1 to the Civil Code, relating to family law.

[Approved by Governor September 26, 1988. Filed with Secretary of State September 27, 1988.]

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

SECTION 1. Section 4726.1 is added to the Civil Code, to read:

4726.1. (a) Upon application by a party in any proceeding where the court has ordered either or both parents to maintain health insurance under Section 4726, the court may 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 wages or earnings of the obligor. The order shall be called a health insurance coverage assignment.

(b) The health insurance coverage assignment may be ordered at the time of trial or entry of a judgment ordering health insurance coverage. The order shall operate as an assignment and shall be binding upon any existing or future employer of the obligated parent upon whom a copy of the order has been served. Any such order of assignment may be modified at any time by the court.

(c) The application shall state that the party seeking the assignment has given the obligor a written notice of his or her intent to seek a health insurance coverage assignment 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 certified mail or personally served at least 15 days prior to the date of the filing of the application. The written notice of intent to seek an assignment required by this paragraph may be given at the time of filing a petition or complaint for support or at any time subsequent thereto.

The obligor may at any time waive the written notice required by this subdivision.

(d) An order made pursuant to this section shall not become effective until 10 days after service by the applicant of the order on the employer or other person providing health insurance to the obligor. 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 under the law to move to quash the order.

(e) An obligor alleged to be in default may move to quash a health insurance coverage assignment order issued under this subdivision within 10 days after service on the obligor of the assignment order by his or her employer or other person providing health insurance coverage if the obligor declares under penalty of perjury that there is an error in that (1) no order to maintain health insurance has been issued under Section 4726; (2) the amount to be withheld for premiums is greater than that permissible under Section 4726 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 or children are or will be otherwise provided health care coverage; or (6) the employer's choice of coverage is inappropriate. The motion and notice of motion to quash the assignment order shall be filed with the court issuing the assignment order within 10 days after service on the obligor of notice of the order by the employer or other person providing health insurance coverage. The clerk of the court shall set the motion to quash for hearing within not less than 15 days, nor more than 20 days, after receipt of the notice of motion; and within five days after receipt of the notice of motion shall deliver a copy of the notice of motion to the district attorney, personally or by first-class mail, and the applicant and the employer or other person providing health insurance, at the appropriate addresses contained in the application by first-class mail. Upon a finding of error, as described above, the court shall quash the assignment.

(f) The employer, or other person providing health insurance, shall take steps to commence coverage, consistent with the order for the health insurance coverage assignment, 10 days after service of the order upon the obligor pursuant to subdivision (d) if the employer or other person providing health insurance 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 shall commence coverage consistent with the assignment order upon 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. If the obligor has made a selection of health coverage inconsistent with the court order, the

selection shall not be superseded unless the child or children to be enrolled in the plan will not be provided benefits or coverage where the child or children reside.

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 shall enroll the child or children in the plan that will reasonably provide benefits or coverage where the child or children reside. If that coverage is not available, the employer or other person providing health insurance shall, within 20 days, return the assignment to the attorney or person initiating the assignment.

(g) An employer or other person providing health insurance who willfully fails to comply with a valid assignment order entered and served upon the employer or other person pursuant to this section shall be liable to the applicant for the amount incurred in health care services which would otherwise have been covered under the insurance policy but for the conduct of the employer or other person providing health insurance which was contrary to the order of assignment under this section. Willful failure of an employer or other person providing health insurance to comply with an order for assignment under this section is punishable as contempt of court pursuant to Section 1218 of the Code of Civil Procedure.

(h) The employer or other person providing health insurance shall be responsible for providing evidence of coverage to both parents or the person having custody of the child and, upon request by the parents or person having custody of the child, for providing all forms and other documentation necessary for the purpose of submitting claims to the insurance carrier which the employer or other person providing health insurance usually provides to insureds.

(i) The employer or other person providing health insurance shall notify the applicant of the order for assignment of the commencement date of the coverage of the children.

(j) If an assignment pursuant to this section is served on an employer or other person providing health insurance and no such coverage is available for the supported child, the employer or other person shall, within 20 days, return the assignment order to the attorney, or person initiating the assignment.

(k) Upon a notice of motion by the obligor, the court shall terminate an order of assignment entered pursuant to this section if one of the following conditions exists: (1) a new order has been issued under Section 4726, which is inconsistent with the existing health insurance coverage assignment; (2) the employer or other person providing health insurance has discontinued health coverage to the obligor; (3) the court determines that there is good cause to terminate the assignment; or (4) the death or emancipation of the child for whom the health insurance has been obtained.

(*l*) No employer shall use any assignment authorized by this section as grounds for refusing to hire a person or for discharging or taking disciplinary action against an employee. An employer who

violates this subdivision may be assessed a civil penalty of a maximum of five hundred dollars ($500).

(m) As used in this section "employer" includes the United States government and any public entity as defined in Section 811.2 of the Government Code.

(n) The Judicial Council shall adopt forms for the orders for health insurance coverage assignment required or authorized by this section, including, but not limited to, the application, the order, and the statement of the obligor's rights. The parties and child shall be sufficiently identified on the forms by the inclusion of birth dates, social security numbers, and any other information deemed necessary by the Judicial Council.

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 five hundred thousand dollars ($500,000), reimbursement shall be made from the State Mandates Claims Fund.

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## CHAPTER 1396

An act to amend Sections 1242.5, 1242.6, 3730, 3755, and 3756 of, and to add Section 3775.5 to, the Business and Professions Code, and to add Section 1276.8 to the Health and Safety Code, relating to respiratory case practitioners, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 26, 1988. Filed with Secretary of State September 27, 1988.]

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

SECTION 1. Section 1242.5 of the Business and Professions Code is amended to read:

1242.5. The department may by regulation authorize unlicensed laboratory personnel who are employed in clinical laboratories in licensed clinics or hospitals, as defined respectively in Sections 1202 and 1250 of the Health and Safety Code, to perform venipuncture, arterial puncture, or skin puncture for the purposes of withdrawing blood or for test purposes, as defined by regulations established by the department. The department shall establish the minimum training required for such persons.

SEC. 1.5. Section 1242.6 of the Business and Professions Code is amended to read:

1242.6. (a) Any registered nurse licensed under the provisions of

Chapter 6 (commencing with Section 2700) of Division 2 may perform arterial puncture, venipuncture, or skin puncture for the purposes of withdrawing blood or for test purposes upon authorization from any licensed physician and surgeon or any licensed dentist.

(b) Any licensed vocational nurse licensed under the provisions of Chapter 6.5 (commencing with Section 2840) of Division 2 may perform arterial puncture, venipuncture, or skin puncture for the purposes of withdrawing blood or for test purposes upon authorization from any licensed physician and surgeon, or any licensed dentist if prior thereto the licensed vocational nurse has been instructed by a physician and surgeon and has demonstrated competence to such physician and surgeon in the proper procedure to be employed when withdrawing blood, or has satisfactorily completed a prescribed course of instruction approved by the Board of Vocational Nurse and Psychiatric Technician Examiners of the State of California or has demonstrated competence to the satisfaction of such board.

(c) Any respiratory care practitioner certified under the provisions of Chapter 8.3 (commencing with Section 3700) of Division 2 may perform arterial puncture, venipuncture, or skin puncture for the purposes of withdrawing blood or for test purposes upon authorization from any licensed physician and surgeon.

SEC. 2. Section 3730 of the Business and Professions Code is amended to read:

3730. All certificates for the practice of respiratory care in this state shall be issued by the examining committee, and all applications for those certificates shall be filed with the examining committee. Except as otherwise required by the director pursuant to Section 164, the certificate issued by the examining committee shall describe the certificate holder as a "respiratory care practitioner certified by the Division of Allied Health Professions of the Board of Medical Quality Assurance."

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 certificate without examination or to take an examination.

The application shall contain other information as the examining committee deems necessary to determine the qualifications of the applicant.

SEC. 3. Section 3755 of the Business and Professions Code is amended to read:

3755. The committee 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 committee may determine unprofessional conduct involving any and all aspects of respiratory care performed by anyone certified 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 less than two hundred dollars ($200) nor more than six hundred dollars ($600) or by imprisonment for a term not less than 60 days nor more than 180 days, or both the fine and imprisonment.

This section shall be operative until January 1, 1991, and on that date is repealed.

SEC. 4. 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 committee if, after investigation and review by one or more respiratory care practitioner consultants of the committee, 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 committee and may include, but not limited to, the following:

(1) A single incidence of gross negligence.

(2) A pattern of inappropriate direct or indirect administration of respiratory care protocols, procedures, therapeutic regimens, or diagnostic testing of 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 Section 3750 or 3755.

(b) The matter shall be presented by the committee'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 committee shall review the petition and any written opposition from the person who has charges brought against him or her, or the committee may hold a hearing in accordance with the provisions of 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 committee is satisfied that reasonable cause exists that is considered by the committee as unprofessional conduct, the committee 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 certificate, license, or registration which shall be determined by the committee in its discretion.

(d) If the committee proceeds pursuant to the provisions of Sections 3755 and 3756 and the person charged passes the professional competency examination administered, the committee 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 committee 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 committee'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.

This section shall be operative until January 1, 1991, and on that date is repealed.

SEC. 5. Section 3775.5 is added to the Business and Professions Code, to read:

3775.5. The application and renewal fee for an inactive certificate shall be fixed by the examining committee in an amount not to exceed one hundred fifty dollars ($150).

SEC. 6. Section 1276.8 is added to the Health and Safety Code, to read:

1276.8. Notwithstanding any other provision of law, including, but not limited to, Section 1276, the following shall apply:

(a) As used in this code, "respiratory care practitioner," "respiratory therapist," "respiratory therapy technician," and "inhalation therapist" mean a respiratory care practitioner certified under the Respiratory Care Practice Act (Chapter 8.3 (commencing with Section 3700) of Division 2 of the Business and Professions Code).

(b) The definition of respiratory care services, respiratory therapy, inhalation therapy, or the scope of practice of respiratory care, shall be as described in Section 3702 of the Business and Professions Code.

(c) Respiratory care may be performed in hospitals, ambulatory or in-home care, and other settings where respiratory care is performed under the supervision of a medical director in accordance

with the prescription of a physician and surgeon. Respiratory care may also be provided during the transportation of a patient, and under any circumstances where an emergency necessitates respiratory care.

(d) In addition to other licensed health care practitioners authorized to administer respiratory care, certified respiratory care practioners may accept, transcribe, and implement the written and verbal orders of a physician and surgeon pertaining to the practice of respiratory care.

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:

There are statutory provisions in the clinical laboratory law which continue to treat respiratory care practitioners as unlicensed persons even though those practitioners are certified under the Respiratory Care Practice Act (Chapter 8.3 (commencing with Section 3700) of Division 2 of the Business and Professions Code). That law also contains provisions which are inconsistent with the Respiratory Care Practice Act. In order that certified practitioners and licensed health facilities are not subject to inconsistent requirements, it is necessary that this act go into immediate effect.

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## CHAPTER 1397

An act to add and repeal Section 9319 of the Welfare and Institutions Code, relating to health, and making an appropriation therefor.

[Approved by Governor September 26, 1988. Filed with Secretary of State September 27, 1988 ]

I am deleting the $149,000 appropriation contained in Section 4 (a) of Assembly Bill No 3771.

This bill would require the California Department of Aging (CDA) to establish a dental care service pilot project in a rural area of the state to serve seniors who are homebound or residing in a residential care facility. It also appropriates $149,000 from the General Fund to the Department for its implementation and specifies that fees received from the project shall be used to offset the cost of the program. In addition, this bill requires a report to the Legislature on the program effectiveness by December 1990.

The demands placed on budget resources require all of us to set priorities. The budget enacted in July 1988 appropriated nearly $44 billion in state funds This amount is more than adequate to provide the necessary essential services provided for by State Government. It is not necessary to put additional pressure on taxpayer funds for programs that fall beyond the priorities currently provided.

Thus, after reviewing this legislation, I have concluded that its merits do not sufficiently outweigh the need this year for funding top priority programs and continuing a prudent reserve for economic uncertainties

It is more appropriate to consider funding the provisions of this bill during the budget process for Fiscal Year 1989–90. Only at that time can we review the relative merits of this program in comparison to all other funding projects. The budget process enables us to weigh all demands on the state's revenues and direct our resources to programs, either new or existing, that have the most merit.

With this deletion, I approve Assembly Bill No. 3771.
GEORGE DEUKMEJIAN, Governor

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

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

(a) Two factors that create a problem in providing dental care for California's elderly who are institutionalized in skilled nursing facilities or confined to their homes, are the rapidly increasing size of the senior population and the lack of public funding available for providing dental services.

(b) By the year 2000, the number of Americans 65 to 75 years of age is expected to increase by 23 percent. The number of those persons 75 years of age or older, growing faster than any other population segment, will increase in that time by 40 percent. By the year 2030, more than 30 million Americans will be 75 years of age or older, which will be up from the 13.5 million figure projected for 1990.

(c) The need to provide dental care among elderly residents in skilled nursing facilities and the homebound is growing at the same time the public seeks relief from the expensive burden of providing long-term care. It is further known that providing necessary dental care can extend the time that the elderly can live productive, healthy lives and avoid costly long term-residential care.

(d) With over 1,000 skilled nursing facilities in California which have more than 115,000 residents, it is expected that the need for dental treatment would be significant. The skilled nursing facilities study commissioned by the California Dental Association in 1986 clearly demonstrated that the skilled nursing facility residents are, in fact, in need of dental care from dentists.

(e) There is a pool of dentists willing to provide care in skilled nursing facilities and to the homebound. Equipment necessary to provide the proper care in these settings is not available. There are no organized services or resources existing in the rural areas of California. A few dentists provide only emergency care.

SEC. 2. Section 9319 is added to the Welfare and Institutions Code, to read:

9319. (a) The Department of Aging shall establish and administer a pilot project in a rural area of the state for the delivery of dental care services to residents of long-term care facilities, intermediate care facilities, and the homebound.

(b) The Department of Aging shall, in the administration of the pilot project, contract with a professional dental organization, component society, or a foundation of that organization with experience in the delivery of care as specified in subdivision (a).

(c) The pilot project shall employ a full-time dentist, or the equivalent. The project may also employ dental assistants and dental hygienists as necessary to carry out the purposes of the project.

(d) The Department of Aging shall provide the pilot project with two portable dental units to be used in the provision of care under this section. The equipment shall meet all of the following requirements:

(1) Each unit shall be totally self-contained and have its own vacuum system, compressor, and associated dental handpieces.

(2) Each unit shall be modular in form, so that they may be disassembled for ease of transportation.

(3) Each unit shall have wheels attached, for ease of movement.

(e) The pilot project shall establish a method for identification of those elderly homebound persons who are in need of acute and routine dental care, shall cooperate with the appropriate area agency on aging in providing services pursuant to this section, and shall establish a program of regular examinations, followup care, and recall examinations for the target population served by the pilot project.

(f) The regional screening program, now used by the Medi-Cal dental fiscal intermediary, shall screen, as necessary, the Medi-Cal patients for whom a prior authorization treatment request has been submitted. When possible, the regional screening consultant shall coordinate his or her examination with the treating dentist. The regional screening program shall evaluate the dental needs set forth in the treatment plan and these findings shall become a part of the utilization review for the Medi-Cal dental program.

(g) Each dentist providing services under this section shall be considered an independent contractor. The state shall assume no liability incurred by those dentists.

(h) This section shall remain in effect only until January 1, 1992, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1992, deletes or extends that date.

SEC. 3. The Department of Aging shall report to the Legislature on the pilot project established pursuant to Section 9319 of the Welfare and Institutions Code no later than the end of the second year of the pilot project. The Department of Aging may contract with any other agency or agencies or with any independent private contractor or contractors for the preparation of the report required by this section. This report shall include a determination of the effectiveness of the pilot project in reaching the target population, and shall include statistical and financial data relating to the project.

The pilot project shall be deemed successful if at least 10 percent of the target population, which would not otherwise receive services, has been served. If less than 10 percent of the population has been served, the pilot project shall be deemed to have failed and shall not be continued.

SEC. 4. (a) The sum of one hundred forty-nine thousand dollars ($149,000) is hereby appropriated from the General Fund to the Department of Aging, to be used for the 1988–89 fiscal year to implement this act.

(b) Fees charged to private patients and reimbursements from

Medi-Cal dental billings which are received by the pilot project for services rendered pursuant to Section 9319 of the Welfare and Institutions Code shall be used to offset the costs incurred by the Department of Aging. The project contractor shall be responsible for billing all parties for whom the services were performed including third party payors and the Medi-Cal program. The contractor shall make every effort to collect all outstanding fees.

(c) It is the intent of the Legislature that the pilot project shall be funded through the Budget Act for fiscal years following the 1988–89 fiscal year, but that the amount appropriated by this act shall be considered a full fiscal year level of funding for the pilot project and the amounts provided in subsequent fiscal years for the pilot project shall not exceed this amount.

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## CHAPTER 1398

An act to amend Sections 288 and 868.5 of the Penal Code, relating to crime.

[Approved by Governor September 26, 1988. Filed with Secretary of State September 27, 1988.]

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

SECTION 1. Section 288 of the Penal Code is amended to read:

288. (a) Any person who shall willfully and lewdly commit any lewd or lascivious act including any of the acts constituting other crimes provided for in Part 1 of this code upon or with the body, or any part or member thereof, of a child under the age of 14 years, with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of that person or of the child, shall be guilty of a felony and shall be imprisoned in the state prison for a term of three, six, or eight years.

(b) Any person who commits an act described in subdivision (a) by use of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person, shall be guilty of a felony and shall be imprisoned in the state prison for a term of three, six, or eight years.

(c) Any person who commits an act described in subdivision (a) with the intent described in that subdivision, and the victim is a child of 14 or 15 years, and the defendant is at least 10 years older than the child, shall be guilty of a public offense and shall be imprisoned in the state prison for one, two, or three years, or by imprisonment in the county jail for not more than one year.

(d) In any arrest or prosecution under this section the peace officer, the district attorney, and the court shall consider the needs of the child victim and shall do whatever is necessary and constitutionally permissible to prevent psychological harm to the

child victim.

(e) Upon the conviction of any person for a violation of subdivision (a) or (b), the court may, in addition to any other penalty or fine imposed, order the defendant to pay an additional fine not to exceed five thousand dollars ($5,000). In setting the amount of the fine, the court shall consider any relevant factors including, but not limited to, the seriousness and gravity of the offense, and the circumstances of its commission, whether the defendant derived any economic gain as a result of the crime, and the extent to which the victim suffered economic losses as a result of the crime. Every fine imposed and collected under this section 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 pursuant to Section 13837.

If the court orders a fine to be imposed pursuant to this subdivision, 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. 2. Section 868.5 of the Penal Code is amended to read:

868.5. (a) Notwithstanding any other provision of law, a prosecuting witness in a case involving a violation of Section 243.4, 261, 273a, 273d, 285, 286, 288, 288a, 289, 647.6, or former Section 647a, or a violation of subdivision (1) of Section 314, shall be entitled for support to the attendance of up to two persons of his or her own choosing, one of whom may be a witness, at the preliminary hearing and at the trial, or at a juvenile court proceeding, during the testimony of the prosecuting witness. Only one of those support persons may accompany the witness to the witness stand, although the other may remain in the courtroom during the witness' testimony. The person or persons so chosen shall not be a person described in Section 1070 of the Evidence Code unless the person or persons are related to the prosecuting witness as a parent, guardian, or sibling and do not make notes during the hearing or proceeding.

(b) If the person or persons so chosen are also prosecuting witnesses, the prosecution shall present evidence that the person's attendance is both desired by the prosecuting witness for support and will be helpful to the prosecuting witness. Upon that showing, the court shall grant the request unless information presented by the defendant or noticed by the court establishes that the support person's attendance during the testimony of the prosecuting witness would pose a substantial risk of influencing or affecting the content of that testimony. In the case of a juvenile court proceeding, the judge shall inform the support person or persons that juvenile court proceedings are confidential and may not be discussed with anyone not in attendance at the proceedings. In all cases, the judge shall admonish the support person or persons to not prompt, sway, or influence the witness in any way. Nothing in this section shall preclude a court from exercising its discretion to remove a person

from the courtroom whom it believes is prompting, swaying, or influencing the witness.

(c) The testimony of the person or persons so chosen who are also prosecuting witnesses shall be presented before the testimony of the prosecuting witness. The prosecuting witness shall be excluded from the courtroom during that testimony. Whenever the evidence given by that person or those persons would be subject to exclusion because given before the corpus delicti has been established, the evidence shall be admitted subject to the court's or the defendant's motion to strike that evidence from the record if the corpus delicti is not later established by the testimony of the prosecuting witness.

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.

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## CHAPTER 1399

An act to add Section 94311.5 to the Education Code, and to amend Section 11100 of the Vehicle Code, relating to driving schools.

[Approved by Governor September 26, 1988. Filed with Secretary of State September 27, 1988 ]

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

SECTION 1. Section 94311.5 is added to the Education Code, to read:

94311.5. No person shall own or operate a school, or give instruction, for the driving of motortrucks of three or more axles which are more than 6,000 pounds unladen weight unless both of the following conditions are met:

(a) The school or instruction has been approved or authorized under either subdivision (c) or (d) of Section 94311.

(b) The department has certified, in addition, that the school, or instruction, meets all standards for truck driving schools and instruction established by the Department of Motor Vehicles as of January 1, 1988, including, but not limited to, vehicle inspection, insurance requirements, and personnel background checks.

SEC. 2. Section 11100 of the Vehicle Code is amended to read:

11100. (a) No person shall own or operate a driving school or give driving instruction for compensation, unless a license therefor has been secured from the department.

(b) This section does not apply to the ownership or operation of any school, or the giving of instruction, for the driving of motortrucks of three or more axles which are more than 6,000 pounds unladen

weight.

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## CHAPTER 1400

An act to add Section 69746.5 to the Government Code, and to add Section 7016 to the Penal Code, relating to courts.

[Approved by Governor September 26, 1988. Filed with Secretary of State September 27, 1988.]

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

SECTION 1. Section 69746.5 is added to the Government Code, to read:

69746.5. In a county of the 14th class, at least one session of the superior court may be held at a location designated by the board of supervisors which is not less than 40 miles, nor more than 50 miles, from the site of the county courthouse. However, at such time on or after July 1, 1990, as the board of supervisors finds that there are sufficient funds for this purpose, the board of supervisors shall designate a location therefor which is within a judicial district with a population of more than 40,000 as determined pursuant to Section 71043.

SEC. 2. Section 7016 is added to the Penal Code, to read:

7016. The Department of Corrections may contract with the County of Kern for the construction and financing of a courthouse and related facilities. Under this contract, the Department of Corrections is authorized to make payments to the County of Kern in consideration for the construction and financing of the courthouse and related facilities, provided that the sums paid to the county are realized from savings to the department by the location of the courthouse in the proximity of the California Correctional Facility in Tehachapi.

In accordance with the contract, the Department of Corrections is authorized to make annual payments to the County of Kern from the approximate savings realized in each fiscal year. These funds shall come from the operating budget of the department. In negotiating this contract, the Department of Corrections shall note the extent to which the courthouse will serve the interest of the County of Kern independent of matters pertaining to individuals in state custody, and seek appropriate county participation in funding.

## CHAPTER 1401

An act to amend Section 25363 of the Health and Safety Code, relating to hazardous substances.

[Approved by Governor September 26, 1988. Filed with Secretary of State September 27, 1988.]

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

SECTION 1. Section 25363 of the Health and Safety Code is amended to read:

25363. (a) Any party found liable for any costs or expenditures recoverable under this chapter who establishes by a preponderance of the evidence that only a portion of those costs or expenditures are attributable to that party's actions, shall be required to pay only for that portion.

(b) If the trier of fact finds the evidence insufficient to establish each party's portion of costs or expenditures under subdivision (a), the court shall apportion those costs or expenditures, to the extent practicable, according to equitable principles, among the defendants.

(c) The state account shall pay any portion of the judgment in excess of the aggregate amount of costs or expenditures apportioned under subdivisions (a) and (b).

(d) The standard of liability for any costs or expenses recoverable pursuant to this chapter is strict liability.

(e) Any person who has incurred removal or remedial action costs in accordance with this chapter may seek contribution or indemnity from any person who is liable pursuant to this chapter, except that no claim may be asserted against a person whose liability has been determined and which has been or is being, fully discharged pursuant to Section 25356.6, or against a person who is actively participating in a pending apportionment proceeding pursuant to Section 25356.6. An action to enforce a claim may be brought as a cross-complaint by any defendant in an action brought pursuant to Section 25360, or in a separate action after the person seeking contribution or indemnity has paid removal or remedial action costs in accordance with this chapter. In resolving claims for indemnity or contribution, the court may allocate costs among liable parties using those equitable factors which are appropriate.

# CHAPTER 1402

An act to amend Sections 1810.3 and 1810.12 of, and to repeal Section 1810.9 of, the Civil Code, relating to retail sales.

[Approved by Governor September 26, 1988. Filed with Secretary of State September 27, 1988.]

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

SECTION 1. Section 1810.3 of the Civil Code is amended to read:

1810.3. (a) Except in the case of an account which the seller deems to be uncollectible or with respect to which delinquency collection procedures have been instituted, the seller of any retail installment account shall mail or deliver to the buyer for each billing cycle at the end of which there is an outstanding debit balance in excess of one dollar ($1) in that account or with respect to which a finance charge is imposed, a statement or statements which the buyer may retain, setting forth in accordance with subdivision (c) each of the following items to the extent applicable:

(1) The outstanding balance in the account at the beginning of the billing cycle, using the term "previous balance."

(2) The amount and date of each extension of credit or the date the extension of credit is debited to the account during the billing cycle and, unless previously furnished, a brief identification of any goods or services purchased or other extension of credit.

(3) The total amounts credited to the account during the billing cycle for payments, using the term "payment," and for other credits, including returns, rebates of finance charges, and adjustments, using the term "credits," and unless previously furnished, a brief identification of each of the items included in the other credits.

(4) The amount of any finance charge, using the term "finance charge," debited to the account during the billing cycle, itemized and identified to show the amounts, if any, due to the application of periodic rates and the amount of any other charge included in the finance charge, such as a minimum charge, using appropriate descriptive terminology.

(5) Each periodic rate, using the term "periodic rate" (or "rates"), that may be used to compute the finance charge (whether or not applied during the billing cycle), and the range of balances to which it is applicable.

(6) The balance on which the finance charge was computed, and a statement of how that balance was determined. If any balance is determined without first deducting all credits during the billing cycle, that fact and the amount of the credits shall also be disclosed.

(7) The closing date of the billing cycle and the outstanding balance in the account on that date, using the term "new balance," accompanied by the statement of the date by which, or the period, if any, within which, payment must be made to avoid additional

finance charges.

(b) The seller shall mail or deliver the statements required by subdivision (a) at least 14 days prior to any date or the end of any time period required to be disclosed under paragraph (7) of subdivision (a) in order for the consumer to avoid an additional finance or other charge. A seller that fails to meet this requirement shall not collect any finance or other charges imposed as a result of the failure.

(c) The disclosures required by subdivision (a) may be made on the face of the periodic statement or on its reverse side. In addition, the disclosures required by subdivision (a) may be made on the periodic statement supplemented by separate statement forms if they are enclosed together and delivered to the customer at the same time and if all of the following conditions are met:

(1) The disclosures required by paragraph (1) of subdivision (a) shall appear on the face of the periodic statement. If the amounts and dates of the charges and credits required to be disclosed under paragraphs (2) and (3) of subdivision (a) are not itemized on the face or reverse side of the periodic statement, they shall be disclosed on a separate statement or separate slips which shall accompany the periodic statement and identify each charge and credit and show the date and amount thereof. Identification of goods or services purchased may be made on an accompanying slip or by symbol relating to an identification list printed on the statement. If the disclosures required under paragraph (4) of subdivision (a) are not itemized on the face or reverse side of the periodic statement, they shall be disclosed on a separate statement which shall accompany the periodic statement.

(2) The disclosures required by paragraph (5) of subdivision (a) and a reference to the amounts required to be disclosed under paragraphs (4) and (6) of subdivision (a), if not disclosed together on the face or the reverse side of the periodic statement, shall appear together on the face of a single supplemental statement which shall accompany the periodic statement.

(3) The face of the periodic statement shall contain one of the following notices, as applicable: "NOTICE: See reverse side for important information" or "NOTICE: See accompanying statement(s) for important information" or "NOTICE: See reverse side and accompanying statement(s) for important information."

(4) The disclosures shall not be separated so as to confuse or mislead the customer, or to obscure or detract attention from the information required to be disclosed.

(d) If any change is to be made in terms of a retail installment account previously disclosed to the buyer, the seller shall mail or deliver to the buyer written disclosure of the proposed change not less than 30 days prior to the effective date of the change or 30 days prior to the beginning of the billing cycle within which the change will become effective, whichever is the earlier date. When the change involves a reduction of any component of a finance charge

or other charge, the notice shall be sufficient if it appears on or accompanies the periodic statements mailed or delivered to buyers receiving periodic statements in the ordinary course of business.

(e) (1) If any outstanding credit balance in excess of one dollar ($1) exists in a retail installment account, the seller shall mail or deliver to the buyer at the end of the billing cycle in which the credit balance is created either of the following:

(A) A cash refund in the amount of the outstanding credit.

(B) A statement setting forth the credit balance, and thereafter shall mail or deliver to the buyer a statement setting forth the credit balance no fewer than two additional times during the six-month period following creation of the credit balance.

(2) If the credit balance exists for a period of 90 days, the seller shall, at his or her option, do either of the following:

(A) Notify the buyer of his or her right to request and receive a cash refund in the amount of the outstanding credit balance in two successive statements covering, respectively, each of the two successive billing cycles immediately following the 90-day period. The notice is to be accomplished by a clear and conspicuous disclosure on or enclosed with each of the two successive statements, each of which shall be accompanied by a self-addressed return envelope. The disclosure shall contain the following information and may be in the following form:

> "We owe you _____. Your credit balance will be refunded on request. If you don't request a refund, six months from the first appearance of a 'credit balance' on your bill, your credit balance will be refunded automatically.
>
> "If your credit balance is $1.00 or less, it will not be refunded unless requested, and after 6 months, it will not be credited against future purchases.
>
> "You may obtain a refund of your credit balance by mail by presenting your statement at our store or by returning the top half of your statement in the enclosed envelope."

If between the sending of the first notice and the sending of the second notice required by this subparagraph, the outstanding credit balance is refunded to the buyer or otherwise disposed of, the sending of the second notice shall not be required.

(B) Refund to the buyer the outstanding credit balance at any time after the credit balance is created in the buyer's account and prior to the date by which the first notice of the outstanding balance would have been sent had the seller elected to proceed under subparagraph (A).

(f) (1) If a retail installment account with an outstanding credit balance in excess of one dollar ($1) which has been determined to be correct by the seller is dormant for a period of 180 days after the credit balance is created in the buyer's account, the seller shall mail or deliver a refund in the amount of the outstanding credit balance

to the buyer at the buyer's last known address.

(2) If any refund is returned to the seller with a notification to the effect that the addressee is not located at the address to which it was sent, the seller shall make one remailing of the refund with an address correction request, and shall mail the refund to the corrected address, if it is obtained.

(3) If the refund reflecting an outstanding credit balance in excess of twenty-five dollars ($25) is again returned, the seller shall reinstate the full amount of the outstanding credit balance on the buyer's account to be retained and credited against future purchases for one year from the date on which the remailed refund was returned. The seller may continue to attempt to obtain a current mailing address for the buyer by whatever means the seller deems appropriate. Except as provided in subdivision (g), the seller shall not be required to take any further action with respect to sending any statement of the credit balance or otherwise with respect to the credit balance, unless the buyer of the account thereafter requests a refund of the credit balance, in which event the seller shall either make the refund or provide a written explanation as provided in paragraph (5) of this subdivision.

(4) If a remailed refund reflecting an outstanding credit balance of twenty-five dollars ($25) or less is again returned, the seller, except as provided in subdivision (g), shall not be required to take any further action with respect to sending any statement of the credit balance to the buyer or otherwise with respect to the credit balance, unless the buyer of the account thereafter requests a refund of the credit balance, in which event the seller shall either make the refund or provide a written explanation as provided in paragraph (5) of this subdivision.

(5) If a buyer requests, in person or by mail, a refund of a credit balance in any amount which has been reflected at any time on the buyer's account, the seller shall, within 30 days of receipt of the request, either refund the amount requested, or furnish the customer with a written explanation, with supporting documentation when available, of the reasons for refusing to refund the amount requested.

(6) If a buyer, in writing, requests a seller to retain an outstanding credit balance on his or her account, the seller shall not be required to give notification as otherwise required by subdivisions (e) and (f).

(g) If an outstanding credit balance remains unrefundable for seven years from the date it was created in the buyer's account, then the amount of the buyer's outstanding credit balance shall escheat to the state as property included within Section 1520 of the Code of Civil Procedure. Those funds shall be paid or delivered to the Controller, and may thereafter be claimed, as specified in Chapter 7 (commencing with Section 1500) of Title 10 of Part 4 of the Code of Civil Procedure.

(h) For the purposes of this section, an outstanding credit balance is created at the end of the billing cycle in which the credit balance

is first recorded on a buyer's account and is created anew at the end of the billing cycle in which the recorded amount of an existing credit balance is changed because of the buyer's use of his or her account.

SEC. 2. Section 1810.9 of the Civil Code is repealed.

SEC. 3. Section 1810.12 of the Civil Code is amended to read:

1810.12. Notwithstanding Section 1810.4, a seller or holder of a retail installment account may, subject to the provisions of subdivision (d) of Section 1810.3, provide that for each installment in default for a period of not less than 10 days the buyer shall pay a delinquency charge in an amount not in excess of 5 percent of the installment or five dollars ($5), whichever is less, but a minimum charge of one dollar ($1) may be made. Only one delinquency charge may be collected on any installment regardless of the period during which it remains in default. No delinquency charge shall be imposed for any default of payment on any purchase made prior to the mailing or delivery to the buyer of the written disclosure concerning the delinquency charge provided by the seller or holder of a retail installment account pursuant to subdivision (d) of Section 1810.3. Payments timely received by the seller under a written extension or deferral agreement shall not be subject to any delinquency charge. The agreement may also provide for payment of any actual and reasonable costs of collection occasioned by removal of the goods from the state without written permission of the holder, or by the failure of the buyer to notify the holder of any change of residence, or by the failure of the buyer to communicate with the holder for a period of 45 days after any default in making payments due under the 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.

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## CHAPTER 1403

An act to amend Sections 11837 and 11837.1 of the Health and Safety Code, and to amend Section 23161 of the Vehicle Code, relating to alcohol and drug abuse programs.

[Approved by Governor September 26, 1988. Filed with Secretary of State September 27, 1988.]

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

SECTION 1. Section 11837 of the Health and Safety Code is amended to read:

11837. (a) Pursuant to the provisions of law relating to suspension of a person's privilege to operate a motor vehicle upon conviction for driving while under the influence of an alcoholic beverage or under the combined influence of an alcoholic beverage and any drug, as set forth in paragraph (3) or (4) of subdivision (a) of Section 13352 of the Vehicle Code, the Department of Motor Vehicles shall restrict the driving privilege pursuant to Section 13352.5 of the Vehicle Code, if the court has notified the department pursuant to Section 13352.5 of the Vehicle Code that the person convicted of that offense has consented to participate for at least one year in a program designed to offer alcohol services to problem drinkers that is licensed pursuant to this chapter.

(b) In determining whether to refer a person, who is ordered to participate in a program pursuant to Section 23161, 23166, 23171, 23176, 23181, 23186, or 23191 of the Vehicle Code, to a licensed one-year or 30-month program, the court may consider any relevant information about the person made available pursuant to a presentence investigation, which is permitted but not required under Section 23205 of the Vehicle Code, or other screening procedure. That information shall not be furnished, however, by any person who also provides services in a privately operated, licensed program or who has any direct interest in a privately operated, licensed program. In addition, the court shall obtain from the Department of Motor Vehicles a copy of the person's driving record to determine whether the person is eligible to participate in a licensed one-year or 30-month program pursuant to this chapter.

(c) The court may, as a condition of probation, refer a first offender to a licensed program pursuant to Section 23161 or 23181 of the Vehicle Code to attend all of the education, group counseling, and interview sessions described in Sections 9834, 9836, and 9838 of Title 9 of the California Code of Regulations if ordered to participate in six, nine, or 12 months of program activities. Notwithstanding Section 13352.5 of the Vehicle Code, if a first offender is referred to a licensed program pursuant to Section 23161 or 23181 of the Vehicle Code, that person may participate in a program if convicted of another offense punishable under Section 23165 or 23185 of the Vehicle Code.

(d) The court may, subject to Sections 11837.3 and 11838.2 and as a condition of probation, refer a person to a licensed program, even though the person's privilege to operate a motor vehicle is restricted, suspended, or revoked. A one-year program described in Section 23166 or 23186 of the Vehicle Code or a 30-month program described in Section 23171, 23176, or 23191 of the Vehicle Code may include treatment of family members and significant other persons related to the convicted person with the consent of those family members and others as described in subdivision (e) of Section 9838 of Title 9 of the California Administrative Code, if there is no increase in the costs of the program to the convicted person.

(e) As used in this chapter, "program" means a program which

has been recommended by the county board of supervisors to the department and possesses a valid license issued by the department.

SEC. 2. Section 11837.1 of the Health and Safety Code is amended to read:

11837.1. (a) In utilizing any program defined in subdivision (e) of Section 11837, the court may require periodic reports concerning the performance of each person referred to and participating in a program. The program shall provide the court, the Department of Motor Vehicles, and the person referred to and participating in a program, with an immediate report of any failure of the person to comply with the program's rules and policies.

(b) (1) If, at any time after entry into or while participating in a program, a participant who is referred to a one-year program described in Section 23166 or 23186 of the Vehicle Code fails to comply with the rules and policies of the program, and that fact is reported, the Department of Motor Vehicles shall revoke or suspend the privilege of that person to operate a motor vehicle for the period prescribed by law in accordance with Section 13352.5 of the Vehicle Code, except as otherwise provided in this section. The Department of Motor Vehicles shall notify the person and the court of its intended action and shall inform the person of the opportunity to be reinstated in the program and to avoid suspension of the driving privilege.

(2) Notwithstanding paragraph (1), the Department of Motor Vehicles shall not suspend the driving privilege pursuant to paragraph (1) if the court, upon the petition of the person, determines that the person should be reinstated in the one-year program. The determination by the court shall be made within 45 days of the notice from the department of the intended action or such additional time, not to exceed an additional 45 days, for the determination as is required, ordered, and transmitted to the Department of Motor Vehicles by the court, which additional time is not caused by any action or failure to act by the person. Upon timely presentation by the person to the Department of Motor Vehicles of evidence satisfactory to the Department of Motor Vehicles that the court of jurisdiction has consented to the person's reinstatement in the program and that the person is currently participating in the program, the Department of Motor Vehicles shall continue in effect the restriction of the driving privilege prescribed by Section 13352.5 of the Vehicle Code unless the person has previously been reinstated in the program on two or more prior occasions, in which case the department shall suspend or revoke the driving privilege for the time prescribed in paragraph (3) or (4) of subdivision (a) of Section 13352 of the Vehicle Code. If the court fails to grant the person's petition for reinstatement in the program, the court shall suspend the person's driving privilege until the time the person's driving privilege is suspended or revoked by the Department of Motor Vehicles pursuant to subdivision (d) of Section 13352.5 of the Vehicle Code.

(c) If, at any time after referral to or while participating in a

program, a participant who is referred to a one-year program pursuant to Section 23166 or 23186 of the Vehicle Code or to a 30-month program pursuant to Section 23171, 23176, or 23191 of the Vehicle Code, refuses, for any reason, to consent to a chemical test that he or she is required to submit to pursuant to Section 23157 of the Vehicle Code, his or her participation in the program shall be terminated and, the Department of Motor Vehicles shall immediately suspend or revoke his or her privilege to operate a motor vehicle for the period prescribed in Section 13352 of the Vehicle Code, according to the offense for which he or she was convicted immediately prior to referral to the program. The period of suspension or revocation shall be in addition to the period of suspension imposed by the Department of Motor Vehicles pursuant to Section 13353 of the Vehicle Code.

(d) If the department withdraws the license of a program, the department shall immediately notify the Department of Motor Vehicles of those persons who do not commence participation in a licensed program within 21 days from the date of the withdrawal of the license of the program in which the persons were previously participating. The Department of Motor Vehicles shall suspend or revoke, for the period prescribed by law, the privilege to operate a motor vehicle of each of those persons referred to a one-year program pursuant to Section 23166 or 23186 of the Vehicle Code or to a 30-month program pursuant to Section 23171, 23176, or 23191 of the Vehicle Code.

SEC. 3. Section 23161 of the Vehicle Code is amended to read:

23161. (a) Except as provided in subdivision (f), if the court grants probation to any person punished under Section 23160, in addition to the provisions of Section 23206 and any other terms and conditions imposed by the court, the court shall impose as a condition of probation that the person be subject to one of the following:

(1) Be confined in the county jail for at least 48 hours but not more than six months and pay a fine of at least three hundred ninety dollars ($390) but not more than one thousand dollars ($1,000). The court may order the Department of Motor Vehicles to suspend the privilege to operate a motor vehicle pursuant to paragraph (1) of subdivision (a) of Section 13352 when this condition of probation is imposed.

(2) Pay a fine of at least three hundred ninety dollars ($390) but not more than one thousand dollars ($1,000) and have the privilege to operate a motor vehicle restricted for 90 days to necessary travel to and from that person's place of employment and to and from the program described in subdivision (b) and, if driving a motor vehicle is necessary to perform the duties of the person's employment, restricted to driving in that person's scope of employment.

(b) In any county where the board of supervisors has approved such a program or programs, the court shall also impose as a condition of probation that the driver shall participate in, and successfully complete, an alcohol or drug education program, or both

of these programs, in the driver's county of residence or employment, as designated by the court.

(c) Each county which has approved an alcohol or drug education program or programs shall make provision for persons who cannot afford the program fee, in order to enable those persons to participate. The county may require that the program report the failure of a person referred to the program to enroll in the program to the referring court.

(d) In order to assure effectiveness of the alcohol or drug education program, the county shall provide, as appropriate, services to ethnic minorities, women, youth, or any other group that has particular needs related to the program.

(e) (1) Any person required to successfully complete an alcohol or drug education program as a condition of probation shall enroll in the program and, except when enrollment is required in a program that is required to report failures to enroll to the court, shall furnish proof of the enrollment to the court within the period of time and in the manner specified by the court. The person shall also participate in and successfully complete the program and, excepting when the person is required to enroll in a program that is required to report unsuccessful program completion to the court, shall furnish proof of successful completion within the period of time and in the manner specified by the court. The court shall revoke the person's probation pursuant to Section 23207, except for good cause shown, for the failure to comply with this paragraph.

(2) An alcohol or drug education program shall report to the court within the period of time and in the manner specified by the court any person who fails to successfully complete the program.

(3) The court, in establishing the reporting requirements in this subdivision, shall consult with the county alcohol program administrator.

(f) Notwithstanding subdivision (a), if the offense occurred in a vehicle requiring a driver with a class 1 or class 2 driver's license or with a certificate issued pursuant to Section 12804.1, the court shall upon conviction order the department to suspend the driver's privilege pursuant to paragraph (1) of subdivision (a) of Section 13352.

# CHAPTER 1404

An act to amend Section 33385 of the Health and Safety Code, relating to redevelopment.

[Approved by Governor September 26, 1988. Filed with Secretary of State September 27, 1988.]

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

SECTION 1. Section 33385 of the Health and Safety Code is amended to read:

33385. (a) The legislative body of a city or county shall call upon the residents and existing community organizations in a redevelopment project area, within which a substantial number of low- and moderate-income families are to be displaced by the redevelopment project, to form a project area committee.

(b) The legislative body shall, by resolution, adopt a procedure pursuant to this section for the formation of the project area committee. The procedure shall include, but not be limited to, all of the following:

(1) Publicizing the opportunity to serve on the project area committee.

(2) Conduct by the agency of a minimum of one public meeting to explain the establishment of, functions of, and opportunity to serve on, the project area committee. At the public meeting, the agency shall distribute copies of the procedure adopted pursuant to this subdivision, the redevelopment plan or the pertinent portions thereof, and any other materials the agency determines would be useful.

(3) Providing published notice of all meetings, hearings, or plebiscites conducted by, or on behalf of, the agency or legislative body relative to the formation and selection of the project area committee in the same manner as specified in subdivision (a) of Section 65090 of the Government Code.

(4) Providing written notice to all residents and businesses in the project area of all meetings, hearings, or plebiscites conducted by, or on behalf of, the agency or legislative body relative to the formation and selection of the project area committee. This mailed notice requirement shall only apply when mailing addresses to all individuals and businesses, or to all occupants, are obtainable by the agency at a reasonable cost. The notice shall be mailed by first-class mail, but may be addressed to "occupant." In lieu of providing separate notice for each meeting, hearing, or plebiscite, the agency may provide a single notice pursuant to this paragraph stating all dates, times, and locations of any meetings, hearings, and plebiscites relative to the formation and selection of the project area committee.

If the agency has acted in good faith to comply with the notice requirements of this paragraph, the failure of the agency to provide

the required notice to residents or businesses unknown to the agency or whose addresses cannot be obtained at a reasonable cost, shall not, in and of itself, invalidate the formation or actions of the project area committee.

(5) Any other forms of assistance which the legislative body requires in connection with the formation of the project area committee.

(c) The project area committee shall include, when applicable, residential owner occupants, residential tenants, business owners, and representatives of existing organizations within the project area. The members of the committee shall serve without compensation.

(d) The legislative body shall approve a representative project area committee in each project area within 60 days after the project area is selected.

(e) For project areas selected prior to March 7, 1973, the legislative body may, but shall not be required to, call upon the residents and existing community organizations to form a project area committee.

(f) If the project will not displace a substantial number of low- and moderate-income families the agency shall either call upon the residents and existing community organizations to form a project area committee or the agency shall consult with, and obtain the advice of, residents and community organizations as provided for project area committees in Section 33386 and provide such persons and organizations with the redevelopment plan prior to submitting it to the legislative body.

(g) Nothing contained in this section shall prevent an agency, or the legislative body of any city or county, from creating any other committee for a project area. However, these committees shall not be merged into the project area committee subsequent to the formation thereof and the members of these other committees shall not vote in meetings of the project area committee.

(h) The agency may charge fees to persons purchasing or leasing property from the agency in the project area and to persons participating in redevelopment of the project area under an owner participation agreement to defray any cost to the agency or legislative body in implementing this section.

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.

# CHAPTER 1405

An act to amend Sections 712.010, 712.020, 1174.2, and 1174.3 of the Code of Civil Procedure, relating to real property.

[Approved by Governor September 26, 1988. Filed with Secretary of State September 27, 1988.]

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

SECTION 1. Section 712.010 of the Code of Civil Procedure is amended to read:

712.010. After entry of a judgment for possession or sale of property, a writ of possession or sale shall be issued by the clerk of the court upon application of the judgment creditor and shall be directed to the levying officer in the county where the judgment is to be enforced. The application shall include a declaration under penalty of perjury stating the daily rental value of the property as of the date the complaint for unlawful detainer was filed. A separate writ shall be issued for each county where the judgment is to be enforced. Writs may be issued successively until the judgment is satisfied, except that a new writ may not be issued for a county until the expiration of 180 days after the issuance of a prior writ for that county unless the prior writ is first returned.

SEC. 2. Section 712.020 of the Code of Civil Procedure is amended to read:

712.020. A writ of possession or sale issued pursuant to this division shall require the levying officer to whom it is directed to enforce the judgment and shall include the following information:

(a) The date of issuance of the writ.

(b) The title of the court where the judgment for possession or sale is entered and the cause and number of the action.

(c) The name and address of the creditor and the name and last known address of the judgment debtor.

(d) The date the judgment was entered, and the date of any subsequent renewals, and where entered in the records of the court.

(e) The daily rental value of the property and, if the judgment for possession or sale includes a money judgment, the amount required to satisfy the money judgment on the date the writ is issued and the amount of interest accruing daily on the principal amount of the judgment from the date the writ is issued.

(f) Whether any person has requested notice of sale under the judgment and, if so, the name and address of such person.

(g) Any other information required to be included in the particular writ.

SEC. 3. Section 1174.2 of the Code of Civil Procedure is amended to read:

1174.2. (a) In an unlawful detainer proceeding involving residential premises after default in payment of rent and in which

the tenant has raised as an affirmative defense a breach of the landlord's obligations under Section 1941 of the Civil Code or of any warranty of habitability, the court shall determine whether a substantial breach of these obligations has occurred. If the court finds that a substantial breach has occurred, the court shall (1) determine the reasonable rental value of the premises in its untenantable state to the date of trial, (2) deny possession to the landlord and adjudge the tenant to be the prevailing party, conditioned upon the payment by the tenant of the rent that has accrued to the date of the trial as adjusted pursuant to this subdivision within a reasonable period of time not exceeding five days, from the date of the court's judgment or, if service of the court's judgment is made by mail, the payment shall be made within the time set forth in Section 1013, and (3) except as otherwise provided in subdivision (b), award the tenant costs and attorneys' fees if provided by, and pursuant to, any statute or the contract of the parties. The court shall, however, award possession of the premises to the landlord if the tenant fails to pay all rent accrued to the date of trial, as determined due in the judgment, within the period prescribed by the court pursuant to this subdivision. The tenant shall, however, retain any rights conferred by Section 1174.

(b) If the court determines that there has been no substantial breach of Section 1941 of the Civil Code or of any warranty of habitability by the landlord or if the tenant fails to pay all rent accrued to the date of trial, as required by the court pursuant to subdivision (a), then judgment shall be entered in favor of the landlord, and the landlord shall be the prevailing party for the purposes of awarding costs or attorneys' fees pursuant to any statute or the contract of the parties.

(c) As used in this section, "substantial breach" means the failure of the landlord to comply with applicable building and housing code standards which materially affect health and safety.

(d) Nothing in this section is intended to deny the tenant the right to a trial by jury.

SEC. 4. Section 1174.3 of the Code of Civil Procedure is amended to read:

1174.3. (a) Any occupant not named in the judgment for possession who occupied the premises on the date of the filing of the action may object to enforcement of the judgment against that occupant by filing a claim of right to possession as prescribed in this section. A claim of right to possession may be filed at any time after service or posting of the writ of possession pursuant to subdivision (a) or (b) of Section 715.020, up to and including the time at which the levying officer returns to effect the eviction of those named in the judgment of possession. Filing the claim of right to possession shall constitute a general appearance for which a fee shall be collected as provided in Section 72056 of the Government Code. Section 68511.3 of the Government Code applies to the claim of right to possession.

(b) The court issuing the writ of possession of real property shall

set a date or dates when the court will hold a hearing to determine the validity of objections to enforcement of the judgment specified in subdivision (a). An occupant of the real property for which the writ is issued may make an objection to eviction either at the court or to the levying officer at the premises at the time of the eviction.

If a claim of right to possession is completed and presented to the sheriff, marshal, or other levying officer, the officer shall forthwith (1) stop the eviction of occupants at the premises, and (2) provide a receipt to the claimant indicating the date and time the completed form was received, and (3) return a copy of the completed claim of right to possession to the court issuing the writ of possession of real property.

If the claim of right to possession is completed and filed with the court, the sheriff, marshal, or other levying officer shall forthwith stop the eviction of the occupants at the premises.

(c) A claim of right to possession is effected by any of the following:

(1) Presenting to the sheriff, marshal, or other levying officer a completed form, as prescribed in this section, and delivering to the court within 48 hours after its presentation, an amount equal to 15 days' rent together with the appropriate fee or form for proceeding in forma pauperis. Upon receipt of a claim of right to possession, the sheriff, marshal, or other levying officer shall indicate thereon the date and time of its receipt and forthwith deliver the original to the issuing court and a duplicate of the claim to the claimant and notify the plaintiff of that fact. Immediately upon receipt of an amount equal to 15 days' rent and the appropriate fee or form for proceeding in forma pauperis, the court shall file the claim of right to possession and serve an endorsed copy with the notice of the hearing date on the plaintiff and the claimant by first-class mail. The court issuing the writ of possession shall set and hold a hearing on the claim not less than 5 nor more than 15 days after the claim is filed with the court.

(2) Presenting to the sheriff, marshal, or other levying officer a completed form, as prescribed by this section, and delivering to the court within 48 hours after its presentation, the appropriate fee or form for proceeding in forma pauperis without delivering the amount equivalent to 15 days' rent. In this case, the court shall immediately set a hearing on the claim to be held on the fifth day after the filing is completed. The court shall notify the claimant of the hearing date at the time the claimant completes the filing by delivering to the court the appropriate fee or form for proceeding in forma pauperis, and shall notify the plaintiff of the hearing date by first-class mail. Upon receipt of a claim of right to possession, the sheriff, marshal, or other levying officer shall indicate thereon the date and time of its receipt and forthwith deliver the original to the issuing court and a duplicate of the claim to the claimant and notify the plaintiff of that fact.

(3) Filing with the court a completed form, as prescribed by this section, with the appropriate fee or form for proceeding in forma

pauperis, and an amount equal to 15 days' rent. In this case, the court shall file the claim of right to possession and serve an endorsed copy thereof with a notice of the hearing date on the plaintiff and the claimant by first-class mail, postage prepaid. The court issuing the writ of possession shall set and hold a hearing on the claim not less than 5 nor more than 15 days after the filing of the claim.

(4) Filing with the court a completed form, as prescribed by this section, with the appropriate fee or form for proceeding in forma pauperis, without delivering an amount equivalent to 15 days' rent. In this case, the court shall immediately set a hearing on the claim to be held on the fifth day after the filing is completed. The court shall notify the claimant of the hearing date at the time of the filing, and shall notify the plaintiff of the hearing date by first class mail.

(d) At the hearing, the court shall determine whether there is a valid claim of possession by the claimant who filed the claim, and the court shall consider all evidence produced at the hearing, including, but not limited to, the information set forth in the claim. The court may determine the claim to be valid or invalid based upon the evidence presented at the hearing. The court shall determine the claim to be invalid if the court determines that the claimant is an invitee, licensee, guest, or trespasser. If the court determines the claim is invalid, the court shall order the return to the claimant of the amount of the 15 days' rent paid by the claimant, if that amount was paid pursuant to paragraphs (1) or (3) of subdivision (c), less a pro rata amount for each day that enforcement of the judgment was delayed by reason of making the claim of right to possession, which pro rata amount shall be paid to the landlord. If the court determines the claim is valid, the amount equal to 15 days' rent paid by the claimant shall be returned immediately to the claimant.

(e) If, upon hearing, the court determines that the claim is valid, then the court shall order further proceedings as follows:

(1) If the unlawful detainer is based upon a curable breach, and the claimant was not previously served with a proper notice, if any notice is required, then the required notice may at the plaintiff's discretion be served on the claimant at the hearing or thereafter. If the claimant does not cure the breach within the required time, then a supplemental complaint may be filed and served on the claimant as defendant if the plaintiff proceeds against the claimant in the same action. For the purposes of this section only, service of the required notice, if any notice is required, and of the supplemental complaint may be made by first-class mail addressed to the claimant at the subject premises or upon his or her attorney of record and, in either case, Section 1013 shall otherwise apply. Further proceedings on the merits of the claimant's continued right to possession after service of the Summons and Supplemental Complaint as prescribed by this subdivision shall be conducted pursuant to this chapter.

(2) In all other cases, the court shall deem the unlawful detainer Summons and Complaint to be amended on their faces to include the claimant as defendant, service of the Summons and Complaint, as

thus amended, may at the plaintiff's discretion be made at the hearing or thereafter, and the claimant thus named and served as a defendant in the action shall answer or otherwise respond within five days thereafter.

(f) If a claim is made without delivery to the court of the appropriate filing fee or a form for proceeding in forma pauperis, as prescribed in this section, the claim shall be immediately deemed denied and the court shall so order. Upon the denial of the claim, the court shall immediately deliver an endorsed copy of the order to the levying officer and shall serve an endorsed copy of the order on the plaintiff and claimant by first-class mail.

(g) If the claim of right to possession is denied pursuant to subdivision (f), or if the claimant fails to appear at the hearing or, upon hearing, if the court determines that there are no valid claims, or if the claimant does not prevail at a trial on the merits of the unlawful detainer action, the court shall order the levying officer to proceed with enforcement of the original writ of possession of real property as deemed amended to include the claimant, which shall be effected within a reasonable time not to exceed five days. Upon receipt of the court's order, the levying officer may enforce the writ of possession of real property against any occupant or occupants.

(h) The claim of right to possession shall be made on the following form:

| CLAIMANT OR CLAIMANT'S ATTORNEY (Name and Address) TELEPHONE NO | FOR COURT USE ONLY |
|---|---|
| ATTORNEY FOR (Name): | |
| NAME OF COURT<br>STREET ADDRESS<br>MAILING ADDRESS<br>CITY AND ZIP CODE<br>BRANCH NAME: | |
| PLAINTIFF:<br>DEFENDANT: | |
| CLAIM OF RIGHT TO POSSESSION AND NOTICE OF HEARING | |

| HEARING DATE: | TIME: | DEPT. | ROOM: | CASE NUMBER: |
|---|---|---|---|---|
| | | | | |

(For levying officer use only)
Completed form was received on
Date: _____ Time: _____
By: _____

Complete this form only if ALL of these statements are true:
1. You are NOT named in the accompanying form called Writ of Possession.
2. You occupied the subject premises on or before the date the unlawful detainer (eviction) action was filed. (The date is in the accompanying Writ of Possession.)
3. You still occupy the subject premises.

I DECLARE THE FOLLOWING UNDER PENALTY OF PERJURY:

1. My name is (specify):
2. I reside at (street address, unit no., city and ZIP code):
3. The address of "the premises" subject to this claim is:
4. On (insert date): _____, the landlord or the landlord's authorized agent filed a complaint to recover possession of the premises. (This date is on the accompanying Writ of Possession.)
5. I occupied the subject premises on the date the complaint was filed (the date in item 4). I have continued to occupy the subject premises ever since.
6. I was at least 18 years of age on the date the complaint was filed (the date in item 4).
7. I claim a right to possession of the subject premises because I occupied the premises on the date the complaint was filed (the date in item 4).

CLAIM OF RIGHT TO POSSESSION
AND NOTICE OF HEARING

138930

| PLAINTIFF: | CASE NUMBER: |
|---|---|
| DEFENDANT: | |

8. I was not named in the Writ of Possession.

9 I understand that if I make this claim of possession, a court hearing will be held to decide whether my claim will be granted.

10. To obtain a court hearing on my claim, I understand that at the time of filing I must pay a court filing fee of $_____ or file with the court the appropriate form for proceeding in forma pauperis. Failure to either pay the court filing fee or file the form for proceeding in forma pauperis will result in the immediate denial of my claim.

11. To obtain a court hearing on my claim, I also understand I must file all the required papers. I further understand the date of my hearing will be set immediately if I fail to deliver to the court an amount equal to 15 days' rent. I am filing my claim in the following manner (check the appropriate box that applies to your claim when filing the original or duplicate claim form with the court):

a. ☐ I presented this claim form to the sheriff, marshal, or other levying officer and, within 48 hours, am delivering to the court a duplicate claim form and an amount equal to 15 days' rent and the appropriate filing fee or form for proceeding in forma pauperis.

b. ☐ I presented this claim form to the sheriff, marshal, or other levying officer and, within 48 hours, am filing with the court the duplicate claim form with the appropriate filing fee or form for proceeding in forma pauperis.

c. ☐ I am filing this completed claim form with the court and delivering an amount equal to 15 days' rent and the appropriate filing fee or form for proceeding in forma pauperis.

d. ☐ I am filing this completed claim form with the court and delivering the appropriate filing fee or form for proceeding in forma pauperis.

| (To be completed by the court) | | | |
|---|---|---|---|
| Date of Hearing: | Time: | Dept.: | Room: |
| Address of court: | | | |

CLAIM OF RIGHT TO POSSESSION
AND NOTICE OF HEARING

12. Rental agreement. I have (check all that apply to you).
    a. ☐ an oral rental agreement with the landlord.
    b. ☐ a written rental agreement with the landlord
    c. ☐ an oral rental agreement with a person other than the landlord.
    d. ☐ a written rental agreement with a person other than the landlord.
    e. ☐ other (explain):

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

| WARNING: Perjury is a felony punishable by imprisonment in the state prison. |
|---|

Date:

. . . . . ▶ _____
(TYPE OR PRINT NAME) (SIGNATURE OF CLAIMANT)

| NOTICE: If your claim to possession is found to be valid, the unlawful detainer action against you will be determined at trial. At trial, you may be found liable for rent, costs, and, in some cases, treble damages. |
|---|

CLAIM OF RIGHT TO POSSESSION
AND NOTICE OF HEARING

## NOTICE TO OCCUPANTS

If you are not named in the attached writ and if you claim a right to possession of the premises described in the writ based upon the fact that you were in possession on or before the date of filing of the unlawful detainer action, you must act at once.

If you do not claim a legal right to possession with the court or sheriff, marshal, or other levying officer, you will be removed by the sheriff/marshal's deputies or other levying or executing officer(s) at the time of the eviction. To claim your rights, if any, you must complete this form in which you state under penalty of perjury that you were in possession of the subject premises on or before the date of filing of the unlawful detainer action. You can complete and submit the form at the court located at _____ before the date of eviction, or at the premises at the time of the eviction. If you do not complete and submit the form, a filing fee, or file the appropriate form for proceeding in forma pauperis if you cannot pay the fee, you will be evicted along with the parties named in the writ.

Upon a proper filing, a hearing will be held to decide your claim. If you do not appear at the hearing, you will be evicted without further hearing.

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## CLAIM OF RIGHT TO POSSESSION AND NOTICE OF HEARING

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# CHAPTER 1406

An act to amend Sections 1917.320, 1917.330, 1917.331, and 1917.711 of the Civil Code, relating to shared appreciation loans for seniors.

[Approved by Governor September 26, 1988. Filed with Secretary of State September 27, 1988.]

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

SECTION 1. Section 1917.320 of the Civil Code is amended to read:

1917.320. For the purposes of this chapter:

(a) "Actual contingent interest" means the lender's appreciation share of the net appreciated amount. In no event, however, shall the rate of appreciation upon which actual contingent interest is calculated at the end of the loan term exceed 2½ times the rate at which projected contingent interest had been calculated.

(b) "Actual life expectancy" shall be calculated based upon actuarial tables for women only, regardless of the sex of the borrower, and acceptable to both the state and the insurance industry.

(c) "Annuity base amount" means the projected loan amount less (1) the initial advance and (2) the projected contingent interest based on the reasonable appreciation rate used in calculating the projected loan amount.

(d) "Borrower" means the recipient or recipients of a shared appreciation loan for seniors who is obligated by execution of a promissory note and who is at least 65 years of age.

(e) "Borrower's life expectancy" means the actual life expectancy of the borrower plus no more than five years. In the case of a loan executed by two borrowers, the actual life expectancy shall be based upon the youngest of the two.

(f) "Cessation of occupancy" means the rental to a third party of the right of exclusive occupancy of the subject property, or the abandonment by all coborrowers of the property as his or her residence.

(g) "Lender" means any corporation organized as a public benefit corporation pursuant to the Nonprofit Corporation Law (Part 2 (commencing with Section 5110), Div. 2, Title 1, Corp. C.).

(h) "Lender's appreciation share" means a proportion not to exceed 25 percent of the appreciation of the property securing the loan calculated in accordance with this chapter.

(i) "Shared appreciation loan for seniors" means any loan made pursuant to this chapter upon the security of owner-occupied real property of a type specified in Section 1917.330, and in connection with which the lender has a right to receive a share of the appreciation in the value of the security property. "Shared appreciation loan" includes a deed of trust and any evidence of debt issued in connection with the loan.

(j) "Maturity event" means the earliest of any of the following:

(1) The death of the borrower. In the case of a married couple who are coborrowers, the death of the surviving spouse.

(2) The date of sale.

(3) The date a loan made pursuant to this chapter is refinanced or repaid in full.

(4) Cessation of occupancy.

(k) "Monthly annuity" means an amount paid in equal monthly installments to the borrower which, together with interest calculated at the stated rate, shall exhaust the annuity base amount during the borrower's life expectancy.

In the event that the calculated monthly annuity exceeds the cap or ceiling determined in accordance with this subdivision, the lender may limit the actual monthly annuity payment to an amount not lower than the cap. If the cap is imposed, the lender's appreciation share shall be limited to 25 percent times the ratio between the actual capped monthly payment and the monthly payment calculated in accordance with the first sentence of this subdivision. For example, if the monthly payment calculated in the first sentence is five thousand dollars ($5,000), but the lender applies a two thousand five hundred dollar ($2,500) ceiling, the lender's share of the home's appreciation shall be likewise reduced by 50 percent.

The minimum cap shall be two thousand five hundred dollars ($2,500) for loans made during the calendar year 1989. In subsequent calendar years, the minimum cap shall be two thousand five hundred dollars ($2,500) increased to reflect the proportional increase in the Consumer Price Index for the State of California, as determined by the United States Bureau of Labor Statistics, for the period from January 1, 1989, until the November monthly index figure for the year prior to the year in which the loan agreement is entered into.

(*l*) "Net advance" means any lump-sum advance of funds by the lender to the borrower made at the time of the loan closing. Net advance shall not exceed 15 percent of the projected loan amount.

(m) "Net appreciated value" means the difference between the fair market value of the property securing the loan at the time the loan is made and the fair market value of the property securing the loan at the time of the maturity event, less any credit for approved improvements made during the term of the loan.

(n) "Prevailing rate" means the yield of a 30-year mortgage commitment for delivery within 30 days for a standard conventional fixed rate mortgage of the Federal Home Loan Mortgage Corporation.

(o) "Projected contingent interest" means the lender's appreciation share of the projected appreciation of the property securing the loan from the date of the loan until the end of the borrower's life expectancy, using the same reasonable projection of annual appreciation used in determining the projected loan amount.

(p) "Projected loan amount" means not less than 75 percent of the estimated fair market value of the borrower's home at the end

of the borrower's life expectancy, calculated by applying to the fair market value a reasonable projection of appreciation over the borrower's life expectancy based on a reasonable projected annual appreciation rate of the fair market value of the home.

(q) "Sale" means any transfer of title to the property and includes the execution of an installment sale contract giving the purchaser a right to possess the property before transfer of title, refinancing, judicial sale on execution, or other legal process of foreclosure or trustee's sale, but "sale" does not include a transfer specified in Section 2924.6 if any spouse to whom the property is transferred is also a coborrower.

(r) "Stated interest rate" means a total interest rate of not more than four-fifths of the prevailing rate.

(s) "Total loan obligation" means the net original loan and the sum total of all monthly annuity payments received by the borrower, with interest on all outstanding amounts calculated no more often than monthly at the stated interest rate, and actual contingent interest plus interest at the prevailing rate as disclosed to the borrower at the time the loan was entered into on all of the above amounts from the date of any maturity event until the outstanding loan obligation is repaid in full. In no event shall the total loan obligation exceed the actual fair market value of the home on the date of the maturity event.

SEC. 2. Section 1917.330 of the Civil Code is amended to read:

1917.330. Lenders may make shared appreciation loans for seniors pursuant to this chapter for the refinancing of real property improved with one- to four-dwelling units, including structures ancillary to such dwelling units and including attached single-family dwelling units, single-family mobilehome units, residential condominium units, and dwelling units within a planned unit development. Shared appreciation loans shall be made to refinance only owner-occupied dwelling units, but in the case of two- to four-unit dwellings financed under this chapter, only one of the units need be owner-occupied. A dwelling unit shall be conclusively deemed to be owner-occupied for purposes of this chapter with respect to initial qualification for participation in the loan program if a borrower certifies in writing to the lender at the time the loan is made that he or she will occupy the property.

Nothing contained herein shall be deemed or interpreted to restrict a lender from providing a shared appreciation loan based solely upon the value of the real property upon which the borrower's dwelling is situated, secured only by that real property and not by the improvements thereon. In that case, the lender's actual contingent interest, and any other necessary calculations, shall be based upon the land value alone, not taking into account any improvements thereon. This paragraph is declaratory of existing law.

SEC. 3. Section 1917.331 of the Civil Code is amended to read:

1917.331. (a) A shared appreciation loan for seniors shall include all of the following:

(1) The term of the loan shall be for an open-ended term, terminating upon the occurrence of a maturity event, or the failure of the borrower to meet the terms of a deed of trust granted by the borrower to the lender which are normally and customarily used by mortgage lenders in this state for loans secured by residential real property. However, if the maturity event is either cessation of occupancy of the property by the borrower or death of the borrower, the term shall be extended until the earlier of the sale or refinancing of the property or 12 months after the occurrence of the maturity event.

(2) An initial advance, if desired by the borrower.

(3) Monthly annuity payments which shall continue until the occurrence of a maturity event, or earlier termination in accordance with paragraph (1).

(4) Interest on (2) and (3), calculated no more often than monthly at the stated interest rate.

(5) Actual contingent interest.

(6) Interest on paragraphs (2) to (5), inclusive, compounded no more often than monthly, from the date of a maturity event until the loan is repaid in full.

(b) The loan shall be secured by a deed of trust on the real property financed.

(c) The aggregate amount of any fee charged to the borrower by the lender for processing an application, preparing any necessary documents, obtaining a credit report, or any other costs incurred by the lender in connection with originating a shared appreciation loan for seniors shall not exceed five hundred dollars ($500). No prepaid interest shall be charged to the borrower.

SEC. 4. Section 1917.711 of the Civil Code is amended to read:

1917.711. (a) Each lender offering shared appreciation loans for seniors shall furnish to a prospective borrower, on the earlier of the dates on which the lender first provides written information concerning shared appreciation loans for seniors by the lender or provides a loan application form to the prospective borrower, a written disclosure as provided in this section, in type of not less than 10 point.

(b) The disclosure shall be entitled "INFORMATION ABOUT THE (Name of Lender) SHARED APPRECIATION LOAN FOR SENIORS," and shall describe the operation and effect of the shared appreciation loan for seniors, including a brief summary of its terms and conditions, together with a statement consisting of substantially the following language, to the extent applicable to such loan:

INFORMATION ABOUT THE SHARED APPRECIATION LOANS FOR SENIORS

Your lender is pleased to offer you the opportunity to borrow against the equity in your home through a Shared Appreciation Loan for Seniors.

Because the Shared Appreciation Loan for Seniors differs from the usual mortgage loan, the law requires that you have a detailed explanation of the special features of the loan before you apply. Before you sign your particular Shared Appreciation Loan for Seniors documents, you will receive more information about your particular Shared Appreciation Loan for Seniors, which you should read and understand before you sign the loan documents.

Receipt of shared appreciation loan proceeds could be considered income, thereby reducing payments received under government benefit programs, such as Supplemental Security Income (SSI). If this income is accumulated, the payments will be considered a resource, and could terminate your eligibility for SSI or Medi-Cal. See your legal adviser for more information.

## I
## GENERAL TERMS

A Shared Appreciation Loan for Seniors will provide you with funds to pay off any existing indebtedness on your home and to pay the closing costs for the loan, and will then advance funds to you each month (monthly annuity) (1) for so long as you or your spouse who is a coborrower live; or (2) until you sell the house; or (3) until you decide to refinance the property and pay off your Shared Appreciation Loan for Seniors; or (4) until you cease to occupy the property as your residence, meaning either that the property has been rented out for exclusive use by a nonborrower, or the abandonment by all coborrowers of the property as their residence. Any of these four events are considered "maturity events," and will constitute the end of the obligation to advance funds to you. The maturity events are described more fully in the promissory note. Your monthly annuity is calculated according to the method described in Section II, below. You will also be required to fulfill any customary terms or conditions included in the deed of trust encumbering your property.

Each advance of funds you receive, including both initial advances (net original loan) and each monthly annuity, will be considered outstanding principal on your loan and will bear a stated interest rate which will be not more than 80 percent of the prevailing rate of interest in the locality in which you live. No payments on your total loan obligation need be made by you until the occurrence of one of the four maturity events described above.

In exchange for a stated interest rate which is below the prevailing rate, you will be obligated to pay us additional interest later, in the form of a share of the appreciation of your home between the time you execute the promissory note and the occurrence of a maturity event. This additional interest is called "actual contingent interest" and is described more fully below at Section III. Once a maturity event has occurred, interest at the prevailing rate compounded not more often than monthly shall accrue on the entire outstanding loan

balance, including the actual contingent interest, until repayment in full of the loan.

Balloon Payment of Principal. If you do not sell the property before the occurrence of a maturity event, you or your successors will need to refinance or pay this loan at that time. The term of this loan is until occurrence of a maturity event. However, if the maturity event is cessation of occupancy or death of the borrowers, the term shall be extended until the earlier of the sale or refinancing of the property, or 12 months after occurrence of the maturity event. We will not refinance either the unpaid balance of the loan or the contingent interest at that time; you or your successors alone will be responsible for obtaining refinancing. If you refinance this loan, your monthly payments may increase substantially if the property has appreciated significantly or if the interest rate on the refinancing loan is much higher than today's prevailing rates. In general, the more your property appreciates, the larger will be the amount of the actual contingent interest that you will have an obligation to pay or refinance.

Tax and Estate Consequences. USE OF THE SHARED APPRECIATION LOAN FOR SENIORS WILL HAVE INCOME TAX OR ESTATE PLANNING CONSEQUENCES WHICH WILL DEPEND UPON YOUR OWN FINANCIAL AND TAX SITUATION. FOR FURTHER INFORMATION, YOU ARE URGED TO CONSULT YOUR OWN ACCOUNTANT, ATTORNEY, OR OTHER FINANCIAL ADVISER.

THE QUESTIONS YOU SHOULD DISCUSS INCLUDE THE TAX DEDUCTIBILITY OF THE CONTINGENT INTEREST PAYMENT, YOUR RIGHT TO UTILIZE THAT DEDUCTION IN YEARS OTHER THAN THE YEAR IT IS PAID, AND THE EFFECT OF THE LOSS OF TAX BENEFITS BEFORE THAT TIME. BECAUSE YOU WILL BE BORROWING A SIGNIFICANT AMOUNT OF THE EQUITY IN YOUR HOME, WHEN A MATURITY EVENT OCCURS AND YOUR LOAN IS REPAID, LITTLE OR NO EQUITY MAY REMAIN FOR YOU OR YOUR HEIRS.

Determining Fair Market Value. If you sell your property, the gross sale price will be the fair market value of the property, unless appraisals are requested by us and the appraisals average more than the gross sale price. However, at your request, we also will tell you what we consider to be the fair market value of the property. If you sell for cash for a gross sale price that equals or exceeds that amount, the gross sale price will control and appraisals will not be needed.

Fair market value is determined by appraisals in the event of sales involving a consideration other than cash, prepayment of the loan in full, or any other maturity event.

When appraisals are required, fair market value is determined by averaging two independent appraisals of the property. You may select one of the two appraisers from a list approved by the Federal National Mortgage Association. If appraisals are requested by us, we

will provide you with full information on how to select an appraiser.

In lieu of appraisals, we may establish fair market value at an agreed amount if an agreement can be reached between you and us.

Determining Value of Capital Improvements. Capital improvements with a value exceeding one thousand dollars ($1,000) (but no maintenance or repair costs) may be added to the value of the property for the purpose of determining the net appreciated value, but only if the procedures set forth in the shared appreciation loan documents are followed. It is important to note that capital improvements completed and claimed in any 12-month period must add more than one thousand dollars ($1,000) in value to the property and must generally also cost more than one thousand dollars ($1,000). However, if you have performed at least one-half the value of the labor or other work involved, then the cost of the improvements will not be considered. The appraised value of the improvements will be the increase in the value of the property resulting from the improvements. You will receive no credit for minor or major repairs or for improvements that are not appraised at more than one thousand dollars ($1,000), but the lender will acquire a share of any resulting appreciation in the value of the property.

## II
## CALCULATION OF MONTHLY ANNUITY

Your Shared Appreciation Loan for Seniors consists of two components: first, an initial advance to cover the cost of paying off any existing liens which you wish to pay off, and to cover closing costs; and second, a monthly annuity.

Your Shared Appreciation Loan for Seniors is designed to provide a monthly stream of funds for the remainder of the lives of the borrowers, with no payments on the loan due at any time during the lives of the borrowers unless the property is sold or the loan is refinanced or repaid in full or until you cease to occupy the property. In determining the amount that it is able to lend, the lender estimates what at least 75 percent of the value of the borrower's home is likely to be at the end of the borrower's life expectancy, based on a reasonable projected appreciation rate per year. Borrowers' estimated life spans are predicted on the basis of "actuarial tables" prepared by the government and the insurance industry; and are based only upon estimated female life span, plus up to five years, to avoid any discriminatory effect between the sexes in determining loan amounts and for conservative lending practices. Once the maximum amount which may be loaned has been determined, the amount necessary to pay off existing liens and for closing costs, plus interest at the stated interest rate on that amount for the borrower's life expectancy, is subtracted. The "projected contingent interest" that is predicted to have been earned at the end of the estimated life span is also subtracted. A monthly annuity is then calculated on the remaining amount, based on the stated

interest and the borrower's life expectancy.

This complex calculation is illustrated by the following example:

Mr. and Mrs. Smith, who are 73 and 71 years of age, respectively, live in a home with a current value of one hundred fifty thousand dollars ($150,000), and apply for a Shared Appreciation Loan for Seniors. According to acceptable actuarial tables, Mrs. Smith, the younger of the two, has a remaining actuarial life span of 18 years. At the end of the 18 years, at a 4 percent per year projected appreciation rate, the house would be worth three hundred thousand dollars ($300,000), 80 percent of which equals two hundred forty thousand dollars ($240,000) (the lender could have based the calculation on as little as 75 percent of the three hundred thousand dollar ($300,000) projected value). The house currently has a fifteen thousand dollar ($15,000) first mortgage, and closing costs will be approximately two thousand dollars ($2,000), and the Smiths' wish to receive an initial advance to pay off the mortgage and to cover closing costs.

At the time the Smiths apply, the average of the 30-year fixed interest rate for home mortgages of the Federal Home Loan Mortgage Corporation is 13 percent, which is the "prevailing rate." The "stated interest rate" on the Smiths' loan will be 75 percent of the "prevailing rate," or 9¾ percent (the lender could have charged up to 80 percent of the prevailing rate).

The Smiths' payments will be calculated so that at the end of the projected loan term of 18 years, the total of all payments owed to the lender will be two hundred forty thousand dollars ($240,000), 80 percent of the estimated value of the Smiths' home after 18 years.

Two items must be subtracted from the two hundred forty thousand dollar ($240,000) future value before the Smiths' payment can be calculated:

(a) Since the Smiths' are requesting an advance of seventeen thousand dollars ($17,000) to pay off their existing mortgage and for closing costs, seventeen thousand dollars ($17,000), plus interest on seventeen thousand dollars ($17,000) at 9¾ percent for 18 years, for a total of ninety-six thousand fifty-seven dollars ($96,057), must be subtracted from the two hundred forty thousand dollars ($240,000) available for lending. This leaves one hundred forty-three thousand nine hundred forty-three dollars ($143,943).

(b) The lender's share of appreciation of the value of the home is also subtracted before calculating the monthly payment. Since the home is projected to increase in value by one hundred fifty thousand dollars ($150,000), the lender's share, 25 percent, equals thirty-seven thousand five hundred dollars ($37,500). When subtracted from one hundred forty-three thousand nine hundred forty-three dollars ($143,943), this leaves one hundred six thousand four hundred forty-three dollars ($106,443) for monthly payments.

The monthly payment is calculated on the basis of one hundred six thousand four hundred forty-three dollars ($106,443), over an 18-year term with interest at 9¾ percent. This equals one hundred

eighty-four dollars ($184) per month. The Smiths' will receive one hundred eighty-four dollars ($184) per month until a maturity event occurs.

At the time of occurrence of a maturity event, the Smiths, or their successors, if they are both deceased, will owe the seventeen thousand dollars ($17,000) advanced initially, plus the sum of all the monthly payments of one hundred eighty-four dollars ($184) received by them until the occurrence of the maturity event, plus interest at 9¾ percent on all of the above from the time the funds were advanced until occurrence of the maturity event, plus actual contingent interest calculated as described in Section III below. Interest, compounded no more often than monthly, on all of the above shall accrue at the prevailing rate from the date of any maturity event until the loan is paid in full.

Because interest accumulates rapidly, when a large initial advance is received, or the projected loan term is relatively long, the monthly payment is significantly lower. For instance, if the Smiths' were 80 years old, and received no lump-sum advance, their monthly payment would be seven hundred forty-nine dollars ($749) per month.

The longer the loan has been in effect, of course, the greater the amount that will be owed, as monthly payments and interest accumulate, and as the home appreciates in value. Unless the borrowers choose to sell the home or refinance the loan, monthly payments will continue until both are deceased, no matter how long they live so long as they continue to occupy the property. Thus, the total loan obligation is not limited to the projected life span of the borrowers, nor to any set dollar amount, regardless of the projected maximum. Regardless of how much principal has been advanced by Shared Appreciation Loans for Seniors, and regardless of how much stated interest and actual contingent interest have accumulated or been earned, payments will continue. If the borrower lives substantially longer than the actuarial prediction, it is possible that the total of principal and acquired stated interest plus actual contingent interest, may exceed the value of the home. IN NO EVENT, HOWEVER, WILL A BORROWER OR A BORROWER'S ESTATE BE LIABLE ON THE SHARED APPRECIATION LOAN FOR SENIORS IN AN AMOUNT GREATER THAN THE VALUE OF THE HOME.

The Smith example can be illustrated as follows:

A. $150,000 = Value of home at time of loan.
B. $300,000 = Estimated value of home at end of life expectancy (18 years, 4% annual appreciation).
C. $240,000 = Loan (80% of B).
D. $150,000 = Total appreciation (B less A).
E. $ 37,500 = Lender's share of appreciation (25% × D).
F. $ 96,057 = Payoff of preexisting mortgage, plus interest.

G. $106,443 = Amount from which monthly payment is calculated (C less E less F).

H. $ 184 = Monthly payment (based on G) to the Smiths. At death or other maturity event, the sum of all monthly payments, plus interest, plus the lender's share of appreciation, plus the amount owing from payoff of the old mortgage, must be paid to the lender.

## III
## ACTUAL CONTINGENT INTEREST

This Shared Appreciation Loan for Seniors provides that you, as borrower, must pay to the lender, as actual contingent interest, a share of up to 25 percent of the net appreciated value of the real property which secures the loan. This actual contingent interest is due and payable whenever a maturity event occurs. The dollar amount of actual contingent interest, if any, which you will be required to pay cannot be determined at this time. If the property does not appreciate, you will owe us nothing as actual contingent interest, and will only have to repay principal and stated interest. Actual contingent interest will not become due if title to the property is transferred on your death to a spouse who is a coborrower, or where a transfer results from a decree of dissolution of a marriage and a spouse who is a coborrower becomes the sole owner.

Your obligation to pay actual contingent interest and stated interest will reduce the amount of the appreciation, if any, that you will realize on the property over and above its value today. Appreciation will not produce a real gain in your equity in the property unless the appreciation rate exceeds the general inflation rate, but you will be required to pay a portion of the appreciation as actual contingent interest without regard to whether the appreciation has resulted in a real gain.

When your home is sold or refinanced, you normally will receive enough cash to pay the total loan obligation. However, if you sell and provide financing to the buyer, you may possibly not receive enough cash to pay the actual contingent interest, and, in that event, it will be necessary for you to provide cash from other funds. In no event, however, will your total loan obligation exceed the value of your home at the time of occurrence of a maturity event, unless you have willfully caused damage to the property.

Calculating the actual contingent interest. Actual contingent interest will be calculated as follows:

| | |
|---|---|
| | FAIR MARKET VALUE OF THE PROPERTY ON DATE OF MATURITY EVENT (Sale Price or Appraised Value) |
| – (less) | CURRENT VALUE OF THE PROPERTY |
| – (less) | VALUE OF CAPITAL IMPROVEMENTS MADE BY YOU (Must exceed $1,000 in cost.) |
| × (times) | LENDER'S APPRECIATION SHARE (up to 25%) |
| = (equals) | ACTUAL CONTINGENT INTEREST |

Below are answers to two frequently asked questions about the Shared Appreciation Loans for Seniors program. If you have any further questions, feel free to call the lender at _____, or write to the lender at _____.

Question. What if I marry, or my spouse is not a coborrower?

Answer. Your Shared Appreciation Loan for Seniors will be due upon the death of the last surviving coborrower. Your lender will be happy to include a new or present spouse as a coborrower, provided the new spouse is over age ____ at the time he or she becomes a coborrower. Because the monthly payment annuity is based upon the projected life span of the youngest coborrower, the annuity will be readjusted if a new, younger coborrower is added. The annuity will be adjusted to reflect the annuity that would have existed had the new coborrower been a coborrower from the beginning of the loan period. Since the monthly annuity is based on a fixed "lendable amount" derived from projected appreciation of the home (see Section II, above), a longer projected loan period, because of the younger age of the new coborrower, will result in a decrease in the size of the monthly annuity.

Question. Can I obtain an additional advance for home improvements?

Answer. Yes, provided your lender approves of the improvement. Your lender will act reasonably in reviewing your request. At the time the advance is made, your lender will calculate the amount of interest at the stated interest rate that will accrue through the projected life of the loan, as it was determined at the time the loan was made. This amount will be deducted from the original lendable amount, and a new annuity calculated, based upon the calculations described in Section II. The effect is the same as if the advance had been made at the outset of the loan, except, of course, you will not be responsible for any interest until the funds are actually advanced. Your annuity will, however, be smaller.

# CHAPTER 1407

An act to amend Section 5604 of the Vehicle Code, relating to motor vehicles.

[Approved by Governor September 26, 1988. Filed with Secretary of State September 27, 1988.]

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

SECTION 1. Section 5604 of the Vehicle Code is amended to read:

5604. Every dealer who, upon transferring by sale, lease, or otherwise, any new or used vehicle of a type subject to registration, requires the transferee to insure the vehicle, and every lending agency which, as the holder of any security interest in the vehicle, requires its obligor to insure the vehicle, shall, if the required insurance policy is obtained by the dealer or lending agency and the policy does not insure the transferee or obligor against damages resulting from ownership or operation of the vehicle arising by reason of personal injury or death of any person, or from injury to property, notify the transferee or obligor of that fact in writing on a document other than the insurance policy. The document shall be in duplicate and signed by the transferee or obligor.

If the required insurance policy is obtained by the dealer or lending agency because of the failure or refusal of the transferee or obligor to furnish or renew insurance in accordance with the terms of the contract of sale or the security agreement, and the policy does not insure the transferee or obligor against damages resulting from ownership or operation of the vehicle arising by reason of personal injury or death of any person, or from injury to property, the dealer or lending agency shall notify the transferee or obligor that the policy obtained does not insure the transferee or obligor for liability from any claims. The notice shall be made in writing on a document other than the insurance policy, or the declaration page attached to the policy, and shall be mailed, with postage paid and properly addressed, to the transferee or obligor within 30 days of obtaining the policy.

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.

# CHAPTER 1408

An act to amend Sections 65858, 66435, 66435.1, 66443, 66452.5, and 66484 of, and to repeal Section 65858 of, and to repeal Chapter 13 (commencing with Section 4590) and Chapter 14 (commencing with Section 4600) of Division 5 of Title 1 of, the Government Code, and to add Part 4 (commencing with Section 22200) to, and to add and repeal Part 5 (commencing with Section 22300) of, Division 2 of, the Public Contract Code, relating to government.

[Approved by Governor September 26, 1988. Filed with Secretary of State September 27, 1988.]

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

SECTION 1. Chapter 13 (commencing with Section 4590) of Division 5 of Title 1 of the Government Code is repealed.

SEC. 2. Chapter 14 (commencing with Section 4600) of Division 5 of Title 1 of the Government Code is repealed.

SEC. 3. Section 65858 of the Government Code as amended by Section 24 of Chapter 1009 of the Statutes of 1984, is amended to read:

65858. (a) Without following the procedures otherwise required prior to the adoption of a zoning ordinance, the legislative body, to protect the public safety, health and welfare, may adopt as an urgency measure an interim ordinance prohibiting any uses which may be in conflict with a contemplated general plan, specific plan, or zoning proposal which the legislative body, planning commission or the planning department is considering or studying or intends to study within a reasonable time. That urgency measure shall require a four-fifths vote of the legislative body for adoption. The interim ordinance shall be of no further force and effect 45 days from its date of adoption. After notice pursuant to Section 65090 and public hearing, the legislative body may extend the interim ordinance for 10 months and 15 days and subsequently extend the interim ordinance for one year. Any extension shall also require a four-fifths vote for adoption. Not more than two extensions may be adopted.

(b) Alternatively, an interim ordinance may be adopted by a four-fifths vote following notice pursuant to Section 65090 and public hearing, in which case it shall be of no further force and effect 45 days from its date of adoption. After notice pursuant to Section 65090 and public hearing, the legislative body may by a four-fifths vote extend the interim ordinance for 22 months and 15 days.

(c) The legislative body shall not adopt or extend any interim ordinance pursuant to this section unless the ordinance contains a finding that there is a current and immediate threat to the public health, safety, or welfare, and that the approval of additional subdivisions, use permits, variances, building permits, or any other applicable entitlement for use which is required in order to comply with a zoning ordinance would result in a threat to public health,

safety, or welfare.

(d) Ten days prior to the expiration of an interim ordinance or any extension, the legislative body shall issue a written report describing the measures taken to alleviate the condition which led to the adoption of the ordinance.

(e) When an interim ordinance has been adopted, every subsequent ordinance adopted pursuant to this section, covering the whole or a part of the same property, shall automatically terminate and be of no further force or effect upon the termination of the first interim ordinance or any extension of the ordinance as provided in this section.

SEC. 4. Section 65858 of the Government Code as amended by Section 25 of Chapter 1009 of the Statutes of 1984 is repealed.

SEC. 5. Section 66435 of the Government Code is amended to read:

66435. Prior to filing, those certificates, statements, and acknowledgments set forth in this article shall appear on the final map and may be combined where appropriate.

SEC. 6. Section 66435.1 of the Government Code is amended to read:

66435.1. Notwithstanding any other provision of this article, local agencies may require that those certificates, statements, and acknowledgments required by Sections 66436 and 66443, be made by separate instrument to be recorded concurrently with the final map being filed for record.

SEC. 7. Section 66443 of the Government Code is amended to read:

66443. In addition to the certificates, statements, and acknowledgments required herein for final maps, the maps shall contain other certificates and acknowledgments as are required by local ordinance.

SEC. 8. Section 66452.5 of the Government Code is amended to read:

66452.5. (a) The subdivider, or any tenant of the subject property, in the case of a proposed conversion of residential real property to a condominium project, community apartment project, or stock cooperative project, may appeal from any action of the advisory agency with respect to a tentative map to the appeal board established by local ordinance or, if none, to the legislative body.

The appeal shall be filed with the clerk of the appeal board, or if there is none, with the clerk of the legislative body within 10 days after the action of the advisory agency from which the appeal is being taken.

Upon the filing of an appeal, the appeal board or legislative body shall set the matter for hearing. The hearing shall be held within 30 days after the date of filing the appeal. Within 10 days following the conclusion of the hearing, the appeal board or legislative body shall render its decision on the appeal.

(b) The subdivider, any tenant of the subject property, in the case

of a conversion of residential real property to a condominium project, community apartment project, or stock cooperative project, or the advisory agency may appeal from the action of the appeal board to the legislative body. The appeal shall be filed in writing with the clerk of the legislative body within 10 days after the action of the appeal board from which the appeal is being taken.

After the filing of an appeal, the legislative body shall set the matter for hearing. The hearing shall be held within 30 days after the date of a request therefor filed by the subdivider or the appellant. Within 10 days following the conclusion of the hearing, the legislative body shall render its decision on the appeal. The decision shall comply with the provisions of Sections 66473, 66473.5, and 66474, and shall include any findings required by those sections.

(c) If there is an appeal board and it fails to act upon an appeal within the time limit specified in this chapter, the decision from which the appeal was taken shall be deemed affirmed and an appeal therefrom may thereupon be taken to the legislative body as provided in subdivision (b) of this section. If no further appeal is taken, the tentative map, insofar as it complies with applicable requirements of this division and local ordinance, shall be deemed approved or conditionally approved as last approved or conditionally approved by the advisory agency, and it shall be the duty of the clerk of the legislative body to certify or state that approval, or if the advisory agency is one which is not authorized by local ordinance to approve, conditionally approve, or disapprove the tentative map, the advisory agency shall submit its report to the legislative body as if no appeal had been taken.

If the legislative body fails to act upon an appeal within the time limit specified in this chapter, the tentative map, insofar as it complies with applicable requirements of this division and local ordinance, shall be deemed to be approved or conditionally approved as last approved or conditionally approved, and it shall be the duty of the clerk of the legislative body to certify or state that approval.

(d) Any interested person adversely affected by a decision of the advisory agency or appeal board may file a complaint with the governing body concerning any decision of the advisory agency or appeal board. The complaint shall be filed with the clerk of the governing body within 10 days after the action of the advisory agency or appeal board which is the subject of the complaint. Upon the filing of the complaint, the governing body shall set the matter for hearing. The hearing shall be held within 30 days after the filing of the complaint. The hearing may be a public hearing for which notice shall be given in the time and manner provided.

Upon conclusion of the hearing, the governing body shall, within seven days, declare its findings based upon the testimony and documents produced before it or before the advisory board or the appeal board. It may sustain, modify, reject, or overrule any recommendations or rulings of the advisory board or the appeal

board and may make any findings which are not inconsistent with the provisions of this chapter or local ordinance adopted pursuant to this chapter.

(e) Notice of each hearing provided for in this section shall be sent by United States mail to each tenant of the subject property, in the case of a conversion of residential real property to a condominium project, community apartment project, or stock cooperative project, at least three days prior to the hearing. The notice requirement of this subdivision shall be deemed satisfied if the notice complies with the legal requirements for service by mail. Pursuant to Section 66451.2, fees may be collected from the subdivider or from persons appealing or filing a complaint for expenses incurred under this section.

SEC. 9. Section 66484 of the Government Code is amended to read:

66484. (a) A local ordinance may require the payment of a fee as a condition of approval of a final map or as a condition of issuing a building permit for purposes of defraying the actual or estimated cost of constructing bridges over waterways, railways, freeways, and canyons, or constructing major thoroughfares. The ordinance may require payment of fees pursuant to this section if all of the following requirements are satisfied:

(1) The ordinance refers to the circulation element of the general plan and, in the case of bridges, to the transportation or flood control provisions thereof which identify railways, freeways, streams, or canyons for which bridge crossings are required on the general plan or local roads and in the case of major thoroughfares, to the provisions of the circulation element which identify those major thoroughfares whose primary purpose is to carry through traffic and provide a network connecting to the state highway system, if the circulation element, transportation or flood control provisions have been adopted by the local agency 30 days prior to the filing of a map or application for a building permit.

(2) The ordinance provides that there will be a public hearing held by the governing body for each area benefited. Notice shall be given pursuant to Section 65091 and shall include preliminary information related to the boundaries of the area of benefit, estimated cost, and the method of fee apportionment. The area of benefit may include land or improvements in addition to the land or improvements which are the subject of any map or building permit application considered at the proceedings.

(3) The ordinance provides that at the public hearing, the boundaries of the area of benefit, the costs, whether actual or estimated, and a fair method of allocation of costs to the area of benefit and fee apportionment are established. The method of fee apportionment, in the case of major thoroughfares, shall not provide for higher fees on land which abuts the proposed improvement except where the abutting property is provided direct usable access to the major thoroughfare. A description of the boundaries of the

area of benefit, the costs, whether actual or estimated, and the method of fee apportionment established at the hearing shall be incorporated in a resolution of the governing body, a certified copy of which shall be recorded by the governing body conducting the hearing with the recorder of the county in which the area of benefit is located. The apportioned fees shall be applicable to all property within the area of benefit and shall be payable as a condition of approval of a final map or as a condition of issuing a building permit for the property or portions of the property. Where the area of benefit includes lands not subject to the payment of fees pursuant to this section, the governing agency shall make provision for payment of the share of improvement costs apportioned to those lands from other sources.

(4) The ordinance provides that payment of fees shall not be required unless the major thoroughfares are in addition to, or a reconstruction of, any existing major thoroughfares serving the area at the time of the adoption of the boundaries of the area of benefit.

(5) The ordinance provides that payment of fees shall not be required unless the planned bridge facility is an original bridge serving the area or an addition to any existing bridge facility serving the area at the time of the adoption of the boundaries of the area of benefit. The fees shall not be expended to reimburse the cost of existing bridge facility construction.

(6) The ordinance provides that if, within the time when protests may be filed under the provisions of the ordinance, there is a written protest, filed with the clerk of the legislative body, by the owners of more than one-half of the area of the property to be benefited by the improvement, and sufficient protests are not withdrawn so as to reduce the area represented to less than one-half of that to be benefited, then the proposed proceedings shall be abandoned, and the legislative body shall not, for one year from the filing of that written protest, commence or carry on any proceedings for the same improvement or acquisition under the provisions of this section.

(b) Any protest may be withdrawn by the owner protesting, in writing, at any time prior to the conclusion of a public hearing held pursuant to the ordinance.

(c) If any majority protest is directed against only a portion of the improvement then all further proceedings under the provisions of this section to construct that portion of the improvement so protested against shall be barred for a period of one year, but the legislative body may commence new proceedings not including any part of the improvement or acquisition so protested against. Nothing in this section prohibits a legislative body, within that one-year period, from commencing and carrying on new proceedings for the construction of a portion of the improvement so protested against if it finds, by the affirmative vote of four-fifths of its members, that the owners of more than one-half of the area of the property to be benefited are in favor of going forward with that portion of the improvement or acquisition.

(d) Nothing in this section precludes the processing and recordation of maps in accordance with other provisions of this division if the proceedings are abandoned.

(e) Fees paid pursuant to an ordinance adopted pursuant to this section shall be deposited in a planned bridge facility or major thoroughfare fund. A fund shall be established for each planned bridge facility project or each planned major thoroughfare project. If the benefit area is one in which more than one bridge is required to be constructed, a fund may be so established covering all of the bridge projects in the benefit area. Money in the fund shall be expended solely for the construction or reimbursement for construction of the improvement serving the area to be benefited and from which the fees comprising the fund were collected, or to reimburse the local agency for the cost of constructing the improvement.

(f) An ordinance adopted pursuant to this section may provide for the acceptance of considerations in lieu of the payment of fees.

(g) A local agency imposing fees pursuant to this section may advance money from its general fund or road fund to pay the cost of constructing the improvements and may reimburse the general fund or road fund for any advances from planned bridge facility or major thoroughfares funds established to finance the construction of those improvements.

(h) A local agency imposing fees pursuant to this section may incur an interest-bearing indebtedness for the construction of bridge facilities or major thoroughfares. However, the sole security for repayment of that indebtedness shall be moneys in planned bridge facility or major thoroughfares funds.

(i) The term "construction" as used in this section includes design, acquisition of right-of-way, administration of construction contracts, and actual construction.

(j) The term "construction," as used in this section, with respect to the unincorporated area of San Diego County only, includes design, acquisition of rights-of-way, and actual construction, including, but not limited to, all direct and indirect environmental, engineering, accounting, legal, administration of construction contracts, and other services necessary therefor. The term "construction," with respect to the unincorporated area of San Diego County only, also includes reasonable administrative expenses, not exceeding three hundred thousand dollars ($300,000) in any calendar year after January 1, 1986, as adjusted annually for any increase or decrease in the Consumer Price Index of the Bureau of Labor Statistics of the United States Department of Labor for all Urban Consumers, San Diego, California (1967 = 100), as published by the United States Department of Commerce for the purpose of constructing bridges and major thoroughfares. "Administrative expenses" means those office, personnel, and other customary and normal expenses associated with the direct management and administration of the agency, but not including costs of construction.

(k) Nothing in this section precludes a county or city from providing funds for the construction of bridge facilities or major thoroughfares to defray costs not allocated to the area of benefit.

SEC. 10. Part 4 (commencing with Section 22200) is added to Division 2 of the Public Contract Code, to read:

## PART 4. ARBITRATION OF PUBLIC WORKS CONTRACT CLAIMS

22200. As used in this part:

(a) "Public works contract" means, except for a contract awarded pursuant to the State Contract Act (Part 2 (commencing with Section 10100)), a contract awarded through competitive bids or otherwise by the state, any of its political subdivisions or public agencies for the erection, construction, alteration, repair, or improvement of any kind upon real property.

(b) "Claim" means a demand for monetary compensation or damages, arising under or relating to the performance of any public works contract.

22201. Unless otherwise prohibited by law, the terms of any public works contract may include at the time of bidding and of award a provision for arbitration of any claim pursuant to Article 7.1 (commencing with Section 10240) of Chapter 1 of Part 2.

SEC. 11. Part 5 (commencing with Section 22300) is added to Division 2 of the Public Contract Code, to read:

## PART 5. WITHHELD CONTRACT FUNDS

22300. 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, provided that substitution of securities provisions shall not be required in contracts in which there will be financing provided by the Farmers Home Administration of the United States Department of Agriculture pursuant to the Consolidated Farm and Rural Development Act (7 U.S.C. Sec. 1921 et seq.), and where federal regulations or policies, or both, do not allow the substitution of securities. At the request and expense of the contractor, securities equivalent to the amount withheld shall be deposited with the public agency, or with a state or federally chartered bank as the escrow agent, who shall then pay such moneys to the contractor. Upon satisfactory completion of the contract, the securities shall be returned to the contractor.

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 the beneficial owner of any securities

substituted for moneys withheld and shall receive any interest thereon.

Failure to include these provisions in bid and contract documents shall void any provisions for performance retentions in a public agency contract.

For purposes of this section, the term "public agency" shall include, but shall not be limited to, chartered cities.

The Legislature hereby declares that the provisions of this section are of statewide concern and are necessary to encourage full participation by contractors in public contract procedures.

The escrow agreement used hereunder 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 22200 of the Public Contract Code of the State of California, Contractor has the option to deposit securities with Escrow Agent as a substitute for retention earnings required to be withheld by Owner pursuant to the Construction Contract entered into between the Owner and Contractor for _____ in the amount of _____ dated _____ (hereinafter referred to as the "Contract"). When Contractor deposits the securities as a substitute for Contract earnings, the Escrow Agent shall notify the Owner within 10 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 _____, and shall designate the Contractor as the beneficial owner.

(2) The Owner shall make progress payments to the Contractor for such funds which otherwise would be withheld from progress payments pursuant to the Contract provisions, provided that the Escrow Agent holds securities in the form and amount specified above.

(3) Alternatively, the Owner may make payments directly to Escrow Agent in the amount of retention for the benefit of the Owner until such time as the escrow created hereunder is

terminated.

(4) Contractor shall be responsible for paying all fees for the expenses incurred by 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 that 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) Contractor shall have the right to withdraw all or any part of the principal in the Escrow Account only by written notice to Escrow Agent accompanied by written authorization from Owner to the Escrow Agent that 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, Escrow Agent shall release to 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) Escrow Agent shall rely on the written notifications from the Owner and the Contractor pursuant to Sections (4) to (6), inclusive, of this agreement and the Owner and Contractor shall hold Escrow Agent harmless from Escrow Agent's release 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 Contractor in connection with the foregoing, and exemplars of their respective signatures are as follows:

| On behalf of Owner: | On behalf of Contractor: |
|---|---|
| Title | Title |
| Name | Name |
| Signature | Signature |
| Address | Address |

On behalf of 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 |

This part shall remain in effect only until January 1, 1992, and as of that date is repealed, unless a later enacted statute, which is chaptered on or before January 1, 1992, deletes or extends that date.

SEC. 12. The transfer of provisions of law from the Government Code to the Public Contract Code made by Sections 1, 2, 10, and 11 of this act does not constitute a change in, but is declaratory of, the existing law.

SEC. 13. The Legislature finds and declares that unique circumstances exist in the unincorporated area of San Diego County which require a different definition of "construction" in Section 66484 of the Government Code amended by Section 9 of this act and that a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution.

SEC. 14. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because self-financing authority is provided in Section 66451.2 of the Government Code and because this act affirms for the state that which has been declared existing law or regulated by action of the courts to cover any costs that may be incurred in carrying on any program or performing any service required to be carried on or performed by this act.

## CHAPTER 1409

An act to amend Sections 1355 and 1365 of the Civil Code, relating to common interest developments.

[Approved by Governor September 26, 1988. Filed with Secretary of State September 27, 1988.]

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

SECTION 1. Section 1355 of the Civil Code is amended to read:

1355. (a) The declaration may be amended pursuant to the governing documents or this title. Except as provided in Section 1356, an amendment is effective after (1) the approval of the percentage of owners required by the governing documents has been given, (2) that fact has been certified in a writing executed and acknowledged by the officer designated in the declaration or by the association for that purpose, or if no one is designated, by the president of the association, and (3) that writing has been recorded in each county in which a portion of the common interest development is located.

(b) Except to the extent that a declaration provides by its express terms that it is not amendable, in whole or in part, a declaration which fails to include provisions permitting its amendment at all times during its existence may be amended at any time. For purposes of this subdivision, an amendment is only effective after (1) the proposed amendment has been distributed to all of the owners of separate interests in the common interest development by first-class mail postage prepaid or personal delivery not less than 15 days and not more than 60 days prior to any approval being solicited; (2) the approval of owners representing more than 50 percent, or any higher percentage required by the declaration for the approval of an amendment to the declaration, of the separate interests in the common interest development has been given, and that fact has been certified in a writing, executed and acknowledged by an officer of the association; and (3) the amendment has been recorded in each county in which a portion of the common interest development is located. A copy of any amendment adopted pursuant to this subdivision shall be distributed by first-class mail postage prepaid or personal delivery to all of the owners of separate interest immediately upon its recordation. The provisions of this subdivision shall be operative until January 1, 1990.

SEC. 2. Section 1365 of the Civil Code is amended to read:

1365. Unless the declaration imposes more stringent standards, financial statements shall be prepared by the association and distributed to all its members as follows:

(a) A pro forma operating budget shall be distributed not less than 45 days nor more than 60 days prior to the beginning of the association's fiscal year. The budget shall include all of the following:

(1) The estimated revenue and expenses on an accrual basis.

(2) The identification of the total cash reserves currently set aside.

(3) The identification of the estimated remaining life of, and the methods of funding used to defray the future repair, replacement, or additions to, those major components which the association is obligated to maintain.

(4) A general statement addressing the procedures used for the calculation and establishment of those reserves to defray the future repair, replacement, or additions to those major components that the association is obligated to maintain.

(b) A copy of a review of the financial statement of the association shall be prepared in accordance with generally accepted accounting principles by a licensee of the California State Board of Accountancy for any fiscal year in which the gross income to the association exceeds seventy-five thousand dollars ($75,000). The review of the financial statement shall be distributed within 120 days after the close of each fiscal year.

(c) In lieu of the distribution of the financial statement required by subdivision (a), the board of directors may elect to distribute a summary of the statement to all its members with a written notice that the statement is available at the business office of the association or at another suitable location within the boundaries of the development and that copies will be provided upon request and at the expense of the association. If any member requests a copy of the financial statement required by subdivision (a) to be mailed to the member, the association shall provide the copy to the member by first-class United States mail at the expense of the association and delivered within five days. The written notice that is distributed to each of the association members shall be in at least 10-point bold type on the front page of the summary of the statement.

(d) A statement describing the association's policies and practices in enforcing lien rights or other legal remedies for default in payment of its assessments against its members shall be annually delivered to the members during the 60-day period immediately preceding the beginning of the association's fiscal year.

SEC. 3. Section 1365 of the Civil Code is amended to read:

1365. Unless the declaration imposes more stringent standards, financial statements shall be prepared by the association and distributed to all its members as follows:

(a) A pro forma operating budget shall be distributed not less than 45 days nor more than 60 days prior to the beginning of the association's fiscal year. The budget shall include all of the following:

(1) The estimated revenue and expenses on an accrual basis.

(2) The identification of the total cash reserves currently set aside.

(3) An estimate of the current replacement costs of the estimated remaining useful life of, and the methods of funding used to defray the future repair, replacement, or additions to, those major components which the association is obligated to maintain.

(4) A general statement addressing the procedures used for the

calculation and establishment of those reserves to defray the future repair, replacement, or additions to those major components that the association is obligated to maintain.

(b) A review of the financial statement of the association shall be prepared in accordance with generally accepted accounting principles by a licensee of the California State Board of Accountancy for any fiscal year in which the gross income to the association exceeds seventy-five thousand dollars ($75,000). A copy of the review of the financial statement shall be distributed within 120 days after the close of each fiscal year.

(c) In lieu of the distribution of the financial statement required by subdivision (a), the board of directors may elect to distribute a summary of the statement to all its members with a written notice that the statement is available at the business office of the association or at another suitable location within the boundaries of the development and that copies will be provided upon request and at the expense of the association. If any member requests a copy of the financial statement required by subdivision (a) to be mailed to the member, the association shall provide the copy to the member by first-class United States mail at the expense of the association and delivered within five days. The written notice that is distributed to each of the association members shall be in at least 10-point bold type on the front page of the summary of the statement.

(d) A statement describing the association's policies and practices in enforcing lien rights or other legal remedies for default in payment of its assessments against its members shall be annually delivered to the members during the 60-day period immediately preceding the beginning of the association's fiscal year.

SEC. 4. Section 3 of this bill incorporates amendments to Section 1365 of the Civil Code proposed by both this bill and AB 3081. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1989, (2) each bill amends Section 1365 of the Civil Code, and (3) this bill is enacted after AB 3081, in which case Section 2 of this bill shall not become operative.

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## CHAPTER 1410

An act to add Section 425.14 to the Code of Civil Procedure, relating to damages.

[Approved by Governor September 26, 1988. Filed with Secretary of State September 27, 1988.]

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

SECTION 1. Section 425.14 is added to the Code of Civil Procedure, to read:

425.14. No claim for punitive or exemplary damages against a

religious corporation or religious corporation sole shall be included in a complaint or other pleading unless the court enters an order allowing an amended pleading that includes a claim for punitive or exemplary damages to be filed. The court may allow the filing of an amended pleading claiming punitive or exemplary damages on a motion by the party seeking the amended pleading and upon a finding, on the basis of the supporting and opposing affidavits presented, that the plaintiff has established evidence which substantiates that plaintiff will meet the clear and convincing standard of proof under Section 3294 of the Civil Code.

Nothing in this section is intended to affect the plaintiff's right to discover evidence on the issue of punitive or exemplary damages.

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## CHAPTER 1411

An act to amend Section 674 of the Code of Civil Procedure, relating to decrees.

[Approved by Governor September 26, 1988. Filed with Secretary of State September 27, 1988.]

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

SECTION 1. Section 674 of the Code of Civil Procedure, as amended by Chapter 153 of the Statutes of 1988, is amended to read:

674. (a) Except as otherwise provided in subdivision (b), an abstract of a judgment or decree requiring the payment of money shall be certified by the clerk of the court where the judgment or decree was entered and shall contain all of the following:

(1) The title of the court where the judgment or decree is entered and cause and number of the action.

(2) The date of entry of the judgment or decree and of any renewals of the judgment or decree and where entered in the records of the court.

(3) The name and last known address of the judgment debtor and the address at which the summons was either personally served or mailed to the judgment debtor or the judgment debtor's attorney of record.

(4) The name and address of the judgment creditor.

(5) The amount of the judgment or decree as entered or as last renewed.

(6) The social security number and driver's license number of the judgment debtor if they are known to the judgment creditor; and, if either or both of those numbers are not known to the judgment creditor, that fact shall be indicated on the abstract of judgment.

(7) Whether a stay of enforcement has been ordered by the court and, if so, the date the stay ends.

(8) The date of issuance of the abstract.

(b) An abstract of a judgment or decree ordering a party to pay spousal, child, or family support to the other party shall be certified by the clerk of the court where the judgment or decree was entered and shall contain all of the following:

(1) The title of the court where the judgment or decree is entered and the cause and number of the action.

(2) The date of entry of the judgment or decree and of any renewal of the judgment or decree.

(3) Where the judgment or decree and any renewals are entered in the records of the court.

(4) The name and last known address of the party ordered to pay support.

(5) The name and address of the party to whom support payments are ordered to be paid.

(6) The social security number, birth date, and driver's license number of the party ordered to pay support if they are known to the party to whom support payments are to be paid. If any of those numbers are not known to the party to whom support payments are to be paid, that fact shall be indicated on the abstract of the court order.

(7) Whether a stay of enforcement has been ordered by the court and, if so, the date the stay ends.

(8) The date of issuance of the abstract.

(9) Any other information deemed reasonable and appropriate by the Judicial Council.

(c) The Judicial Council may develop a form for an abstract of a judgment or decree ordering a party to pay spousal, child, or family support to another party which contains the information required by subdivision (b).

(d) An abstract of judgment, recorded after January 1, 1979, that does not list the social security number and driver's license number of the judgment debtor, or either of them, as required above may be amended by the recording of a document entitled "Amendment to Abstract of Judgment." The Amendment to Abstract of Judgment shall contain all of the information required by this section, shall list both the social security number and driver's license number if both of those numbers were known at the date of recordation of the original abstract of judgment, or one of them, if only one was known, and shall set forth the date of recording and the book and page location in the records of the county recorder of the original abstract of judgment.

A recorded Amendment to Abstract of Judgment shall have priority as of the date of recordation of the original abstract of judgment, except as to any purchaser, encumbrancer, or lessee who obtained their interest after the recordation of the original abstract of judgment but prior to the recordation of the Amendment to Abstract of Judgment without actual notice of the original abstract of judgment. The purchaser, encumbrancer, or lessee without actual notice may assert as a defense against enforcement of the abstract of

judgment the failure to comply with this section regarding the contents of the original abstract of judgment notwithstanding the subsequent recordation of an Amendment to Abstract of Judgment. With respect to an abstract of judgment recorded between January 1, 1979, and July 10, 1985, the defense against enforcement for failure to comply with this section may not be asserted by the holder of another abstract of judgment or involuntary lien, recorded without actual notice of the prior abstract, unless refusal to allow the defense would result in prejudice and substantial injury as used in Section 475. The recordation of an Amendment to Abstract of Judgment does not extend or otherwise alter the computation of time as provided in Section 697.310.

SEC. 2. The amendments to Section 674 of the Code of Civil Procedure made by this act are intended to maintain the integrity of the recordation system for interests in real property as discussed in Keele v. Reich, (1985) 169 Cal. App. 3d 1129, to preserve the reasonable expectations of all parties asserting interests in real property, and to provide a means for the amendment of abstracts of judgment recorded after the effective date of Chapter 203 of the Statutes of 1978. The amendments are not intended to require the amendment of abstracts of judgment recorded prior to the effective date of Chapter 203 of the Statutes of 1978, and are intended to prevent a windfall from being realized by the holders of junior abstracts recorded after 1978 and prior to the decision in Keele v. Reich, supra.

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## CHAPTER 1412

An act to amend Sections 40426.7, 40448, and 40821 of, to add Sections 40800.5 and 42405.1 to, to repeal and add Section 40820 of, and to repeal Sections 40403 and 40448 of, the Health and Safety Code, relating to air pollution.

[Approved by Governor September 26, 1988. Filed with Secretary of State September 27, 1988.]

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

SECTION 1. Section 40403 of the Health and Safety Code is repealed.

SEC. 2. Section 40426.7 of the Health and Safety Code is amended to read:

40426.7. (a) No retired, dismissed, or separated employee or officer of the south coast district, or member of the south coast district board, shall participate in any contract of the district in which he or she engaged in any of the negotiations, transactions, planning, arrangements, or any part of the decisionmaking process relevant to the contract while acting in the capacity of employee or officer of the

south coast district, or member of the south coast district board, during the 24-month period commencing on the date the person became retired, dismissed, or separated from service with the south coast district or ceased being a member of the south coast district board.

(b) For a period of 12 months following retirement, dismissal, or separation from service with the south coast district, no former employee or officer of the south coast district, or member of the south coast district board, shall enter into a contract with the south coast district if that person had been with the south coast district in a position involving making any decision, giving or withholding any approval, making any recommendation, rendering any advice, or conducting any investigation concerning the general subject of the proposed contract within 12 months prior to retirement, dismissal, or separation from service with the south coast district. Notwithstanding the prohibitions in this subdivision, the south coast district board may, by a two-thirds vote, enter into a contract with a retired employee of the south coast district or an employee who separated under conditions satisfactory to the south coast district if the south coast district board finds and determines that, at the time of the retirement or separation, the employee was working on one or more programs that are of great importance to the south coast district, that the services of the employee are necessary to assure the continued effectiveness of the program or programs, that the contract is only for that period of time necessary to complete the employee's work on the program or programs, and that the employee is the most qualified person to provide the needed services.

(c) No former employee or officer of the south coast district previously holding a position designated in the conflict-of-interest code of the south coast district, and no member of the south coast district board, who was, at any time while in the service of the south coast district, involved in making any decision, giving or withholding any approval, making any recommendation, rendering any advice, or conducting any investigation involving a particular person shall, with respect to any of these matters that the former employee, officer, or member of the south coast district board was involved in, do any of the following:

(1) Act as an agent or attorney, or otherwise represent, that person in an appearance before the south coast district board or the hearing board.

(2) Make a communication on behalf of that person with the intent to influence the south coast district board or its officers or employees or the hearing board.

(3) Represent, aid, counsel, advise, consult with, or otherwise assist that person in connection with any of these matters in any capacity.

(4) Knowingly enter into a contract or accept employment for any purpose specified in this subdivision.

(d) Any violation of this section is a misdemeanor.

(e) This section applies only to employees and officers who are in the employment of the south coast district on or after July 1, 1988, and members serving on the south coast district board on or after July 1, 1988.

(f) This section shall become operative on July 1, 1988.

SEC. 3. Section 40448 of the Health and Safety Code, as amended by Chapter 1476 of the Statutes of 1982, is amended to read:

40448. (a) The south coast district board shall establish an office of public adviser and small business assistance to provide administrative and technical services to small businesses and the public.

(b) The office shall facilitate and encourage small business compliance with the rules and regulations of the south coast district, assist small businesses in applying for permits and variances, and facilitate the participation of small businesses in the development and adoption of rules and regulations. The office shall also develop a data base on the economic impact and cost effectiveness of the rules and regulations of the south coast district on small businesses within the south coast district. The office shall develop and make available to small businesses information regarding low-cost financing for air pollution control equipment.

The south coast district board, upon receiving findings and recommendations from the office, shall endeavor to coordinate compliance schedules with the availability of low-cost financing to small businesses in implementing its control programs.

(c) The office shall insure full and adequate participation by all interested groups and the public at large in the process of development and adoption of rules and regulations and the development and adoption of the air quality management plan and insure that a reasonable effort be made to provide timely and complete notice of south coast board and hearing board meetings and public hearings is disseminated to all interested groups and to the public at large. The office shall also advise interested groups and the public as to effective ways of participating in the south coast board and hearing board proceedings. The office shall recommend to the south coast board and the hearing board additional measures to assure open consideration and public participation in all proceedings of the boards.

SEC. 4. Section 40448 of the Health and Safety Code, as added by Chapter 1476 of the Statutes of 1982, is repealed.

SEC. 5. Section 40800.5 is added to the Health and Safety Code, to read:

40800.5. Any district board may designate the hearing board appointed by it as the "district hearing panel." Every provision of every statute and every regulation that relates to hearing boards appointed pursuant to this chapter shall be fully applicable to any district hearing panel that is so designated pursuant to this section.

SEC. 6. Section 40820 of the Health and Safety Code is repealed.

SEC. 7. Section 40820 is added to the Health and Safety Code, to read:

40820. Except as provided in Section 40501.1, subdivision (c) of Section 40824, subdivision (c) of Section 40825, Section 42351.5, and Section 42359.5, three members of the hearing board shall constitute a quorum, and no action shall be taken by the hearing board except in the presence of a quorum and upon the affirmative vote of a majority of the members of the hearing board.

SEC. 8. Section 40821 of the Health and Safety Code is amended to read:

40821. A hearing board, with not fewer than four members present, may, in its discretion, within 30 days of the effective date of the decision, rehear any matter.

SEC. 9. Section 42405.1 is added to the Health and Safety Code, to read:

42405.1. (a) Any person who provides information which materially contributes to the imposition of a civil penalty or criminal fine against any person for violating any provision of this part or any rule, regulation, or order of a district pertaining to mobile source emission regulations or limitations shall be paid a reward pursuant to regulations adopted by the district under subdivision (f). The reward shall not exceed 10 percent of the amount of the civil penalty or criminal fine collected by the district, district attorney, or city attorney. The district shall pay the reward to the person who provides information which results in the imposition of a civil penalty, and the city or the county shall pay the reward to the person who provides information which results in the imposition of a criminal fine. No reward paid pursuant to this subdivision shall exceed five thousand dollars ($5,000).

(b) No informant shall be eligible for a reward for a violation known to the district, unless the information materially contributes to the imposition of criminal or civil penalties for a violation specified in this section.

(c) If there is more than one informant for a single violation, the first notification received by the district shall be eligible for the reward. If the notifications are postmarked on the same day or telephoned notifications are received on the same day, the reward shall be divided equally among those informants.

(d) Public officers and employees of the United States, the State of California, or districts, counties, and cities in California are not eligible for the reward pursuant to subdivision (a), unless reporting of those violations does not relate in any manner to their responsibilities as public officers or employees.

(e) An informant who is an employee of a business and who provides information that the business violated this chapter is not eligible for a reward if the employee intentionally or negligently caused the violation or if the employee's primary and regular responsibilities included investigating the violation, unless the business knowingly caused the violation.

(f) The district shall adopt regulations which establish procedures for a determination of the accuracy and validity of information provided and for the receipt and review of claims for payment of rewards. All decisions concerning the eligibility for a reward and the materiality of the provided information shall be made pursuant to these regulations. In each case brought under subdivision (a), the district, the office of the city attorney, or the district attorney, whichever office brings the action, shall determine whether the information materially contributed to the imposition of civil or criminal penalties for violating any provision of this part or any rule, regulation, or order of a district pertaining to emission regulations or limitations.

(g) The district shall continuously publicize the availability of the rewards pursuant to this section for persons who provide information pursuant to this section.

(h) Claims may be submitted only for those referrals made on or after January 1, 1989.

SEC. 10. The amendment of Section 40426.7 of the Health and Safety Code by this act does not constitute a change in, but is declaratory of, the existing law.

SEC. 11. 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.

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## CHAPTER 1413

An act to add Section 69534.5 to, to repeal Sections 69534.7 and 69534.8 of, and to repeal and add Sections 69534, 69534.1, 69534.2, 69534.3, 69534.4, and 69534.6 of, the Education Code, relating to education, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 26, 1988. Filed with Secretary of State September 27, 1988.]

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

SECTION 1. Section 69534 of the Education Code is repealed.

SEC. 2. Section 69534 is added to the Education Code, to read:

69534. In enacting this act which enacts this section, it is the intent of the Legislature to substantially improve the student financial aid application and need analysis environment in California. It is further the intent of the Legislature to create an opportunity for students to receive better student financial aid need analysis services at minimal costs by fostering competitive conditions.

SEC. 3. Section 69534.1 of the Education Code is repealed.

SEC. 4. Section 69534.1 is added to the Education Code, to read:

69534.1. (a) The Student Aid Commission, in consultation with an advisory committee of students, and representatives of postsecondary institutions, and processors, shall authorize the use of standardized student financial aid application forms for California. These forms shall be simple in nature and collect common data elements required by the federal government and those elements needed to meet the objectives of state-funded and institutional financial aid programs.

(b) These forms shall be utilized for the Cal Grant Program, all other programs funded by the state or a public institution of postsecondary education (except for the Board of Governors' Financial Assistance Program authorized by Chapter 1118 of the Statutes of 1987, for which a simplified form designed for that sole purpose may be used), and all federal programs administered by a public postsecondary education institution.

(c) Supplemental forms may be utilized if the forms are essential to accomplishing the objectives of individual programs. All supplemental forms utilized by public postsecondary educational institutions shall be subject to approval by the commission, and forms shall be identical for programs with similar objectives, as determined by the commission.

(d) Public postsecondary institutions are encouraged to, but may decide whether to, use the standard application forms for funds provided by private donors.

(e) The Legislature finds and declares that it is in the best interest of students that all postsecondary education institutions in California participating in federal and state-funded financial aid programs accept the standard application forms authorized by the Student Aid Commission.

SEC. 5. Section 69534.2 of the Education Code is repealed.

SEC. 6. Section 69534.2 is added to the Education Code, to read:

69534.2. (a) The Student Aid Commission shall authorize organizations that have an appropriate multiple data entry contract with the United States Department of Education to provide financial need analysis and related services and to process the forms specified in Section 69534.1 in accordance with subdivision (b) of this section.

(b) For the 1989–90 academic year, the commission shall develop and adopt policies, standards, and guidelines governing the multiple processing environment. For the 1990–91 academic year and subsequent years, the commission shall develop and adopt, as necessary, rules and regulations for the effective governance of the multiple processor environment. In the development of these policies, standards, guidelines, rules, and regulations, the commission shall consider the reporting requirements set forth in Section 69534.5 and shall consult with students, representatives of postsecondary institutions, and processor representatives. The commission shall continuously monitor authorized processing organizations for

compliance with state law and its own rules, regulations, standards, and guidelines.

SEC. 7. Section 69534.3 of the Education Code is repealed.

SEC. 8. Section 69534.3 is added to the Education Code, to read:

69534.3. Nothing in this article shall prevent an individual public postsecondary institution from processing, with its own staff and fiscal resources, the standard financial aid application forms specified in Section 69534.1 for student aid programs for which it has legal responsibility.

SEC. 9. Section 69534.4 of the Education Code is repealed.

SEC. 10. Section 69534.4 is added to the Education Code, to read:

69534.4. The Student Aid Commission may enter into contracts with a public agency or a private entity to improve the processing and distribution of grants, fellowships, and loans through the use of electronic networks and unified data bases.

SEC. 11. Section 69534.5 is added to the Education Code, to read:

69534.5. Commencing September 1, 1989, the Student Aid Commission shall prepare an annual report to the Legislature, and make the information available to postsecondary education institutions, high school counselors, students, and interested parties regarding the multiple processing environment. The scope of this annual report shall be developed in consultation with an existing advisory committee of students, representatives of postsecondary education institutions, the California Postsecondary Education Commission, and other interested parties, and shall include, but need not be limited to, the following:

(a) Cost differences and fee waivers to students, postsecondary education institutions, and the commission among the authorized processing organizations.

(b) Service differences, including timeliness and accuracy of processing, to students, postsecondary education institutions, and the commission between the authorized processing organizations.

(c) Postsecondary education institutions that do not accept the standard application forms and common financial statements from authorized processing organizations and the incidence of duplicate application filing by students.

SEC. 12. Section 69534.6 of the Education Code is repealed.

SEC. 13. Section 69534.6 is added to the Education Code, to read:

69534.6. The Student Aid Commission shall every two years, commencing January 1, 1990, submit a report to the Legislature and the Governor which compares the multiple processor environment in effect subsequent to the effective date of this section to the sole processor environment in effect prior to the effective date of this section and which includes a recommendation to the Legislature as to the success or failure of the new multiple processor system.

SEC. 14. Section 69534.7 of the Education Code is repealed.

SEC. 15. Section 69534.8 of the Education Code is repealed.

SEC. 16. 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:

To ease transition for use of student financial aid forms that are being developed and implemented for financial aid in the 1989–90 school year, it is necessary that this act take effect immediately.

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## CHAPTER 1414

An act to amend Section 94312 of the Education Code, relating to education.

[Approved by Governor September 26, 1988. Filed with Secretary of State September 27, 1988.]

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

SECTION 1. Section 94312 of the Education Code is amended to read:

94312. All institutions authorized, or approved, under this chapter shall be maintained and operated, or in the case of a new institution, shall demonstrate that it will be maintained and operated, in compliance with all of the following minimum standards:

(a) That the institution is financially capable of fulfilling its commitments to its students.

(b) That the institution and its agents do not utilize advertising of any type which is erroneous or misleading, either by actual statement, omission, or intimation.

(c) That the institution designates an agent for service of process within this state.

(d) That the institution has and maintains a fair and equitable policy in reference to refund of the unused portion of tuition fees and other charges in the event the student fails to enter the course, or withdraws therefrom at any time prior to completion of the course. The policy shall be in compliance with the minimum standard of refunds as adopted by the superintendent. The superintendent shall take into consideration the length and character of the educational program in determining standards for refunds.

(e) That any written contract or agreement signed by a prospective student away from the institution premises shall not become operative until the student makes an initial visit to the institution. The provision applies only in those situations when the student begins payment on tuition charges (beyond the registration fee) prior to arriving at the campus. The student is obligated to visit the campus at least six days prior to the start of classes. The school officials are obligated to provide the student with a thorough tour of the campus facilities and to place a written statement, signed by the student, in the student's file to verify that the visitation and campus

tour were provided. Following the visitation to the campus, the student shall have a three-day "cooling off" period to void the contract with no money to be retained by the school as provided in subdivision (d). If the student does not visit the campus after signing the contract, the "cooling off" period shall automatically begin six days prior to the start of classes. The student may waive the right to visit the campus at any time after signing the contract. This provision does not apply to correspondence schools or other mail study institutions. The superintendent shall take into consideration the character of the educational program in determining if other types of institutions should also be excluded from this provision.

(f) That any written contract or agreement for a course of study with an institution shall include on the first page of the agreement or contract, in 12-point boldface print or larger, the following statement:

"Any questions or problems concerning this institution which have not been satisfactorily answered or resolved by the institution should be directed to the Superintendent of Public Instruction, State Department of Education, Sacramento, California 95814."

In addition, the written contracts or agreements shall specify, in underlined capital letters on the same page of the contract or agreement in which the student's signature is required, the total financial obligation that the student will incur upon enrollment in the institution in numbers or letters.

(g) That neither the institution nor its agents engage in sales, collection, credit, or other practices of any type which are false, deceptive, misleading, or unfair.

(h) That the institution makes available to students and other interested persons a catalog or brochure containing information describing the courses offered, program objectives, length of program, faculty and their qualifications, schedule of tuition, fees, and all other charges and expenses necessary for completion of the course of study, cancellation and refund policies, the total cost of tuition over the entire period, and (for vocational training programs for which specific placement claims are made) placement data, as well as other material facts concerning the institution and the program or course of instruction, as are reasonably likely to affect the decision of the student to enroll therein, as specified by the superintendent and defined in the rules and regulations; and that the information is made available to prospective students prior to enrollment.

(i) That upon satisfactory completion of training, the student is given an appropriate degree or diploma by the institution, indicating that the course or courses of instruction or study have been satisfactorily completed by the student.

(j) That adequate and accurate records are maintained by the institution, in accordance with regulations adopted by the superintendent, and that satisfactory standards are enforced relating to attendance, progress, and performance.

(k) That the institution maintains current records for a period of not less than five years at its principal place of business within the State of California, immediately available during normal business hours, for inspection by the superintendent or the Attorney General of California showing all of the following:

(1) The names and addresses, both local and home, including city and street, of each of its students.

(2) The courses of study offered by the institution.

(3) The names and addresses, including city and street, of its faculty, together with a record of the educational qualifications of each.

(4) The degrees or diplomas and honorary degrees and diplomas granted, the date of granting, together with the curricula upon which the diplomas and degrees were based.

(*l*) Accreditation by a national or applicable regional accrediting agency recognized by the United States Department of Education shall be accepted by the superintendent as evidence of compliance with the minimum standards established by the accrediting or licensing agency, and therefore as evidence of compliance with the minimum standards specified in the provisions of this section. If there is substantial evidence of violation by a college or university accredited by a national accrediting agency of the standard established by the responsible national accrediting agency, the superintendent shall require further evidence and make further investigation. Following the superintendent's investigation, the appropriate national accrediting agency shall be notified by the superintendent of his or her findings. If, after four months, the superintendent determines that the national accrediting agency has not taken appropriate action and substantial evidence remains that the institution is not meeting minimum standards, the superintendent may take further action, as may be necessary, including revoking the institution's license to offer education and to award degrees and diplomas.

(m) That the institution provides instruction as part of its educational program. Instruction shall include any specific, formal arrangement by an institution for its enrollees to participate in learning experiences wherein the institution's faculty or contracted instructors present a planned curriculum appropriate to the enrollee's educational program.

(n) Institutions licensed solely under subdivision (b) of Section 94311, with the exception of those offering flight instruction, shall comply with subdivisions (b), (e), (g), (h), (i), and (j). The responsibility for monitoring and enforcing institutional compliance with these minimum standards shall be with the state board or agency responsible for licensing the school.

(o) Institutions certified to offer flight instruction by the Federal Aviation Administration, or its successor agency, shall comply with all of the requirements of this section, but shall not be required to file any materials with the Superintendent of Public Instruction

which are not required by the Federal Aviation Administration, or its successor agency, except those minimally necessary to administer the Student Tuition Recovery Fund, pursuant to Section 94342, as determined by the Superintendent of Public Instruction. The responsibility for monitoring and enforcing institutional compliance for these institutions shall be with the Superintendent of Public Instruction.

Individual flight instructors not requiring any advance payments, who do not negotiate a formal contract of indebtedness, and who do not have an established place of business other than their residences shall be exempt from the requirements of this section.

SEC. 2. The State Board of Cosmetology, in conjunction with the Private Postsecondary Education Division of the State Department of Education and the Student Aid Commission, shall report and make recommendations to the Legislature on or before March 1, 1989, concerning the feasibility of establishing a tuition recovery fund for students attending schools of cosmetology.

The State Board of Cosmetology shall submit a report to the education policy committees of the Legislature not later than March 1, 1989, describing efforts of the board to reduce student default and institutional abuses of student loan programs.

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## CHAPTER 1415

An act to amend Sections 13350, 13352, 14601.2, 14601.3, 23170, and 23175 of, and to add Section 23159.5 to, the Vehicle Code, relating to driving offenses.

[Approved by Governor September 26, 1988 Filed with Secretary of State September 27, 1988.]

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

SECTION 1. Section 13350 of the Vehicle Code is amended to read:

13350. (a) The department shall immediately revoke the privilege of any person to drive a motor vehicle upon receipt of a duly certified abstract of the record of any court showing that the person has been convicted of any of the following crimes or offenses:

(1) Failure of the driver of a vehicle involved in an accident resulting in injury or death to any person to stop or otherwise comply with Section 20001.

(2) Any felony in the commission of which a motor vehicle is used, except as provided for in Sections 13352 and 13357.

(3) Reckless driving causing bodily injury.

(b) If a person is convicted of a violation of Section 23152 punishable under Section 23170 or 23175, the court shall, at the time of surrender of the driver's license, require the defendant to sign an

affidavit in a form provided by the department acknowledging his or her understanding of the revocation required by paragraph (5) or (7) of subdivision (a) of Section 13352 and an acknowledgement of his or her designation as a habitual traffic offender. A copy of this affidavit shall be transmitted with the license to the department within the prescribed 10 days.

(c) The department shall not renew the privilege revoked under subdivision (a) until the expiration of one year after the date of revocation and until the person whose privilege was revoked gives proof of ability to respond in damages as defined in Section 16430.

SEC. 2. 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. 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, or if the offense occurred in a vehicle requiring a driver with a class 1 or class 2 driver's license or with a certificate specified in Section 12804.1. However, where (A) the driving privilege is required to be suspended by this paragraph due to the violation having occurred in vehicles requiring a class 1 or class 2 driver's license, and (B) the court grants probation and imposes the condition specified in subdivision (b) of Section 23161, the department shall issue the person a class 3 driver's license restricted in the same manner and subject to the same conditions as specified in subdivision (e) of Section 13352.5. 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.

(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 as defined in Section 16430.

(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 as defined in Section 16430.

(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 as defined in Section 16430.

(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 as defined in Section 16430 and gives proof satisfactory to the department of successful completion of a one-year program or a 30-month program approved pursuant to Chapter 9 (commencing with Section 11837) of Part 2 of Division 10.5 of the Health and Safety Code. The court shall advise the person at the time of sentencing that completion of a one-year program or a 30-month program is required in order to become eligible for a California driver's license. 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 a one-year program or a 30-month program approved pursuant to Chapter 9 (commencing with Section 11837) 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 as defined in Section 16430 and gives proof satisfactory to the department of successful completion of a 30-month program approved pursuant to Chapter 9 (commencing with Section 11837) of Part 2 of Division 10.5 of the Health and Safety Code. The court shall advise the person at the time of sentencing that completion of a 30-month program is required in order to become eligible for a California driver's license. 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 a 30-month program approved pursuant to Chapter 9 (commencing with Section 11837) 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 as defined in

Section 16430 and gives proof satisfactory to the department of successful completion of a one-year program or a 30-month program approved pursuant to Chapter 9 (commencing with Section 11837) of Part 2 of Division 10.5 of the Health and Safety Code. The court shall advise the person at the time of sentencing that completion of a one-year program or a 30-month program is required in order to become eligible for a California driver's license. 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 a one-year program or a 30-month program approved pursuant to Chapter 9 (commencing with Section 11837) 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 as defined in Section 16430.

(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 the Dominion of 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 such 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 such a conviction.

SEC. 3. 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. 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, or if the offense occurred in a vehicle requiring a driver with a class 1 or class 2 driver's license or with a certificate specified in Section 12804.1. However, where (A) the driving privilege is required to be suspended by this paragraph due to the violation having occurred in vehicles requiring a class 1 or class 2 driver's license, and (B) the court grants probation and imposes the condition specified in subdivision (b) of Section 23161, the department shall issue the person a class 3 driver's license restricted in the same manner and subject to the same conditions as specified in subdivision (e) of Section 13352.5. 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.

(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 as defined in Section 16430.

(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 as defined in Section 16430.

(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 as defined in Section 16430.

(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 as defined in Section 16430 and gives proof satisfactory to the department of successful completion of a one-year program or a 30-month program approved pursuant to Chapter 9 (commencing with Section 11837) of Part 2 of Division 10.5 of the Health and Safety Code. The court

shall advise the person at the time of sentencing that completion of a one-year program or a 30-month program is required in order to become eligible for a California driver's license. 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 a one-year program or a 30-month program approved pursuant to Chapter 9 (commencing with Section 11837) 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 as defined in Section 16430 and gives proof satisfactory to the department of successful completion of a 30-month program approved pursuant to Chapter 9 (commencing with Section 11837) of Part 2 of Division 10.5 of the Health and Safety Code. The court shall advise the person at the time of sentencing that completion of a 30-month program is required in order to become eligible for a California driver's license. 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 a 30-month program approved pursuant to Chapter 9 (commencing with Section 11837) 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 as defined in Section 16430 and gives proof satisfactory to the department of successful completion of a one-year program or a 30-month program approved pursuant to Chapter 9 (commencing with Section 11837) of Part 2 of Division 10.5 of the Health and Safety Code. The court shall advise the person at the time of sentencing that completion of a one-year program or a 30-month program is required in order to become eligible for a California driver's license. 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 a one-year program or a 30-month program approved pursuant to Chapter 9 (commencing with Section 11837) 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 as defined in Section 16430.

(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 the Dominion of 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 such 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 such a 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 as defined in Section 16430 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. 4. 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. 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, or if the offense occurred in a vehicle requiring a driver with a class 1 or class 2 driver's license or with a certificate specified in Section 12804.1. However, where (A) the driving privilege is required to be suspended by this paragraph due to the violation having occurred in vehicles requiring a class 1 or class 2 driver's license, and (B) the court grants probation and imposes the condition specified in subdivision (b) of Section 23161, the department shall issue the person a class 3 driver's license restricted in the same manner and subject to the same conditions as specified in subdivision (e) of Section 13352.5. 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.

(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 as defined in Section 16430.

(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 as defined in Section 16430.

(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 as defined in Section 16430.

(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 as defined in Section 16430 and gives proof satisfactory to the department of successful completion subsequent to the most recent underlying conviction of a one-year program or a 30-month program approved pursuant to Chapter 9 (commencing with Section 11837) of Part 2 of Division 10.5 of the Health and Safety Code. The court shall advise the person at the time of sentencing that completion of a one-year program or a 30-month program is required in order to become eligible for a California driver's license. 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 a one-year program or a 30-month program approved pursuant to Chapter 9 (commencing with Section 11837) 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 as defined in Section 16430 and gives proof satisfactory to the department of successful completion subsequent to the most recent underlying conviction of a 30-month program approved pursuant to Chapter 9 (commencing with Section 11837) of Part 2 of Division 10.5 of the Health and Safety Code. The court shall advise the person at the time of sentencing that completion of a 30-month program is required in order to become eligible for a California driver's license. 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 a 30-month program approved pursuant to Chapter 9 (commencing with Section 11837) 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 as defined in Section 16430 and gives proof satisfactory to the department of successful completion subsequent to the most recent underlying conviction of a one-year program or a 30-month program approved pursuant to Chapter 9 (commencing with Section 11837) of Part 2 of Division 10.5 of the Health and Safety Code. The court shall advise the person at the time of sentencing that completion of a one-year program or a 30-month program is required in order to become eligible for a California driver's license. 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 a one-year program or a 30-month program approved pursuant to Chapter 9 (commencing with Section 11837) 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 as defined in Section 16430.

(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 the Dominion of 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 such 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 such a conviction.

SEC. 5. 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. 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, or if the offense occurred in a vehicle requiring a driver with a class 1 or class 2 driver's license or with a certificate specified in Section 12804.1. However, where (A) the driving privilege is required to be suspended by this paragraph due to the violation having occurred in vehicles requiring a class 1 or class 2 driver's license, and (B) the court grants probation and imposes the condition specified in subdivision (b) of Section 23161, the department shall issue the person a class 3 driver's license restricted in the same manner and subject to the same conditions as specified in subdivision (e) of Section 13352.5. 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.

(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 as defined in Section 16430.

(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 as defined in Section 16430.

(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 as defined in Section 16430.

(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 as defined in Section 16430 and gives proof satisfactory to the department of successful completion subsequent to the most recent underlying conviction of a one-year program or a 30-month program approved pursuant to Chapter 9 (commencing with Section 11837) of Part 2 of Division 10.5 of the Health and Safety Code. The court shall advise the person at the time of sentencing that completion of a one-year program or a 30-month program is required in order to become eligible for a California driver's license. 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 a one-year program or a 30-month program approved pursuant to Chapter 9 (commencing with Section 11837) 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 as defined in Section 16430 and gives proof satisfactory to the department of successful completion subsequent to the most recent underlying conviction of a 30-month program approved pursuant to Chapter 9 (commencing with Section 11837) of Part 2 of Division 10.5 of the Health and Safety Code. The court shall advise the person at the time

of sentencing that completion of a 30-month program is required in order to become eligible for a California driver's license. 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 a 30-month program approved pursuant to Chapter 9 (commencing with Section 11837) 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 as defined in Section 16430 and gives proof satisfactory to the department of successful completion subsequent to the most recent underlying conviction of a one-year program or a 30-month program approved pursuant to Chapter 9 (commencing with Section 11837) of Part 2 of Division 10.5 of the Health and Safety Code. The court shall advise the person at the time of sentencing that completion of a one-year program or a 30-month program is required in order to become eligible for a California driver's license. 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 a one-year program or a 30-month program approved pursuant to Chapter 9 (commencing with Section 11837) 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 as defined in Section 16430.

(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 the Dominion of 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 such 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 such a 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 as defined in Section 16430 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. 6. 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, and when 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, and when the person so driving has knowledge of the restriction.

(c) Knowledge of suspension or revocation of the driving privilege shall be presumed if notice has been given by the department to the person and 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, 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 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 or 14601.1 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. 7. 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 a 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 which resulted from a conviction of an offense or offenses of driving under the influence of alcohol or drugs, or both, or from negligent driving:

(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 presumed if notice has been given by the

department to the person. 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 a 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 a 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 a 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 subdivision (b) of Section 23170 or subdivision (b) of Section 23175 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. 8. Section 23159.5 is added to the Vehicle Code, to read:

23159.5. (a) On and after January 1, 1990, the Department of Motor Vehicles shall not issue or renew a driver's license to any person unless the person consents in writing to submit to a chemical test or tests of that person's blood, breath, or urine pursuant to Section 23157 when requested to do so by a peace officer.

(b) All application forms for driver's license or driver's license renewal notices processed after January 1, 1990, shall include a requirement that the applicant sign the following declaration as a condition of licensure:

"I agree to submit to a chemical test of my blood, breath, or urine for the purpose of determining the alcohol or drug content of my blood when testing is requested by a peace officer acting in accordance with Section 23157 of the Vehicle Code."

(c) The Department of Motor Vehicles is not, incident to this section, required to maintain, copy, or store any information other than that to be incorporated into the standard application form.

SEC. 9. Section 23170 of the Vehicle Code is amended to read:

23170. (a) If any person is convicted of a violation of Section

23152 and the offense occurred within seven years of two separate violations of Section 23103 as specified in Section 23103.5 which occurred on or after January 1, 1982, 23152, or 23153, or any combination thereof, which resulted in convictions, that person shall be punished by imprisonment in the county jail for not less than 120 days nor more than one year and by a fine of not less than three hundred ninety dollars ($390) nor more than one thousand dollars ($1,000). The person's privilege to operate a motor vehicle shall be revoked as required in paragraph (5) of subdivision (a) of Section 13352. The court shall require the person to surrender his or her driver's license to the court in accordance with Section 13550.

(b) Any person convicted of a violation of Section 23152 punishable under this section shall be designated as an habitual traffic offender for a period of three years, subsequent to the conviction. The person shall be advised of this designation pursuant to subdivision (b) of Section 13350.

SEC. 10. Section 23170 of the Vehicle Code is amended to read:

23170. (a) If any person is convicted of a violation of Section 23152 and the offense occurred within seven years of two separate violations of Section 23103 as specified in Section 23103.5 which occurred on or after January 1, 1982, Section 23152, or a misdemeanor violation of Section 23153, or any combination thereof, which resulted in convictions, that person shall be punished by imprisonment in the county jail for not less than 120 days nor more than one year and by a fine of not less than three hundred ninety dollars ($390) nor more than one thousand dollars ($1,000). The person's privilege to operate a motor vehicle shall be revoked by the Department of Motor Vehicles pursuant to paragraph (5) of subdivision (a) of Section 13352. The court shall require the person to surrender his or her driver's license to the court in accordance with Section 13350.

(b) If any person is convicted of a violation of Section 23152 and the offense occurred within seven years of one separate violation of Section 23103 as specified in Section 23103.5 which occurred on or after January 1, 1982, Section 23152, or a misdemeanor or felony violation of Section 23153, which resulted in a conviction, and another prior violation of Section 23153, Section 191.5 of the Penal Code, or paragraph (3) of subdivision (c) of Section 192 of the Penal Code, which resulted in a felony conviction, that person shall be punished by imprisonment in the state prison, or in the county jail for not less than 120 days nor more than one year, and by a fine of not less than three hundred ninety dollars ($390) nor more than than one thousand dollars ($1,000). The person's privilege to operate a motor vehicle shall be suspended by the Department of Motor Vehicles pursuant to paragraph (5) of subdivision (a) of Section 13352. The court shall require the person to surrender his or her license to the court in accordance with Section 13350.

(c) Any person convicted of a violation of Section 23152 punishable under this section shall be designated as an habitual

traffic offender for a period of three years subsequent to the conviction. The person shall be advised of this designation pursuant to subdivision (b) of Section 13350.

SEC. 11. Section 23175 of the Vehicle Code is amended to read:

23175. (a) If any person is convicted of a violation of Section 23152 and the offense occurred within seven years of three or more separate violations of Section 23103 as specified in Section 23103.5 which occurred on or after January 1, 1982, 23152, or 23153, or any combination thereof, which resulted in convictions, that person shall be punished by imprisonment in the county jail for not less than 180 days nor more than one year, and by a fine of not less than three hundred ninety dollars ($390) nor more than one thousand dollars ($1,000). The person's privilege to operate a motor vehicle shall be revoked as required in paragraph (7) of subdivision (a) of Section 13352. The court shall require the person to surrender his or her driver's license to the court in accordance with Section 13350.

(b) Any person convicted of a violation of Section 23152 punishable under this section shall be designated as an habitual traffic offender for a period of three years subsequent to the conviction. The person shall be advised of this designation pursuant to subdivision (b) of Section 13350.

SEC. 12. Section 23175 of the Vehicle Code is amended to read:

23175. (a) If any person is convicted of a violation of Section 23152 and the offense occurred within seven years of three or more separate violations of Section 23103 as specified in Section 23103.5 which occurred on or after January 1, 1982, Section 23152, or misdemeanor violations of Section 23153, or any combination thereof, which resulted in convictions, that person shall be punished by imprisonment in the state prison, and by a fine of not less than three hundred ninety dollars ($390) nor more than one thousand dollars ($1,000). The person's privilege to operate a motor vehicle shall be revoked by the Department of Motor Vehicles pursuant to paragraph (7) of subdivision (a) of Section 13352. The court shall require the person to surrender his or her license to the court in accordance with Section 13350.

(b) If any person is convicted of a violation of Section 23152 and the offense occurred within seven years of two or more separate violations of Section 23103 as specified in Section 23103.5 which occurred on or after January 1, 1982, Section 23152, or one or more misdemeanor or felony violations of Section 23153, or any combination thereof, which resulted in convictions, and another prior violation of Section 23153, Section 191.5 of the Penal Code, or paragraph (3) of subdivision (c) of Section 192 of the Penal Code, which resulted in a felony conviction, that person shall be punished by imprisonment in the state prison, or in the county jail for not less than 180 days nor more than one year, and by a fine of not less than three hundred ninety dollars ($390) nor more than one thousand dollars ($1,000). The person's privilege to operate a motor vehicle shall be suspended by the Department of Motor Vehicles pursuant

to paragraph (7) of subdivision (a) of Section 13352. The court shall require the person to surrender his or her license to the court in accordance with Section 13350.

(c) Any person convicted of a violation of Section 23152 punishable under this section shall be designated as an habitual traffic offender for a period of three years subsequent to the conviction. The person shall be advised of this designation pursuant to subdivision (b) of Section 13350.

SEC. 13. (a) Section 3 of this bill incorporates amendments to Section 13352 of the Vehicle Code proposed by both this bill and SB 1964. It shall only become operative if (1) both bills are enacted and become effective January 1, 1989, (2) each bill amends Section 13352 of the Vehicle Code, (3) SB 2233 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after SB 1964, in which case Sections 2, 4, and 5 of this bill shall not become operative.

(b) Section 4 of this bill incorporates amendments to Section 13352 of the Vehicle Code proposed by both this bill and SB 2233. It shall only become operative if (1) both bills are enacted and become effective January 1, 1989, (2) each bill amends Section 13352 of the Vehicle Code, (3) SB 1964 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after SB 2233, in which case Sections 2, 3, and 5 of this bill shall not become operative.

(c) Section 5 of this bill incorporates amendments to Section 13352 of the Vehicle Code proposed by this bill, SB 1964, and SB 2233. It shall only become operative if (1) all three bills are enacted and become effective January 1, 1989, (2) all three bills amend Section 13352 of the Vehicle Code, and (3) this bill is enacted after SB 1964 and SB 2233, in which case Sections 2, 3, and 4 of this bill shall not become operative.

SEC. 14. Section 10 of this bill incorporates amendments to Section 23170 of the Vehicle Code proposed by both this bill and SB 2073. It shall become operative only if (1) both bills are enacted and become effective on January 1, 1989, (2) each bill amends Section 23170 of the Vehicle Code, and (3) this bill is enacted after SB 2073, in which case Section 9 of this bill shall not become operative.

SEC. 15. (a) Sections 11 and 12 of this bill shall not become operative if SB 2651, AB 2751, or AB 3134 is enacted and as enacted amends Section 23175 of the Vehicle Code.

(b) Section 12 of this bill incorporates amendments to Section 23175 of the Vehicle Code proposed by both this bill and SB 2073. It shall become operative only if (1) both bills are enacted and become effective on January 1, 1989, (2) each bill amends Section 23175 of the Vehicle Code, (3) SB 2651, AB 2751, or AB 3134 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after SB 2073, in which case Section 11 of this bill shall not become operative.

SEC. 16. 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.

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## CHAPTER 1416

An act to amend Section 5714.2 of the Welfare and Institutions Code, relating to mental health.

[Approved by Governor September 26, 1988 Filed with Secretary of State September 27, 1988.]

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

SECTION 1. Section 5714.2 of the Welfare and Institutions Code is amended to read:

5714.2. (a) Subject to the approval of the department, at the end of the fiscal year, a county may retain unexpended funds allocated to it, exclusive of the amount required to care for patients in state hospitals, for 12 months for expenditure for mental health services in accordance with this part.

However, no funds to which this subdivision applies shall be used for 24-hour hospital services.

(b) Each fiscal year, counties using state hospitals in excess of their annual state hospital day allocations shall receive an assessment against their local assistance allocation for that year. This assessment shall be based on the statewide variable per diem cost of care times the number of days used in excess of the annual allocation. The State Department of Mental Health shall execute the assessments within 180 days after the end of each fiscal year by deducting the assessment amount from the following year's advance monthly payments. Funds accruing from the assessments, less any costs incurred in the year of the assessments by state hospitals which are in excess of the state hospital appropriation, shall be allocated to underusing counties. Counties shall be allowed to expend these funds for mental health services and capital outlay purposes including the acquisition of land. Allocation of funds shall be made to counties who underused their state hospital day allocation in a given year and who have a proposal approved by the State Department of Mental Health. The amount of the allocation shall be the number of underutilized days in a fiscal year times the variable per diem cost as calculated for that year, or pro rata share of available funds, whichever is less. These funds shall be spent in accordance with the approved project plan and shall be subject to audit. All audit disallowance shall be returned to the State Department of Mental Health.

(c) Funds retained by a county pursuant to subdivision (b) may be expended for capital projects for services which have been approved in the county Short-Doyle plan, in order to enable counties

to purchase and renovate facilities to house treatment programs which will act as an alternative to institutional care. The approval of the capital project shall be specifically approved by the department as a part of the annual Short-Doyle plan.

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## CHAPTER 1417

An act to add Sections 25115.2 and 25204 to the Health and Safety Code, relating to hazardous waste.

[Approved by Governor September 26, 1988. Filed with Secretary of State September 27, 1988 ]

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

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

(a) Current state and federal law requires that steps be taken to eliminate the land disposal of untreated hazardous wastes not later than May 1990.

(b) The May 1986 Report of the Governor's Task Force on Toxics recommended that action be taken at the state level toward the establishment of residuals management facilities, the purpose of which would be to provide for the disposal of the residual material remaining after the treatment of hazardous wastes so that the threat to the public health and welfare and the environment is minimized to the greatest extent possible. Included among those recommendations are the following:

(1) Strict residuals content standards should be established to govern the content and form of residuals to be accepted by residuals management facilities.

(2) The appropriate state agencies should develop siting criteria for residuals management facilities and regulations defining the protections that residuals management facilities are required to provide and the performance standards that will be applicable to these facilities.

(c) It is a matter of urgent public necessity that the State Department of Health Services, in consultation with the State Water Resources Control Board, adopt, by regulation, the criteria and standards set forth in subdivision (b) of Section 25204 of the Health and Safety Code so as to coincide, as closely as possible, with the state and federal ban on the land disposal of untreated wastes.

SEC. 2. Section 25115.2 is added to the Health and Safety Code, to read:

25115.2. "Federal act" means the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Sec. 6901 et seq.).

SEC. 3. Section 25204 is added to the Health and Safety Code, to read:

25204. (a) For purposes of this section, "residuals repository" means a hazardous waste facility, or an operational unit at a hazardous waste facility, which meets all of the following requirements:

(1) It is sited, designed and constructed, operated, and maintained, in accordance with all applicable federal and state regulations, including, but not limited to, the regulations adopted pursuant to subdivision (b).

(2) The operator holds a hazardous waste facilities permit issued by the department under this chapter.

(3) A condition imposed in the hazardous waste facilities permit authorizes the residuals repository to accept for disposal in or on the land only treated hazardous waste, as defined in subdivision (*l*) of Section 25179.3, that has been specified as suitable for disposal in a residuals repository pursuant to paragraph (1) of subdivision (b).

(b) On or before May 1, 1990, the department shall adopt, by regulation, standards for residuals repositories. In developing these standards, the department shall consult with the State Water Resources Control Board, conduct public workshops, and request comments and recommendations from appropriate state and federal agencies and the interested public. The standards shall, at a minimum, be at least as stringent, effective, and comprehensive as the standards applicable to hazardous waste land disposal facilities adopted under the federal act, including the regulations, guidelines, and policies adopted pursuant to the federal act, and shall include, but not be limited to, all of the following:

(1) A specification of which treated hazardous wastes the department determines are suitable for disposal in a residuals repository. The department may specify these treated hazardous wastes by listing types or categories of treated hazardous wastes or by establishing physical or chemical properties that treated hazardous wastes are required to meet.

(2) Design and construction standards for a residuals repository.

(3) Standards governing the operation, monitoring, maintenance, closure, and postclosure maintenance of a residuals repository.

(4) Minimum standards governing the location of a residuals repository and the subsurface geology underlying the site. In establishing these standards, the department shall also specify the specific criteria, if any, under which the department justifies a finding that engineering measures or design factors may be substituted for geological requirements.

(5) Requirements for hazardous waste segregation and recordkeeping.

SEC. 4. Section 2 of this act, which adds Section 25115.2 to the Health and Safety Code to define the term "federal act," shall not become operative if Assembly Bill 3188 is enacted and becomes effective on January 1, 1989, and adds Section 25115.1 to the Health and Safety Code, defining the term "federal act."

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.

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## CHAPTER 1418

An act to amend Section 49559 of the Education Code, relating to education.

[Approved by Governor September 26, 1988 Filed with Secretary of State September 27, 1988.]

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

SECTION 1. Section 49559 of the Education Code is amended to read:

49559. (a) Any school food authority that participates in a federal child nutrition program and is reimbursed pursuant to subdivision (b) of Section 41350 for meals served pursuant to this article may, commencing with the program period of July 1, 1988, to June 30, 1989, be reimbursed at the rate of 29.58 cents ($0.2958) for breakfast or snack and 29.58 cents ($0.2958) for lunch or 59.16 cents ($0.5916) for a morning supplement. If the sum appropriated for purposes of this section is not sufficient to make the allowances specified by this section, the allowances shall be reduced proportionately. This rate shall be in addition to the reimbursement currently provided under Section 49536. The additional funds shall be used exclusively to supplement the meals served pursuant to Section 49550.

(b) Pregnant or lactating students shall qualify for nutrition program supplements under this section upon the submission of medical verification of pregnancy or lactating status. Those students shall qualify for nutrition program supplements under this section through the end of the school year during which they conclude their pregnancy or discontinue lactating. All statements shall be strictly confidential, in accordance with Section 49558.

(c) The State Department of Education shall make allowances to school food authorities from the General Fund on at least a quarterly basis. Program providers shall submit claims to the department within 10 calendar days of the end of each quarter. Within 45 calendar days of submission of a valid claim, the State Department of Education shall tender reimbursement.

(d) The State Department of Education shall, prior to July 1 of each year, prescribe an adjustment in the state meal contribution rates for the next fiscal year. The adjustments shall reflect the changes in the cost of operating a school breakfast, snack, morning supplement, and lunch program and shall be effective July 1 of each

year. The adjustment shall be based on the average of the separate indices of the "Food Away From Home Index" for Los Angeles and San Francisco, as prepared by the United States Bureau of Labor Statistics.

In giving effect to the cost-of-living provisions of this subdivision, the State Department of Education shall prescribe a calendar month for the computation of the percentage change in the cost of living after July 1, 1985. The same month shall be used annually thereafter. The product of any percentage increase or decrease in the average index and the per meal reimbursement disbursement rate shall be adjusted by the amount of any cost-of-living change currently in effect pursuant to this subdivision. For the purposes of this subdivision, state reimbursement shall be made for the breakfast or lunch which qualifies for reimbursement pursuant to the nutritional requirements of Section 49553.

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## CHAPTER 1419

An act to amend Section 11837.4 of the Health and Safety Code, and to amend Sections 13352, 23171, 23176, and 23191 of the Vehicle Code, relating to driving offenses.

[Approved by Governor September 26, 1988 Filed with Secretary of State September 27, 1988 ]

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

SECTION 1. Section 11837.4 of the Health and Safety Code is amended to read:

11837.4. (a) The department shall have sole authority to license programs pursuant to this chapter. No program, regardless of how it is funded, may be licensed unless, subject to subdivision (c), it meets or exceeds the minimum standards established by the department, which shall include, but are not limited to, all of the following:

(1) For the one-year programs specified in subdivision (a) of Section 11837, each program shall provide for close and regular supervision of the person, including face-to-face interviews at least once every other calendar week, regarding the person's progress in the program. For the 30-month programs specified in subdivision (b) of Section 23171, subdivision (b) of Section 23176, and subdivision (b) of Section 23191 of the Vehicle Code, each program shall provide for close and regular supervision of the person, including regular, scheduled face-to-face interviews over the course of 30 months regarding the person's progress in the program and recovery from problem drinking, alcoholism, chemical dependency, or polydrug abuse, as prescribed by regulations of the department. The interviews in either program shall be conducted individually with each person being supervised and shall occur at times other than

when the person is participating in any group or other activities of the program. No program activity in which the person is participating shall be interrupted in order to conduct the individual interviews.

(2) The department shall approve all fee schedules for the programs and shall require that each program be self-supporting from the participants' fees and that each program provide for the payment of the costs of the program by participants at times and in amounts commensurate with their ability to pay in order to enable these persons to participate. Each program shall make provisions for persons who can successfully document current inability to pay the fees. Only the department may establish the criteria and procedures for determining a participant's ability to pay. The department shall ensure that the fees are set at amounts which will enable programs to provide adequately for the immediate and long-term continuation of services required pursuant to this chapter. The fees shall be used only for the purposes set forth in this chapter, except that any profit or surplus, that does not exceed the maximum level established by the department, may be utilized for any purposes allowable under any other provisions of law. In its standards, the department shall define, for the purposes of this paragraph, taking into account prudent accounting, management, and business practices and procedures, the terms "profits" and "surplus." The department shall fairly construe these provisions so as not to jeopardize fiscal integrity of the programs. The department may not license any program if the department finds that any element of the administration of the program does not assure the fiscal integrity of the program.

(3) Both of the licensed programs described in paragraph (1) shall include a variety of treatment services for problem drinkers, alcoholics, chemical dependents, and polydrug abusers or shall have the capability of referring the persons to, and regularly and closely supervising the persons while in, any appropriate medical, hospital, or licensed residential treatment services or self-help groups for their problem drinking, alcoholism, chemical dependency, or polydrug abuse problem. In addition to the requirements of paragraph (1), the department shall prescribe in its minimum standards what other services the program shall provide, at a minimum, in the treatment of participants, which services may include lectures, classes, group discussions, group counseling, or individual counseling in addition to the interviews required by paragraph (1), or any combination thereof. However, any group discussion or counseling activity, other than classes or lectures, shall be regularly scheduled to consist of not more than 15 persons, except that they may, on an emergency basis, exceed 15, but not more than 17, persons, at any one meeting. For the 30-month programs specified in subdivision (b) of Section 23171, subdivision (b) of Section 23176, and subdivision (b) of Section 23191 of the Vehicle Code, each licensed program shall include a method by which each participant shall maintain a compendium of probative evidence, as prescribed in the regulations of the department, on a

trimonthly basis demonstrating a performance of voluntary community service by the participant, including, but not limited to, the prevention of drinking and driving, the promotion of safe driving, and responsible attitudes toward the use of chemicals of any kind, for not less than 120 hours and not more than 300 hours, as determined by the court, with one-half of that time to be served during the initial 18 months of program participation and one-half of that time to be served during the final 12 months. In determining whether or not the participant has met the objectives of the program, the compendium of evidence shall also include, and the court shall consider, the participant's demonstration of significant improvement in any of the following areas of personal achievement:

(A) Significant improvement in occupational performance, including efforts to obtain gainful employment.

(B) Significant improvement in physical and mental health.

(C) Significant improvement in family relations, including financial obligations.

(D) Significant improvement in financial affairs and economic stability.

The compendium of evidence shall be maintained by the participant for review by the program, court, probation officer, or other appropriate governmental agency. The program officials, unless prohibited by the referring court, shall make provisions for a participant to voluntarily enter, using the participant's own resources, a licensed chemical dependency recovery hospital or residential treatment program which has a valid license issued by the State of California to provide alcohol or drug services, and to receive three weeks of program participation credit for each week of that treatment, not to exceed 12 weeks of program participation credit, but only if the treatment is at least two weeks in duration. The program shall document probative evidence of this hospital or residential care treatment in the participant's program file.

(4) In order to assure program effectiveness, the department shall require, whenever appropriate, that the licensed program provides services to ethnic minorities, women, youth, or any other group that has particular needs relating to the program.

(5) The goal of each program shall be to assist persons participating in the program to recognize their chemical dependency and to assist them in their recovery.

(6) Each program shall establish a method by which the court, the Department of Motor Vehicles, and the person are notified in a timely manner of the person's failure to comply with the program's rules and regulations.

(b) Each program may be an extension of an existing program or a new program. No such program may be licensed, however, unless the county complies with the requirements of subdivision (b) of Section 11812. The provider of a program that offers either or both programs described in this section shall be required to obtain only one license.

(c) The approval for the establishment of the 30-month program is contingent upon approval by the county alcohol program administrator, based upon confirmation that the program applicant is capable of providing the service and that the fiscal integrity of the program applicant will not be jeopardized by the operation of the program.

The court shall refer a person to a 30-month treatment program only if a 30-month program exists or is provided for in the jurisdiction of the court.

(d) A county or program shall not prescribe additional program requirements unless the requirements are specifically approved by the department.

(e) The department may license a program on a provisional basis.

SEC. 2. Section 11837.4 of the Health and Safety Code is amended to read:

11837.4. (a) No program, regardless of how it is funded, may be licensed unless all of the requirements of this chapter and of the regulations adopted pursuant to this chapter have been met.

(b) Each licensed program shall include, but not be limited to, the following:

(1) For the one-year programs specified in subdivision (a) of Section 11837, each program shall provide for close and regular supervision of the person, including face-to-face interviews at least once every other calendar week, regarding the person's progress in the program. For the 30-month programs specified in subdivision (b) of Section 23171, subdivision (b) of Section 23176, and subdivision (b) of Section 23191 of the Vehicle Code, each program shall provide for close and regular supervision of the person, including regular, scheduled face-to-face interviews over the course of 30 months regarding the person's progress in the program and recovery from problem drinking, alcoholism, chemical dependency, or polydrug abuse, as prescribed by regulations of the department. The interviews in either program shall be conducted individually with each person being supervised and shall occur at times other than when the person is participating in any group or other activities of the program. No program activity in which the person is participating shall be interrupted in order to conduct the individual interviews.

(2) The department shall approve all fee schedules for the programs and shall require that each program be self-supporting from the participants' fees and that each program provide for the payment of the costs of the program by participants at times and in amounts commensurate with their ability to pay in order to enable these persons to participate. Each program shall make provisions for persons who can successfully document current inability to pay the fees. Only the department may establish the criteria and procedures for determining a participant's ability to pay. The department shall ensure that the fees are set at amounts which will enable programs to provide adequately for the immediate and long-term continuation

of services required pursuant to this chapter. The fees shall be used only for the purposes set forth in this chapter, except that any profit or surplus, that does not exceed the maximum level established by the department, may be utilized for any purposes allowable under any other provisions of law. In its regulations, the department shall define, for the purposes of this paragraph, taking into account prudent accounting, management, and business practices and procedures, the terms "profits" and "surplus." The department shall fairly construe these provisions so as not to jeopardize fiscal integrity of the programs. The department may not license any program if the department finds that any element of the administration of the program does not assure the fiscal integrity of the program.

(3) Both of the licensed programs described in paragraph (1) shall include a variety of treatment services for problem drinkers, alcoholics, chemical dependents, and polydrug abusers or shall have the capability of referring the persons to, and regularly and closely supervising the persons while in, any appropriate medical, hospital, or licensed residential treatment services or self-help groups for their problem drinking, alcoholism, chemical dependency, or polydrug abuse problem. In addition to the requirements of paragraph (1), the department shall prescribe in its regulations what other services the program shall provide, at a minimum, in the treatment of participants, which services may include lectures, classes, group discussions, group counseling, or individual counseling in addition to the interviews required by paragraph (1), or any combination thereof. However, any group discussion or counseling activity, other than classes or lectures, shall be regularly scheduled to consist of not more than 15 persons, except that they may, on an emergency basis, exceed 15, but not more than 17, persons, at any one meeting. At no time shall there be more than 17 persons in attendance at any one meeting. For the 30-month programs specified in subdivision (b) of Section 23171, subdivision (b) of Section 23176, and subdivision (b) of Section 23191 of the Vehicle Code, each licensed program shall include a method by which each participant shall maintain a compendium of probative evidence, as prescribed in the regulations of the department, on a trimonthly basis demonstrating a performance of voluntary community service by the participant, including, but not limited to, the prevention of drinking and driving, the promotion of safe driving, and responsible attitudes toward the use of chemicals of any kind, for not less than 120 hours and not more than 300 hours, as determined by the court, with one-half of that time to be served during the initial 18 months of program participation and one-half of that time to be served in the final 12 months. In determining whether or not the participant has met the objectives of the program, the compendium of evidence shall also include, and the court shall consider, the participant's demonstration of significant improvement in any of the following areas of personal achievement:

(A) Significant improvement in occupational performance,

including efforts to obtain gainful employment.

(B) Significant improvement in physical and mental health.

(C) Significant improvement in family relations, including financial obligations.

(D) Significant improvement in financial affairs and economic stability.

The compendium of evidence shall be maintained by the participant for review by the program, court, probation officer, or other appropriate governmental agency. The program officials, unless prohibited by the referring court, shall make provisions for a participant to voluntarily enter, using the participant's own resources, a licensed chemical dependency recovery hospital or residential treatment program which has a valid license issued by the State of California to provide alcohol or drug services, and to receive three weeks of program participation credit for each week of that treatment, not to exceed 12 weeks of program participation credit, but only if the treatment is at least two weeks in duration. The program shall document probative evidence of this hospital or residential care treatment in the participant's program file.

(4) In order to assure program effectiveness, the department shall require, whenever appropriate, that the licensed program provides services to ethnic minorities, women, youth, or any other group that has particular needs relating to the program.

(5) The goal of each program shall be to assist persons participating in the program to recognize their chemical dependency and to assist them in their recovery.

(6) Each program shall establish a method by which the court, the Department of Motor Vehicles, and the person are notified in a timely manner of the person's failure to comply with the program's rules and regulations.

(c) No program may be licensed unless the county complies with the requirements of subdivision (b) of Section 11812. The provider of a program that offers either a one-year program or a 30-month program or both programs described in this section shall be required to obtain only one license.

(d) Departmental approval for the establishment of a 30-month program by a licensed one-year program is contingent upon approval by the county alcohol program administrator, based upon confirmation that the program applicant is capable of providing the service and that the fiscal integrity of the program applicant will not be jeopardized by the operation of the program.

The court shall refer a person to a 30-month treatment program only if a 30-month program exists or is provided for in the jurisdiction of the court.

(e) A county or program shall not prescribe additional program requirements unless the requirements are specifically approved by the department.

(f) The department may license a program on a provisional basis.

SEC. 3. Section 13352 of the Vehicle Code is amended to read:

13352. (a) The department shall immediately suspend or revoke 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. 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, or if the offense occurred in a vehicle requiring a driver with a class 1 or class 2 driver's license or with a certificate specified in Section 12804.1. However, where (A) the driving privilege is required to be suspended by this paragraph due to the violation having occurred in vehicles requiring a class 1 or class 2 driver's license, and (B) the court grants probation and imposes the condition specified in subdivision (b) of Section 23161, the department shall issue the person a class 3 driver's license restricted in the same manner and subject to the same conditions as specified in subdivision (e) of Section 13352.5. 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.

(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 as defined in Section 16430.

(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 as defined in Section 16430.

(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 as defined in Section 16430.

(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 as defined in

Section 16430 and gives proof satisfactory to the department of successful completion subsequent to the most recent underlying conviction of a one-year program or a 30-month program approved pursuant to Chapter 9 (commencing with Section 11837) of Part 2 of Division 10.5 of the Health and Safety Code. The court shall advise the person at the time of sentencing that completion of a one-year program or a 30-month program is required in order to become eligible for a California driver's license. 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 a one-year program or a 30-month program approved pursuant to Chapter 9 (commencing with Section 11837) 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 as defined in Section 16430 and gives proof satisfactory to the department of successful completion subsequent to the most recent underlying conviction of a 30-month program approved pursuant to Chapter 9 (commencing with Section 11837) of Part 2 of Division 10.5 of the Health and Safety Code. The court shall advise the person at the time of sentencing that completion of a 30-month program is required in order to become eligible for a California driver's license. 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 a 30-month program approved pursuant to Chapter 9 (commencing with Section 11837) 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 as defined in Section 16430 and gives proof satisfactory to the department of successful completion subsequent to the most recent underlying conviction of a one-year program or a 30-month program approved pursuant to Chapter 9 (commencing with Section 11837) of Part 2 of Division 10.5 of the Health and Safety Code. The court shall advise the person at the time of sentencing that completion of a one-year program or a 30-month program is required in order to become eligible for a California driver's license. 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 a

one-year program or a 30-month program approved pursuant to Chapter 9 (commencing with Section 11837) 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 as defined in Section 16430.

(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 the Dominion of 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 such 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 such a conviction.

SEC. 4. 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. 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, or if the offense

occurred in a vehicle requiring a driver with a class 1 or class 2 driver's license or with a certificate specified in Section 12804.1. However, where (A) the driving privilege is required to be suspended by this paragraph due to the violation having occurred in vehicles requiring a class 1 or class 2 driver's license, and (B) the court grants probation and imposes the condition specified in subdivision (b) of Section 23161, the department shall issue the person a class 3 driver's license restricted in the same manner and subject to the same conditions as specified in subdivision (e) of Section 13352.5. 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.

(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 as defined in Section 16430.

(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 as defined in Section 16430.

(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 as defined in Section 16430.

(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 as defined in Section 16430 and gives proof satisfactory to the department of successful completion subsequent to the most recent underlying conviction of a one-year program or a 30-month program approved pursuant to Chapter 9 (commencing with Section 11837) of Part 2 of Division 10.5 of the Health and Safety Code. The court shall advise the person at the time of sentencing that completion of a one-year program or a 30-month program is required in order to become eligible for a California driver's license. 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 a one-year program or a 30-month program approved pursuant to Chapter 9 (commencing with Section 11837) 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 as defined in Section 16430 and gives proof satisfactory to the department of successful completion subsequent to the most recent underlying conviction of a 30-month program approved pursuant to Chapter 9 (commencing with Section 11837) of Part 2 of Division 10.5 of the Health and Safety Code. The court shall advise the person at the time of sentencing that completion of a 30-month program is required in order to become eligible for a California driver's license. 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 a 30-month program approved pursuant to Chapter 9 (commencing with Section 11837) 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 as defined in Section 16430 and gives proof satisfactory to the department of successful completion subsequent to the most recent underlying conviction of a one-year program or a 30-month program approved pursuant to Chapter 9 (commencing with Section 11837) of Part 2 of Division 10.5 of the Health and Safety Code. The court shall advise the person at the time of sentencing that completion of a one-year program or a 30-month program is required in order to become eligible for a California driver's license. 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 a one-year program or a 30-month program approved pursuant to Chapter 9 (commencing with Section 11837) 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 as defined in Section 16430.

(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 the Dominion of 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 such 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 such a conviction.

SEC. 5. Section 13352 of the Vehicle Code is amended to read:

13352. (a) The department shall immediately suspend or revoke 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. 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, or if the offense occurred in a vehicle requiring a driver with a class 1 or class 2 driver's license or with a certificate specified in Section 12804.1. However, where (A) the driving privilege is required to be suspended by this paragraph due to the violation having occurred in vehicles requiring a class 1 or class 2 driver's license, and (B) the court grants probation and imposes the condition specified in subdivision (b) of Section 23161, the department shall issue the person a class 3 driver's license restricted in the same manner and subject to the same conditions as specified in subdivision (e) of Section 13352.5. 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.

(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 as defined in Section 16430.

(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 as defined in Section 16430.

(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 as defined in Section 16430.

(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 as defined in Section 16430 and gives proof satisfactory to the department of successful completion subsequent to the most recent underlying conviction of a one-year program or a 30-month program approved pursuant to Chapter 9 (commencing with Section 11837) of Part 2 of Division 10.5 of the Health and Safety Code. The court shall advise the person at the time of sentencing that completion of a one-year program or a 30-month program is required in order to become eligible for a California driver's license. 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 a one-year program or a 30-month program approved pursuant to Chapter 9 (commencing with Section 11837) 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 as defined in Section 16430 and gives proof satisfactory to the department of successful completion subsequent to the most recent underlying conviction of a 30-month program approved pursuant to Chapter 9 (commencing with Section 11837) of Part 2 of Division 10.5 of the Health and Safety Code. The court shall advise the person at the time of sentencing that completion of a 30-month program is required in order to become eligible for a California driver's license. 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 a 30-month program approved pursuant to Chapter 9 (commencing with Section 11837) 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 as defined in Section 16430 and gives proof satisfactory to the department of successful completion subsequent to the most recent underlying conviction of a one-year program or a 30-month program approved pursuant to Chapter 9 (commencing with Section 11837) of Part 2 of Division 10.5 of the Health and Safety Code. The court shall advise the person at the time of sentencing that completion of a one-year program or a 30-month program is required in order to become eligible for a California driver's license. 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 a one-year program or a 30-month program approved pursuant to Chapter 9 (commencing with Section 11837) 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 as defined in Section 16430.

(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 the Dominion of 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 such 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 such a 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 as defined in Section 16430 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. 6. 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. 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, or if the offense occurred in a vehicle requiring a driver with a class 1 or class 2 driver's license or with a certificate specified in Section 12804.1. However, where (A) the driving privilege is required to be suspended by this paragraph due to the violation having occurred in vehicles requiring a class 1 or class 2 driver's license, and (B) the court grants probation and imposes the condition specified in subdivision (b) of Section 23161, the department shall issue the person a class 3 driver's license restricted in the same manner and subject to the same conditions as specified in subdivision (e) of Section 13352.5. 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.

(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 as defined in

Section 16430.

(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 as defined in Section 16430.

(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 as defined in Section 16430.

(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 as defined in Section 16430 and gives proof satisfactory to the department of successful completion subsequent to the most recent underlying conviction of a one-year program or a 30-month program approved pursuant to Chapter 9 (commencing with Section 11837) of Part 2 of Division 10.5 of the Health and Safety Code. The court shall advise the person at the time of sentencing that completion of a one-year program or a 30-month program is required in order to become eligible for a California driver's license. 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 a one-year program or a 30-month program approved pursuant to Chapter 9 (commencing with Section 11837) 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 as defined in Section 16430 and gives proof satisfactory to the department of successful completion subsequent to the most recent underlying conviction of a 30-month program approved pursuant to Chapter 9 (commencing with Section 11837) of Part 2 of Division 10.5 of the Health and Safety Code. The court shall advise the person at the time of sentencing that completion of a 30-month program is required in order to become eligible for a California driver's license. 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 a 30-month program approved pursuant to Chapter 9 (commencing with Section 11837) 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 as defined in Section 16430 and gives proof satisfactory to the department of successful completion subsequent to the most recent underlying conviction of a one-year program or a 30-month program approved pursuant to Chapter 9 (commencing with Section 11837) of Part 2 of Division 10.5 of the Health and Safety Code. The court shall advise the person at the time of sentencing that completion of a one-year program or a 30-month program is required in order to become eligible for a California driver's license. 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 a one-year program or a 30-month program approved pursuant to Chapter 9 (commencing with Section 11837) 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 as defined in Section 16430.

(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 the Dominion of 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 such 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 such a 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 as defined in Section 16430 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. 7. Section 23171 of the Vehicle Code is amended to read:

23171. (a) If the court grants probation to any person punished under Section 23170, in addition to the provisions of Section 23206 and any other terms and conditions imposed by the court, the court shall impose as conditions of probation that the person be confined in the county jail for at least 120 days but not more than one year and pay a fine of at least three hundred ninety dollars ($390) but not more than one thousand dollars ($1,000). The person's privilege to operate a motor vehicle shall be revoked by the Department of Motor Vehicles pursuant to paragraph (5) of subdivision (a) of Section 13352.

(b) In addition to subdivision (a), if the court grants probation to any person punished under Section 23170, the court, may, in its discretion, order as a condition of probation that the person participate, for at least 30 months subsequent to the underlying conviction and in a manner satisfactory to the court, in a program approved pursuant to Chapter 9 (commencing with Section 11837) of Part 2 of Division 10.5 of the Health and Safety Code. In lieu of the minimum term of imprisonment in subdivision (a), the court shall impose as a condition of probation under this subdivision that the person be confined in the county jail for at least 30 days but not more than one year. The court shall not order the treatment prescribed by this subdivision unless the person makes a specific request and shows good cause for the order, whether or not the person has previously completed a treatment program pursuant to paragraph (4) of subdivision (b) of Section 23166 or paragraph (4) of subdivision (b) of Section 23186. A person ordered to treatment pursuant to this subdivision shall apply to the court or to a board of review, as designated by the court, at the conclusion of the program to obtain the court's order of satisfaction. Only upon the granting of that order of satisfaction by the court may the program issue its certificate of successful completion and report the completion to the Department of Motor Vehicles. A failure to obtain an order of satisfaction at the conclusion of the program is a violation of probation. In order to enable all required persons to participate, each person shall pay the program costs commensurate with the person's ability to pay as determined pursuant to Section 11837.4 of the Health and Safety Code. No condition of probation required pursuant to this subdivision is a basis for reducing any other probation requirement

in this section or Section 23206 or for avoiding the mandatory license revocation provisions of paragraph (5) of subdivision (a) of Section 13352.

(c) In addition to the provisions of Section 23206 and subdivision (a), if the court grants probation to any person punished under Section 23170 who has not previously successfully completed a treatment program pursuant to paragraph (4) of subdivision (b) of Section 23166 or paragraph (4) of subdivision (b) of Section 23186, and unless the person is ordered to participate in and complete a program under subdivision (c), the court shall impose as a condition of probation that the person participate, for at least one year and in a manner satisfactory to the court, in a program approved pursuant to Chapter 9 (commencing with Section 11837) of Part 2 of Division 10.5 of the Health and Safety Code, as designated by the court. The program shall provide for persons who cannot afford the program fee pursuant to paragraph (2) of subdivision (a) of Section 11837.4 of the Health and Safety Code in order to enable those persons to participate. No condition of probation required pursuant to this subdivision is a basis for reducing any other probation requirement in this section or Section 23206 or for avoiding the mandatory license revocation provisions of paragraph (5) of subdivision (a) of Section 13352.

SEC. 8. Section 23176 of the Vehicle Code is amended to read:

23176. (a) If the court grants probation to any person punished under Section 23175, in addition to the provisions of Section 23206 and any other terms and conditions imposed by the court, the court shall impose as conditions of probation that the person be confined in the county jail for at least 180 days but not more than one year and pay a fine of at least three hundred ninety dollars ($390) but not more than one thousand dollars ($1,000). The person's privilege to operate a motor vehicle shall be revoked by the Department of Motor Vehicles pursuant to paragraph (7) of subdivision (a) of Section 13352.

(b) In addition to subdivision (a), if the court grants probation to any person punished under Section 23175, the court, may, in its discretion, order as a condition of probation that the person participate, for at least 30 months subsequent to the underlying conviction and in a manner satisfactory to the court, in a program approved pursuant to Chapter 9 (commencing with Section 11837) of Part 2 of Division 10.5 of the Health and Safety Code. In lieu of the minimum term of imprisonment in subdivision (a), the court shall impose as a condition of probation under this subdivision that the person be confined in the county jail for at least 30 days but not more than one year. The court shall not order the treatment prescribed by this subdivision unless the person makes a specific request and shows good cause for the order, whether or not the person has previously completed a treatment program pursuant to paragraph (4) of subdivision (b) of Section 23166 or paragraph (4) of subdivision (b) of Section 23186. A person ordered to treatment pursuant to this

subdivision shall apply to the court or to a board of review, as designated by the court, at the conclusion of the program to obtain the court's order of satisfaction. Only upon the granting of that order of satisfaction by the court may the program issue its certificate of successful completion and report the completion to the Department of Motor Vehicles. A failure to obtain an order of satisfaction at the conclusion of the program is a violation of probation. In order to enable all required persons to participate, each person shall pay the program costs commensurate with the person's ability to pay as determined pursuant to Section 11837.4 of the Health and Safety Code. No condition of probation required pursuant to this subdivision is a basis for reducing any other probation requirement in this section or Section 23206 or for avoiding the mandatory license revocation provisions of paragraph (7) of subdivision (a) of Section 13352.

(c) In addition to the provisions of Section 23206 and subdivision (a), if the court grants probation to any person punished under Section 23175 who has not previously successfully completed a treatment program pursuant to paragraph (4) of subdivision (b) of Section 23166 or paragraph (4) of subdivision (b) of Section 23186, and unless the person is ordered to participate in, and complete, a program under subdivision (c), the court shall impose as a condition of probation that the person participate, for at least one year and in a manner satisfactory to the court, in a program approved pursuant to Chapter 9 (commencing with Section 11837) of Part 2 of Division 10.5 of the Health and Safety Code, as designated by the court. No condition of probation required pursuant to this subdivision is a basis for reducing any other probation requirement in this section or Section 23206 or for avoiding the mandatory license revocation provisions of paragraph (7) of subdivision (a) of Section 13352.

SEC. 9. Section 23176 of the Vehicle Code is amended to read:

23176. (a) If the court grants probation to any person punished under Section 23175, in addition to the provisions of Section 23206 and any other terms and conditions imposed by the court, the court shall impose as conditions of probation that the person be confined in the county jail for not less than 270 days but not more than one year and pay a fine of at least three hundred ninety dollars ($390) but not more than two thousand five hundred dollars ($2,500). The person's privilege to operate a motor vehicle shall be revoked by the Department of Motor Vehicles pursuant to paragraph (7) of subdivision (a) of Section 13352.

(b) In addition to subdivision (a), if the court grants probation to any person punished under Section 23175, the court, may, in its discretion, order as a condition of probation that the person participate, for not less than 30 months subsequent to the underlying conviction and in a manner satisfactory to the court, in a program approved pursuant to Chapter 9 (commencing with Section 11837) of Part 2 of Division 10.5 of the Health and Safety Code. In lieu of the minimum term of imprisonment in subdivision (a), the court shall

impose as a condition of probation under this subdivision that the person be confined in the county jail for not less than 30 days but not more than one year. The court shall not order the treatment prescribed by this subdivision unless the person makes a specific request and shows good cause for the order, whether or not the person has previously completed a treatment program pursuant to paragraph (4) of subdivision (b) of Section 23166 or paragraph (4) of subdivision (b) of Section 23186. A person ordered to treatment pursuant to this subdivision shall apply to the court or to a board of review, as designated by the court, at the conclusion of the program to obtain the court's order of satisfaction. Only upon the granting of that order of satisfaction by the court may the program issue its certificate of successful completion and report the completion to the Department of Motor Vehicles. A failure to obtain an order of satisfaction at the conclusion of the program is a violation of probation. In order to enable all required persons to participate, each person shall pay the program costs commensurate with the person's ability to pay as determined pursuant to Section 11837.4 of the Health and Safety Code. No condition of probation required pursuant to this subdivision is a basis for reducing any other probation requirement in this section or Section 23206 or for avoiding the mandatory license revocation provisions of paragraph (7) of subdivision (a) of Section 13352.

(c) In addition to the provisions of Section 23206 and subdivision (a), if the court grants probation to any person punished under Section 23175 who has not previously successfully completed a treatment program pursuant to paragraph (4) of subdivision (b) of Section 23166 or paragraph (4) of subdivision (b) of Section 23186, and unless the person is ordered to participate in, and complete, a program under subdivision (c), the court shall impose as a condition of probation that the person participate, for not less than one year and in a manner satisfactory to the court, in a program approved pursuant to Chapter 9 (commencing with Section 11837) of Part 2 of Division 10.5 of the Health and Safety Code, as designated by the court. No condition of probation required pursuant to this subdivision is a basis for reducing any other probation requirement in this section or Section 23206 or for avoiding the mandatory license revocation provisions of paragraph (7) of subdivision (a) of Section 13352.

SEC. 10. Section 23191 of the Vehicle Code is amended to read:

23191. (a) If the court grants probation to any person punished under Section 23190, in addition to the provisions of Section 23206 and any other terms and conditions imposed by the court, the court shall impose as conditions of probation that the person be confined in the county jail for at least one year, that the person pay a fine of at least three hundred ninety dollars ($390) but not more than five thousand dollars ($5,000), and that the person make restitution or reparation pursuant to Section 1203.1 of the Penal Code. The person's privilege to operate a motor vehicle shall be revoked by the

Department of Motor Vehicles pursuant to paragraph (6) of subdivision (a) of Section 13352.

(b) In addition to the provisions of Section 23206 and subdivision (a), if the court grants probation to any person punished under Section 23190, the court shall impose as a condition of probation that the person participate, for at least 30 months subsequent to the underlying conviction and in a manner satisfactory to the court, in a program approved pursuant to Chapter 9 (commencing with Section 11837) of Part 2 of Division 10.5 of the Health and Safety Code, as designated by the court. In lieu of the minimum term of imprisonment in subdivision (a), the court shall impose as a minimum condition of probation under this subdivision that the person be confined in the county jail for at least 30 days but not more than one year. Except as provided in subdivision (b), if the court grants probation under this section, the court shall order the treatment prescribed by this subdivision, whether or not the person has previously completed a treatment program pursuant to paragraph (4) of subdivision (b) of Section 23166 or paragraph (4) of subdivision (b) of Section 23186. A person ordered to treatment pursuant to this subdivision shall apply to the court or to a board of review, as designated by the court, at the conclusion of the program to obtain the court's order of satisfaction. Only upon the granting of that order of satisfaction by the court may the program issue its certificate of successful completion and report the completion to the Department of Motor Vehicles. A failure to obtain an order of satisfaction at the conclusion of the program is a violation of probation. In order to enable all required persons to participate, each person shall pay the program costs commensurate with the person's ability to pay as determined pursuant to Section 11837.4 of the Health and Safety Code. No condition of probation required pursuant to this subdivision is a basis for reducing any other probation requirement in this section or Section 23206 or for avoiding the mandatory license revocation provisions of paragraph (6) of subdivision (a) of Section 13352.

SEC. 11. Section 2 of this bill incorporates amendments to Section 11837.4 of the Health and Safety Code proposed by both this bill and SB 2859. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1989, (2) each bill amends Section 11837.4 of the Health and Safety Code, and (3) this bill is enacted after SB 2859, in which case Section 1 of this bill shall not become operative.

SEC. 12. (a) Section 4 of this bill incorporates amendments to Section 13352 of the Vehicle Code proposed by both this bill and SB 1902. It shall only become operative if (1) both bills are enacted and become effective January 1, 1989, (2) each bill amends Section 13352 of the Vehicle Code, (3) SB 1964 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after SB 1902, in which case Sections 3, 5, and 6 of this bill shall not become operative.

(b) Section 5 of this bill incorporates amendments to Section

13352 of the Vehicle Code proposed by both this bill and SB 1964. It shall only become operative if (1) both bills are enacted and become effective January 1, 1989, (2) each bill amends Section 13352 of the Vehicle Code, (3) SB 1902 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after SB 1964 in which case Sections 3, 4, and 6 of this bill shall not become operative.

(c) Section 6 of this bill incorporates amendments to Section 13352 of the Vehicle Code proposed by this bill, SB 1902, and SB 1964. It shall only become operative if (1) all three bills are enacted and become effective January 1, 1989, (2) all three bills amend Section 13352 of the Vehicle Code, and (3) this bill is enacted after SB 1902 and SB 1964, in which case Sections 3, 4, and 5 of this bill shall not become operative.

SEC. 13. Section 9 of this bill incorporates amendments to Section 23176 of the Vehicle Code proposed by both this bill and AB 2751. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1989, (2) each bill amends Section 23176 of the Vehicle Code, and (3) this bill is enacted after AB 2751, in which case Section 8 of this bill shall not become operative.

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## CHAPTER 1420

An act to add Sections 66022 and 94343.6 to the Education Code, relating to student loans.

[Approved by Governor September 26, 1988 Filed with Secretary of State September 27, 1988.]

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

SECTION 1. (a) The Legislature finds and declares all of the following:

(1) There is an increasing trend toward financing a college education through government-subsidized student loans with more than 50 percent of all undergraduates and nearly 60 percent of all graduate students currently incurring debt.

(2) Students who borrow for only their first year of schooling have a higher probability of defaulting on loans, and most defaulters have borrowed only once, which suggests that many defaulters probably fail to complete their planned educational program.

(3) Student reliance on indebtedness has resulted in an increase in defaults.

(b) It is the intent of the Legislature to do all of the following:

(1) Encourage postsecondary education institutions, both public and private, to assume proper responsibility for assisting in default prevention efforts.

(2) Provide an opportunity for postsecondary education institutions, both public and private, to adopt comprehensive rules

and regulations for preventing and reducing student default.

(3) Provide an avenue for student loan defaulters who reenter the postsecondary education system to repay their debt.

(c) The Legislature does not intend to do any of the following:

(1) Create a barrier for students who are in default as a result of technical or administrative errors or who do not have adequate resources to immediately repay their loans but are attempting to reach accommodations to retire their debt.

(2) Discourage students from attending college by creating the perception that defaulters will be denied services.

(3) Have services withheld from students as a result of procedural entanglements associated with the implementation of this statute.

SEC. 2. Section 66022 is added to the Education Code, to read:

66022. (a) The governing board of every community college district, the Trustees of the California State University, the Regents of the University of California, the Board of Directors of the Hastings College of the Law and the Maritime Academy Board of Governors shall adopt regulations providing for the withholding of institutional services from students or former students who have been notified in writing at the student's or former student's last known address that he or she is in default on a loan or loans under either of the following loan programs:

(1) Guaranteed Student Loan program.

(2) Supplemental Loan for Students program.

"Default," for purposes of this section, means the failure of a borrower to make an installment payment when due, or to meet other terms of the promissory note under circumstances where the guarantee agency finds it reasonable to conclude that the borrower no longer intends to honor the obligation to repay, provided that this failure persists for 180 days for a loan repayable in monthly installments, or 240 days for a loan repayable in less frequent installments.

(b) The regulations adopted pursuant to subdivision (a) shall provide that the services withheld may be provided during a period when the facts are in dispute or when the student or former student demonstrates to either the governing board of the community college district, the Trustees of the California State University, the Regents of the University of California, the Board of Directors of the Hastings College of the Law, or the Maritime Academy Board of Governors, as appropriate, or to the Student Aid Commission, or both the Student Aid Commission and the appropriate entity or its designee, that reasonable progress has been made to repay the loan or that there exists a reasonable justification for the delay as determined by the institution. The regulations shall specify the services to be withheld from the student and may include, but are not limited to, the following:

(1) The provision of grades.

(2) The provision of transcripts.

(3) The provision of diplomas.

The adopted regulations shall not include the withholding of registration privileges.

(c) When it has been determined that an individual is in default on a loan or loans under either of the loan programs specified in subdivision (a), the Student Aid Commission shall give notice of the default to all institutions through which that individual acquired the loan or loans.

(d) This section shall not impose any requirement upon the University of California or the Hastings College of the Law unless the Regents of the University of California or the Board of Directors of the Hastings College of the Law, respectively, by resolution, make this section applicable.

(e) Guarantors, or those who act as their agents or act under their control, who provide information to postsecondary educational institutions pursuant to this section, shall defend, indemnify, and hold harmless the governing board of every community college district, the Trustees of the California State University, the Regents of the University of California, the Board of Directors of the Hastings College of the Law and the Maritime Academy Board of Governors from action resulting from compliance with this section when the action arises as a result of incorrect, misleading, or untimely information provided to the postsecondary educational institution by the guarantors, their agents, or those acting under the control of the guarantors.

SEC. 3. Section 94343.6 is added to the Education Code, to read:

94343.6. (a) The governing board or other governing authority of any California postsecondary educational institution as defined in subdivision (*l*) of Section 94302 shall adopt regulations providing for the withholding of institutional services from students or former students who have been notified in writing at the student's or former student's last known address that he or she is in default on a loan or loans under either of the following loan programs:

(1) Guaranteed Student Loan program.

(2) Supplemental Loan for Students program.

"Default," for purposes of this section, means the failure of a borrower to make an installment payment when due, or to meet other terms of the promissory note under circumstances where the guarantee agency finds it reasonable to conclude that the borrower no longer intends to honor the obligation to repay, provided that this failure persists for 180 days for a loan repayable in monthly installments, or 240 days for a loan repayable in less frequent installments.

(b) The regulations adopted pursuant to subdivision (a) shall provide that the services withheld may be provided during a period when the facts are in dispute and when the student or former student demonstrates to either the governing board or other appropriate governing authority of the California postsecondary educational institution as defined in subdivision (*l*) of Section 94302, or the Student Aid Commission, or both the Student Aid Commission and

the appropriate entity or its designee, that reasonable progress has been made to repay the loan or that there exists a reasonable justification for the delay as determined by the institution. The regulations shall specify the services to be withheld from the student and may include, but are not limited to, the following:

(1) The provision of grades.

(2) The provision of transcripts.

(3) The provision of diplomas.

The adopted regulations shall not include the withholding of registration privileges.

(c) When it has been determined that an individual is in default on a loan or loans under either of the loan programs specified in subdivision (a), the Student Aid Commission shall give notice of the default to all institutions through which that individual acquired the loan or loans.

(d) Guarantors, or those who act as their agents or act under their control, who provide information to postsecondary educational institutions pursuant to this section, shall defend, indemnify, and hold harmless the governing board or other governing authority of the institutions from action resulting from compliance with this section when the action arises as a result of incorrect, misleading, or untimely information provided to the postsecondary educational institution by the guarantors, their agents, or those acting under the control of the guarantors.

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## CHAPTER 1421

An act to add and repeal Article 1.5 (commencing with Section 2720) of Chapter 6 of Division 2 of the Business and Professions Code, relating to registered nursing, and making an appropriation therefor.

[Approved by Governor September 26, 1988. Filed with Secretary of State September 27, 1988.]

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

SECTION 1. (a) The Legislature finds and declares that:

(1) There is a profound shortage of registered nurses in California.

(2) This shortage of nurses will jeopardize the provision of health care for the people of California.

(3) This shortage is likely to continue and worsen for many years because enrollment in schools of nursing in California and across the country is declining because young women and men are not choosing nursing as a career.

(b) The Legislature further finds and declares that:

(1) The reduced duration of the average hospital stay has aggravated this shortage by increasing the demand for registered nurses in hospitals, outpatient care and home care. Because patients

are sicker when they are in the hospital, are sicker when seen in outpatient settings and more frequently in need of nursing at home, the demands for more highly skilled and educated nurses have increased.

(2) Increasingly complex health care technology also demands highly skilled and educated nurses.

(3) Demographic trends such as the spread of acquired immune deficiency syndrome (AIDS) are burdening the health care system and will result in increased need for registered nurses for the forseeable future.

(c) The Legislature finds and declares that:

(1) It is in the interests of the people of California to encourage the development of new educational models which promote optimal use of existing educational resources to increase the supply of nurses in California.

(2) It is in the interests of the people of California to encourage the development of new models for the use of registered nurses in hospitals, outpatient settings, and home care in order to encourage nurses to remain in the profession, and in order to use their skills most effectively.

(d) The Legislature finds and declares that representatives of employers of nurses, educators of nurses, professional associations, and the Board of Registered Nurses have been seeking solutions to these complex problems.

(e) It is the intent of the Legislature that these parties be brought together to develop a coordinated strategy for addressing the shortage of registered nurses.

SEC. 2. Article 1.5 (commencing with Section 2720) is added to Chapter 6 of Division 2 of the Business and Professions Code, to read:

Article 1.5. Nursing Shortage

2720. (a) The board may appoint a special advisory committee on the nursing shortage to develop recommendations for the Legislature and for licensing agencies that will address the shortage of registered nurses in California.

(b) The special advisory committee may consist of 16 representatives of any of the following:

(1) Organizations representing registered nurses.

(2) Statewide professional associations representing registered nurses.

(3) A statewide professional association representing nursing service administrators.

(4) Associations of hospitals, long-term care facilities, and other employers of nurses. Representatives from these associations shall be chief executive officers.

(5) Organizations representing educators of baccalaureate of science of nursing programs.

(6) Organizations representing educators of associate degree

nurses.

(7) The Board of Registered Nursing.

(8) The Chancellor of the California Community Colleges.

(9) The Chancellor of the California State University System.

(10) The California Postsecondary Education Commission.

(c) The members of the special advisory committee shall not receive compensation for their services, but shall be entitled to reimbursement for their travel expenses and per diem incurred in connection with the performance of their duties. The committee shall employ administrative staff as necessary and consistent with the limitations of its budget and in conformance with the California Constitution and the State Civil Service Act, Part 2 (commencing with Section 18500) of Division 5 of Title 2 of the Government Code.

2721. (a) The special advisory committee on the nursing shortage shall develop recommendations for the Legislature, the board, and other appropriate entities regarding the following:

(1) Increasing the supply of registered nurses.

(2) Improving the use of registered nurses so that the use of their skills and education are maximized.

(3) Developing projects that demonstrate innovative approaches to educating registered nurses.

(4) Developing projects that demonstrate innovative approaches to the use of registered nurses in clinical settings, including, but not limited to, acute care hospitals, outpatient clinics, and home health care.

(b) The special advisory committee shall report to the Legislature, and the board on its recommendations. The report shall also be made available to the participating organizations and agencies.

2722. This article shall be operative until July 1, 1990, and as of that date is repealed.

SEC. 3. There is hereby appropriated two hundred eighty thousand dollars ($280,000) from the Board of Registered Nursing Fund to the Board of Registered Nursing to carry out this act.

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## CHAPTER 1422

An act to add Section 9725.1 to the Business and Professions Code, relating to cemeteries.

[Approved by Governor September 26, 1988 Filed with Secretary of State September 27, 1988.]

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

SECTION 1. Section 9725.1 is added to the Business and Professions Code, to read:

9725.1. Unprofessional conduct by any licensee or registrant or by

any agent or employee of a licensee or registrant constitutes grounds for disciplinary action. Unprofessional conduct includes, but is not limited to, the following:

(a) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of this chapter and any regulation adopted thereunder, or of any federal or state law or regulation governing the disposition of human remains, operation of cemeteries or crematories, the sale of cemetery property, or the sale of crematory services or commodities.

(b) Negligence in performing any act related to the operation of a cemetery or crematory.

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## CHAPTER 1423

An act relating to urban growth, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 26, 1988 Filed with Secretary of State September 27, 1988.]

I am deleting the $250,000 appropriation contained in Section 4 of Senate Bill No. 2895.

This bill would appropriate $250,000 to the Little Hoover Commission and to the Senate Office of Research for the development of studies on the effects of growth control on housing and on urban development

This legislation is not necessary since both the Little Hoover Commission and the Senate Office of Research currently have the staff and the authority to perform such studies. In fact, the State Senate Urban Growth Policy Project has already been established by Senate Resolution to perform a study of housing and growth management. If the Senate Office of Research needs additional funds to meet the mandate of the Resolution, it is more appropriate to allocate them from the Senate Contingency Fund

Finally, the affects of growth control on the availability and affordability of housing is an area that has been reviewed by the Department of Housing and Community Development (HCD), the Legislature, and housing advocate groups such as the California Association of Realtors. Furthermore, many of the areas mandated to be assessed by this bill have already been examined and findings published in HCD's report entitled *Growth Control: A Part of California's Landscape*, in the Assembly Office of Research's report entitled *California's Intrastructure: Rusty Hinges on the Golden Gate*, and in the Senate Committee on Local Government's report entitled *Closing the Gap. Intrastructure Needs and Our Ability to Pay for Them*.

With this deletion, I approve Senate Bill No. 2895

GEORGE DEUKMEJIAN, Governor

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

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

(a) The population of the State of California continues to grow at a rate of more than 500,000 people annually. This growth rate requires a broad range of public facilities and services including schools and libraries, streets and highways, police and fire protection, water and sanitation, and parks and recreation.

(b) The number of new households requiring housing far outstrips the new affordable residential units constructed annually in California. Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7 of the Government Code requires each locality to develop a housing element to plan for the housing needs of all economic sectors of the community.

(c) One of the most important considerations in planning for this growth is the availability of affordable housing within a reasonable commute of employment.

(d) Community growth management becomes a volatile issue with the electorate when services and facilities are insufficient to maintain or attain the quality of life the community is accustomed to or is seeking. If local officials lack the financing authority to provide these services and facilities, community groups have turned to the initiative process to limit community growth.

(e) During the last 15 years, more than 150 growth initiatives have been placed on local ballots to limit community growth. In most cases, these measures use restrictions on the supply of housing to manage or control growth. The use of the initiative and referendum to achieve local growth control is not only increasing in frequency, but the range of land use issues addressed by these measures is expanding significantly.

(f) The effects of growth management measures are interjurisdictional. Housing markets do not follow municipal or county boundaries. Therefore, limitations in one community have a spillover effect on the surrounding communities.

(g) Various groups have urged the Legislature to enact legislation establishing state policy on growth control measures. Opponents and proponents of a state policy make highly contradictory claims about the benefits or negative effects of growth controls on housing, services, and the quality of community life.

(h) There is a need to conduct an independent evaluation of the effects of growth and growth control and management measures on the availability of affordable housing. There is a need to understand the various local conditions which served as the impetus for these measures. There is a need to consider a broad range of potential solutions, including the appropriate use of the state's powers, land use and housing courts, a policy for balancing jobs and housing in the development process, and a method of financing the municipal services and facilities necessary for growth and development in order to ensure an adequate supply of housing.

SEC. 2. No later than December 31, 1988, the Commission on California State Government Organization and Economy shall contract with an institution or organization with demonstrated experience in the analysis of urban growth and community development related issues to analyze and develop recommendations concerning the effects of growth control measures on the availability and affordability of housing. In the selection of the consultant, the commission shall seek the advice of local government

officials, advocates of growth management, the building and development industry, affordable housing advocates, organizations concerned with the broad effects of growth controls, the real estate industry, environmental groups, and the Department of Housing and Community Development. The report shall include, but is not limited to, all of the following:

(a) An inventory and analysis of growth control ordinances, measures, and practices, however adopted or enacted. The report shall contain a definition of the growth control mechanisms to be evaluated. The report shall include a comprehensive review of the underlying causes for growth control measures and the relationship, if any, between the level of community facilities and services, including transportation and health and safety issues, and growth control measures.

(b) The effect of growth control measures on the availability and affordability of housing, including housing for lower income households, exemptions from measures, the effects on the numbers and ratio of homeownership units to rental units, the cost of land, the cost of construction, the cost of infrastructure, and the cost of other mitigation factors. The contractor may elect to measure this effect by a statewide analysis or by studying several selected areas.

(c) Recommendations on the appropriate role of cities, counties, regional agencies, and the state to (1) ensure that there are sufficient services and facilities to support community growth and development, and (2) to resolve the effects, including the interjurisdictional effects, of growth control measures on the supply and affordability of housing.

(d) Legislative recommendations for both short-term solutions and long-range solutions which can be implemented in stages.

(e) Evaluation of the effectiveness of state development appeals bodies and land use and housing courts in other states and their possible usefulness to California.

The report shall be submitted to the Legislature and the Governor no later than December 31, 1989. The consultant shall submit a progress report to the commission no later than June 30, 1989. The commission shall prepare a request for proposals, evaluate the proposals, select a contractor or contractors, administer the contract or contracts, and monitor progress.

SEC. 3. The Senate Office of Research shall seek the advice of local government officials, advocates of growth management, the building and development industry, environmental groups, experts on transportation, experts on air and water quality, affordable housing advocates, organizations concerned with the broad effects of growth, the real estate industry and the relevant state departments in reviewing a request for proposal to implement Senate Resolution 39 of the 1987–88 Regular Session.

SEC. 4. The sum of two hundred fifty thousand dollars ($250,000) is hereby appropriated from the General Fund to be allocated according to the following schedule:

(a) The sum of one hundred fifty thousand ($150,000) is allocated to the Commission on California State Government Organization and Economy for consulting contracts and services authorized by Section 2 of this act.

(b) The sum of one hundred thousand dollars ($100,000) is allocated to the Senate Office of Research for the request for proposal provided for in Senate Resolution 39 of the 1987–88 Regular Session.

This act is an urgency statute necessary for the immediate preservation of 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:

As the number of communities which have enacted or are considering enactment of growth control measures grows, so does the demand for a state policy on this issue. There is a need to evaluate this sweeping new movement, its roots and effects, so as to enable the Legislature to determine whether a state policy on this issue is necessary. Furthermore, there is an urgent need for comprehensive planning and funding in order to ameliorate the adverse impacts of growth and to preserve and enhance the quality of life throughout the state.

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## CHAPTER 1424

An act to amend Section 4084.6 of, to add Sections 4050.1 and 4383 to, and to add and repeal Section 4350.6 of, the Business and Professions Code, relating to pharmacy, and making an appropriation therefor.

[Approved by Governor September 26, 1988. Filed with Secretary of State September 27, 1988.]

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

SECTION 1. (a) The Legislature finds and declares that the practice of pharmacy 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.

(b) The Legislature recognizes that with the proliferation of alternate methods of health delivery, there has arisen among third-party payers and insurance companies the desire to control the cost and utilization of pharmacy services through a variety of mechanisms, including the use of mail order pharmacies located outside the State of California.

(c) As a result, the Legislature finds and declares that to continue to protect the California consumer-patient, all out-of-state pharmacies that provide service to California residents shall be

registered with the board, disclose specific information about their services, and provide pharmacy services at a high level of protection and competence.

SEC. 2. Section 4050.1 is added to the Business and Professions Code, to read:

4050.1. (a) Any pharmacy located outside this state which ships, mails, or delivers, in any manner, controlled substances or dangerous drugs or devices into this state shall be considered a nonresident pharmacy, shall be registered with the board, and shall disclose to the board all of the following:

(1) The location, names and titles of all principal corporate officers and all pharmacists who are dispensing controlled substances or dangerous drugs or devices to residents of this state. A report containing this information shall be made on an annual basis and within 30 days after any change of office, corporate officer, or pharmacist.

(2) That it complies with all lawful directions and requests for information from the regulatory or licensing agency of the state in which it is licensed as well as with all requests for information made by the board pursuant to this section. The nonresident pharmacy shall maintain, at all times, a valid unexpired license, permit, or registration to conduct the pharmacy in compliance with the laws of the state in which it is a resident. As a prerequisite to registering with the board, the nonresident pharmacy shall submit a copy of the most recent inspection report resulting from an inspection conducted by the regulatory or licensing agency of the state in which it is located.

(3) That it maintains its records of controlled substances or dangerous drugs or devices dispensed to patients in this state so that the records are readily retrievable from the records of other drugs dispensed.

(b) Any pharmacy subject to this section shall, during its regular hours of operation, but not less than six days per week, and for a minimum of 40 hours per week, provide a toll-free telephone service to facilitate communication between patients in this state and a pharmacist at the pharmacy who has access to the patient's records. This toll-free number shall be disclosed on a label affixed to each container of drugs dispensed to patients in this state.

(c) The registration fee shall be the fee specified in subdivision (a) of Section 4416.

(d) The registration requirements of this section and Sections 4350.6 and 4383, shall apply only to a nonresident pharmacy which only ships, mails, or delivers controlled substances and dangerous drugs and devices into this state pursuant to a prescription.

SEC. 3. Section 4084.6 of the Business and Professions Code is amended to read:

4084.6. No out-of-state manufacturer, wholesaler, or pharmacy doing business in this state who has not obtained a certificate, license, permit, registration, or exemption from the board and who sells or distributes drugs in this state through any person or media other than

a wholesaler who has obtained a certificate, license, permit, registration, or exemption pursuant to the provisions of this chapter or through a selling or distribution outlet which is licensed as a wholesaler pursuant to the provisions of this chapter, shall conduct the business of selling or distributing drugs in this state without obtaining an out-of-state drug distributor's license from the board or registering as a nonresident pharmacy.

Applications for an out-of-state drug distributor's license or a nonresident pharmacy registration, under this section shall be made on a form furnished by the board. The board may require such information as the board deems is reasonably necessary to carry out the purposes of the section.

The board may deny, revoke, or suspend such out-of-state distributor's license for any violation of this chapter or for any violation of Division 21 (commencing with Section 26001) of the Health and Safety Code. The license or nonresident pharmacy registration shall be renewed annually on or before the first day of January of each year.

The Legislature, by enacting this section, does not intend a license or nonresident pharmacy registration issued to any out-of-state manufacturer, wholesaler, or pharmacy pursuant to this section to change or affect the tax liability imposed by Chapter 3 (commencing with Section 23501) of Part 11 of Division 2 of the Revenue and Taxation Code on any out-of-state manufacturer, wholesaler, or pharmacy.

The Legislature, by enacting this section, does not intend a license or nonresident pharmacy registration, issued to any out-of-state manufacturer, wholesaler, or pharmacy pursuant to this section to serve as any evidence that such out-of-state manufacturer, wholesaler, or pharmacy is doing business within this state.

SEC. 4. Section 4350.6 is added to the Business and Professions Code, to read:

4350.6. (a) The board may deny, revoke, or suspend a nonresident pharmacy registration for failure to comply with any requirement of Section 4050.1 or 4383 or for any failure to comply with Section 11164 of the Health and Safety Code.

(b) The board may deny, revoke, or suspend a nonresident pharmacy registration for conduct which causes serious bodily or serious psychological injury to a resident of this state if the board has referred the matter to the regulatory or licensing agency in the state in which the pharmacy is located and the regulatory or licensing agency fails to initiate an investigation within 45 days of the referral. The board shall obtain and maintain a record of referrals pursuant to this subdivision and any action taken thereon and shall report its findings to the Legislature on or before March 31, 1991.

This section shall be operative until January 1, 1992, and as of that date, is repealed unless a later enacted statute deletes or extends that date.

SEC. 5. Section 4350.6 is added to the Business and Professions

Code, to read:

4350.6. The board may deny, revoke, or suspend a nonresident pharmacy registration for failure to comply with any requirement of Section 4050.1 or 4383 or for any failure to comply with Section 11164 of the Health and Safety Code.

This section shall become operative on January 1, 1992.

SEC. 6. Section 4383 is added to the Business and Professions Code, to read:

4383. It is unlawful for any nonresident pharmacy which is not registered pursuant to Section 4050.1 to advertise its services in this state, or for any person who is a resident of this state to advertise the pharmacy services of a nonresident pharmacy which has not registered with the board, with the knowledge that the advertisement will or is likely to induce members of the public in this state to use the pharmacy to fill prescriptions.

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.

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## CHAPTER 1425

An act to amend Section 61601.10 of, and to add Section 61765.76 to, the Government Code, relating to community services districts.

[Approved by Governor September 26, 1988. Filed with Secretary of State September 27, 1988 ]

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

SECTION 1. Section 61601.10 of the Government Code is amended to read:

61601.10. In addition to the powers which may be exercised pursuant to Section 61600, whenever the Board of Directors of the El Dorado Hills Community Services District, the Salton Community Services District, the Big River Community Services District, or the Lake Shastina Community Services District, determines by resolution, entered in the minutes, 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 adoption of the additional purpose pursuant to Section 61601, the district may enforce the covenants, conditions, and restrictions adopted for each tract within the boundaries of the district, and assume the duties of the architectural control committee for each tract within the boundaries of the district and for other tracts as may be annexed from time to time, for the purpose of maintaining uniform standards of

development within the district as adopted in the covenants, conditions, and restrictions. However, the district shall exercise the duties of an architectural control committee for any tract only to the extent authorized by the covenants, conditions, and restrictions applicable to the tract.

The power to carry on that activity may be divested in the same manner as the power was acquired.

For the purposes of this section, "tract" means any parcel of land for which the county has authorized development.

SEC. 1.5. Section 61601.10 of the Government Code is amended to read:

61601.10. In addition to the powers which may be exercised pursuant to Section 61600, whenever the Board of Directors of the El Dorado Hills Community Services District, the Salton Community Services District, the Stallion Springs Community Services District, the Lake Shastina Community Services District, or the Big River Community Services District determines by resolution, entered in the minutes, 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 adoption of the additional purpose pursuant to Section 61601, the district may enforce the covenants, conditions, and restrictions adopted for each tract within the boundaries of the district, and assume the duties of the architectural control committee for each tract within the boundaries of the district and for other tracts as may be annexed from time to time, for the purpose of maintaining uniform standards of development within the district as adopted in the covenants, conditions, and restrictions. However, the district shall exercise the duties of an architectural control committee for any tract only to the extent authorized by the covenants, conditions, and restrictions applicable to the tract.

The power to carry on that activity may be divested in the same manner as the power was acquired.

For the purposes of this section, "tract" means any parcel of land for which the county has authorized development.

SEC. 2. Section 61765.76 is added to the Government Code, to read:

61765.76. Notwithstanding Section 61765, in the Lake Shastina Community Services District, the water standby or availability charge shall not exceed forty dollars ($40) per year for each acre of land on which the charge is levied or forty dollars ($40) per year for a parcel less than one acre.

This section, applicable only to the Lake Shastina Community Services District, is necessary because of the unique and special water management and financing problems in the area included within the district.

In the event the Lake Shastina Community Services District places before the voters, the proposition of whether the district shall adopt the additional purpose of supplying water, it shall also include in the proposition the limitations on the water standby or availability

charges which may be charged to landowners within the district as prescribed in this section.

SEC. 3. The Legislature finds and declares that the Lake Shastina Community Services District has a special need to exercise the powers set forth in this act. The Legislature further finds and declares that this need 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 solution of problems existing in the Lake Shastina Community Services District.

SEC. 3.5. Section 1.5 of this bill incorporates amendments to Section 61601.10 of the Government Code proposed by both this bill and AB 4673. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1989, (2) each bill amends Section 61601.10 of the Government Code, and (3) this bill is enacted after AB 4673, in which case Section 1 of this bill shall not become operative.

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## CHAPTER 1426

An act to amend Section 3 of Chapter 11 of the Statutes of 1986, and to add Part 10.7 (commencing with Section 17910) to the Education Code, relating to schoolbuses, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 26, 1988. Filed with Secretary of State September 27, 1988 ]

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

SECTION 1. The Legislature finds and declares that there are many schoolbuses operating in this state which are not fuel efficient and do not meet current federal standards of safety, and that ensuring the safety of schoolbus transportation is a matter of the highest importance. It is, therefore, the intent of the Legislature, in enacting this act, to create a program for the purchase of new schoolbuses which meet federal safety standards and are primarily fueled by methanol or other low-emission, clean-burning fuels in the development of the demonstration program.

SEC. 2. Part 10.7 (commencing with Section 17910) is added to the Education Code, to read:

### PART 10.7. KATZ SAFE SCHOOLBUS CLEAN FUEL EFFICIENCY DEMONSTRATION PROGRAM

#### CHAPTER 1. GENERAL PROVISIONS

17910. This part shall be known and may be cited as the Katz Safe Schoolbus Clean Fuel Efficiency Demonstration Program.

17910.1. As used in this part, the following terms have the following meanings:

(a) "Commission" means the State Energy Resources Conservation and Development Commission.

(b) "Superintendent" means the Superintendent of Public Instruction.

(c) "Fund" means the Katz Schoolbus Fund created pursuant to Section 17911.

(d) "Department" means the Department of the California Highway Patrol.

(e) "Program" means the Katz Safe Schoolbus Clean Fuel Efficiency Demonstration Program.

(f) "Schoolbus" means a schoolbus, as defined in Section 545 of the Vehicle Code, which is Type 1 and publicly owned.

(g) "Local educational agency" means any of the following:

(1) A school district.

(2) A county office of education.

(3) A regional occupational program or center.

(4) A joint powers agency which operates publicly owned schoolbuses.

## CHAPTER 2. FISCAL PROVISIONS AND AUTHORIZED USE OF FUNDS

17911. There is hereby created in the State Treasury the Katz Schoolbus Fund.

17911.2. The commission shall determine the local educational agencies that are to receive replacement schoolbuses for participation in the program.

17911.3. In determining which candidate schoolbuses will be selected for replacement, the commission shall first, in coordination with the department and the superintendent, determine which local educational agencies meet the demonstration project criteria.

17911.4. All candidate schoolbuses selected by the commission for replacement shall be inspected by the department to determine that they meet the following criteria:

(a) The schoolbuses shall have been manufactured prior to April 1, 1977.

(b) The schoolbuses shall be beyond their useful service life, as determined by the department pursuant to Section 17911.5.

(c) The department shall consider all of the findings and criteria in the study prepared pursuant to Section 3 of Chapter 11 of the Statutes of 1986.

17911.5. (a) Schoolbuses shall be purchased by the Department of General Services pursuant to specifications developed by the commission. Title to any schoolbus purchased by the Department of General Services pursuant to this section shall be in the name of the

local educational agency for which the schoolbus was purchased.

(b) Any schoolbus purchased with these funds shall meet all applicable federal motor vehicle safety standards, operate with greater energy efficiency, and produce fewer adverse air emissions than the vehicles being replaced.

(c) No replacement vehicle shall exceed the capacity of the vehicle being replaced, as estimated by the department. A local educational agency may use funds from any available source, other than grants received pursuant to this part, to pay that part of the cost of a schoolbus that exceeds the cost of a replacement vehicle, as estimated by the department.

(d) The department shall estimate the useful service life of schoolbuses.

(e) A replacement vehicle may be of the same design, configuration, and nonpower-train specifications as the retired vehicle.

17911.6. Schoolbuses replaced under this part shall not be used as schoolbuses, youth buses, school pupil activity buses, or farm labor vehicles in this state.

## CHAPTER 3. DEMONSTRATION PROGRAM

17912. The demonstration program established by this chapter shall be designed and administered by the commission, with the advice and consultation of the department and the superintendent. The commission shall insure that fuel economy and exhaust emissions are monitored as a part of the demonstration, and shall ensure that at least 35 percent of the vehicles are powered by methanol or other low-emission, clean-burning fuels, unless the commission determines, within 18 months of the effective date of this act, that the use of these funds for clean burning fuel projects is infeasible. The commission shall, within 30 days of making that determination, submit a report to the Legislature explaining its determination with respect to the feasibility or infeasibility of the project. The field demonstration shall be in accordance with State Energy Conservation Program guidelines.

17912.1. The commission shall transmit a report to the Governor and to the Legislature on the demonstration program required by this chapter on or before June 30, 1989.

17912.2. When a local educational agency accepts a replacement schoolbus, it shall also agree to participate in the demonstration program. That participation shall include maintaining records of mileage and fuel consumption, and reporting that information to the commission in a timely manner. The commission shall, by regulation, establish a procedure and requirement for participation in the demonstration program.

SEC. 3. Section 3 of Chapter 11 of the Statutes of 1986 is amended to read:

Sec. 3. The sum of three hundred thousand dollars ($300,000) is

hereby appropriated from the Driver Training Penalty Assessment Fund to the Department of the California Highway Patrol to fund an engineering study and economic analysis of minimum standards for schoolbus replacement, reconditioning, inspection, and preventive maintenance.

The study shall be administered by the Department of the California Highway Patrol, with the assistance and cooperation of the State Department of Education.

The purpose of the study is to develop information that may be used by the State Department of Education to identify schoolbuses which are suitable for retrofitting to 1977 federal safety standards, to improve the allocation of funds for schoolbus replacement, to improve the effectiveness of bus inspections by the Department of the California Highway Patrol, and to improve schoolbus maintenance programs by school districts. The study shall identify the maintenance problems associated with various types and classes of schoolbuses and shall develop guidelines to assist school districts in making the most cost-effective use of their maintenance resources.

The study shall be contracted through a request for a proposal process.

SEC. 4. (a) Notwithstanding Sections 13340 and 16361 of the Government Code, and to the extent permitted by federal law, the sum of sixty million dollars ($60,000,000) of the money in the Federal Trust Fund, which is created by Section 16360 of the Government Code, received by the state from federal oil overcharge funds in the petroleum violation escrow account, is hereby appropriated for the purpose of providing funds for the implementation of Part 10.7 (commencing with Section 17910) of the Education Code, as follows:

(1) Fifty-nine million five hundred eighty-one thousand dollars ($59,581,000) to the State Energy Resources Conservation and Development Commission for the Katz Schoolbus Fund created by Section 17911 of the Education Code.

(2) For the purposes of Part 10.7 (commencing with Section 17910) of the Education Code:

(A) Two hundred sixty-nine thousand dollars ($269,000) to the State Energy Resources Conservation and Development Commission.

(B) One hundred fifty thousand dollars ($150,000) to the Department of the California Highway Patrol.

(b) The Legislature intends to appropriate for the implementation of Part 10.7 (commencing with Section 17910) of the Education Code one-half of each future disbursement received by the state from federal oil overcharge funds in the petroleum violation escrow account.

(c) All interest derived from the funds appropriated under subdivision (a) shall be used for the implementation of Part 10.7 (commencing with Section 17910) of the Education Code.

(d) Funds appropriated by this act from the petroleum violation escrow account shall be dispersed by the State Controller, subject to

approval by the Director of Finance as to which court judgment or federal agency order is the proper source of those funds.

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 for the State of California to utilize available funds to provide for a safe schoolbus demonstration program, it is necessary for this program to take effect immediately.

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## CHAPTER 1427

An act to add Chapter 5.7 (commencing with Section 25470) to Division 15 of the Public Resources Code, relating to transportation, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 26, 1988. Filed with Secretary of State September 27, 1988 ]

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

SECTION 1. Chapter 5.7 (commencing with Section 25470) is added to Division 15 of the Public Resources Code, to read:

### CHAPTER 5.7. SMART CORRIDOR TELECOMMUNICATIONS DEMONSTRATION PROJECT

25470. The Legislature finds and declares all of the following:

(a) By 1995, vehicle miles of travel on state highways will increase by 30 percent to 130 billion miles statewide, thereby placing an enormous demand on the state highway and local road systems.

(b) Congestion caused by growing motorist traffic results in increased energy consumption, substantial environmental costs, a significant cost burden on motor transport carriers and others moving goods, and lost productivity at the workplace.

(c) A number of metropolitan areas in California will not meet federal air quality standards of the Environmental Protection Agency and, as a consequence, will face sanctions which could reduce the amount of federal funding available to the state.

(d) Because of the immense fiscal and environmental impacts associated with new freeway construction, few, if any, new freeways will be built in our urban centers over the next 20 years.

(e) In lieu of additional freeway and road construction, transportation planners have to look to alternative and innovative means to address present and future traffic problems, including the use of telecommunications and computer systems to increase roadway efficiency and reduce commuter demand.

(f) Traffic congestion can be mitigated by providing commuters with up-to-the-minute information regarding traffic conditions and alternatives which will allow them to reach their destination in a timely and safe manner.

(g) Traffic flow can be enhanced through better coordination and management among public agencies of construction and maintenance activities.

(h) The application of telecommunications and computer systems to reduce traffic tieups and improve free-flow conditions on our state highway and local road systems will also produce significant energy savings to consumers, a goal consistent with the Legislature's intent to use petroleum violation escrow funds to provide restitution to energy users who were overcharged by oil companies that violated federal oil price control regulations.

25471. The Smart Corridor Telecommunications Demonstration Project is comprised of the following elements:

(a) A linked traffic monitoring network of traffic monitoring devices placed in freeway lanes, surface street travel lanes, turn lanes, and onramps to continuously monitor traffic speeds and volumes to identify congestion and traffic incidents.

(b) An interactive signal control system to allow central control personnel or systems to override regular signal cycles in order to expedite traffic flow of congested freeways and surface street intersections and to facilitate the diversion of traffic around congested areas.

(c) A traffic information management system providing commuter access to current traffic information through phone links, radio and television, home computers, terminals in office buildings, in-vehicle motorist information systems, and via computer-activated changeable message signs placed on freeways, at onramps, at downtown parking garages, and on major arterials which parallel the freeway system.

(d) An improved emergency response system to accelerate the dispatch of emergency vehicles, traffic control officers, and signal maintenance crews, thus reducing the time needed to clear an incident.

(e) Tow service to reduce congestion caused by delays in removing stalled or damaged cars from the freeway in accordance with plans developed by the Department of the California Highway Patrol in consultation with the Department of Transportation.

(f) A joint-agency data base system to coordinate construction and maintenance which impact traffic flow in the corridor.

25472. (a) In order to take full advantage of computerized traffic control equipment already in place, the Smart Corridor Telecommunications Demonstration Project shall be coordinated by the Los Angeles County Transportation Commission from any funds appropriated by the state for that purpose in the corridor of the Santa Monica Freeway (Interstate 10), bounded on the west by the San Diego Freeway (Interstate 405), on the north by Olympic

Boulevard, on the east by Soto Street, and on the south by Washington Boulevard between the San Diego Freeway and La Cienega Boulevard and Adams Boulevard between La Cienega Boulevard and Soto Street. The commission shall consult with local and state traffic and law enforcement agencies on all aspects of the Smart Corridor Telecommunications Demonstration Project in order to provide necessary and productive coordination of the project with existing plans and programs.

(b) The Los Angeles County Transportation Commission shall make every effort to make preliminary and final results of the demonstration project available to other interested parties and jurisdictions for possible application throughout the state. At the conclusion of the demonstration project, the commission shall provide the Legislature with a final report which shall cover the following areas:

(1) Effect of the demonstration project on average speeds, vehicle delay, and travel times in the corridor, including local arterials.

(2) Effect of the demonstration project on response time to traffic incidents in the corridor.

(3) Effect of the demonstration project on accident rates in the corridor.

(4) Elements of the demonstration project which can be applied in other urban areas.

25473. The Department of Transportation, in coordination with appropriate regional and local agencies, shall study the feasibility of, and provide preliminary costs for, the application of smart corridor technologies, as described in Section 25471, in other corridors in the Los Angeles, San Diego, Sacramento, and San Francisco Bay Area regions and for the conduct of an in-vehicle motorist information and navigation system demonstration. The department shall report to the Legislature on its findings of the feasibility studies and progress on the in-vehicle demonstration by June 30, 1990.

SEC. 2. Notwithstanding Sections 13340 and 16361 of the Government Code and to the extent permitted by federal law, in lieu of any funds appropriated in Item 2660-112-853 of the Budget Act of 1988, the sum of six million five hundred thousand dollars ($6,500,000) of the money in the Federal Trust Fund, created by Section 16360 of the Government Code, received by the state either from federal oil overcharge funds in the Petroleum Violations Escrow Account, as defined by either Section 155 of the Further Continuing Appropriations Act of 1983 (P.L. 97-377) or by any other federal law, or from federal oil overcharge funds available pursuant to court judgments, is hereby appropriated to the Department of Transportation for allocation to the Los Angeles County Transportation Commission for carrying out the Smart Corridor Telecommunications Demonstration Project pursuant to Chapter 5.7 (commencing with Section 25470) of Division 15 of the Public Resources Code.

SEC. 3. Funds appropriated by this act from the Petroleum

Violation Escrow Account shall be dispersed by the State Controller, subject to approval by the Director of Finance as to which court judgment or federal agency order is the proper source of those funds.

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 that the needed demonstration program proposed by this act to test the viability of new electronic technologies to help alleviate the massive overcrowding on our freeways and local streets and roads, and thereby smooth traffic flow and conserve energy be implemented as soon as possible, it is necessary that this act take effect immediately.

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## CHAPTER 1428

An act relating to transportation, and making an appropriation therefor.

[Approved by Governor September 26, 1988. Filed with Secretary of State September 27, 1988.]

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

SECTION 1. (a) Notwithstanding Sections 13340 and 16361 of the Government Code, and to the extent permitted by federal law, the sum of six million three hundred thousand dollars ($6,300,000) of the money in the Federal Trust Fund, which is created by Section 16360 of the Government Code, received by the state from federal oil overcharge funds in the petroleum violation escrow account, as defined by Section 155 of the Further Continuing Appropriations Act of 1983 (P.L. 97-377) or other federal law, and from federal oil overcharge funds available pursuant to court judgments or federal agency orders, is hereby appropriated to the State Energy Resources Conservation and Development Commission for allocation as follows:

(1) Two million three hundred thousand dollars ($2,300,000) to the County of Santa Clara for expenditure by the county for expressway signalization projects on the San Tomas Expressway, the Oregon Expressway, the Foothill Expressway, Page Mill Road, and the Montague Expressway.

(2) Seven hundred fifty thousand dollars ($750,000) to the Department of Transportation for transportation management purposes, including traffic signalization, on State Highway Route 82 (El Camino Real), and for traffic system management on other segments of the state highway system, in San Mateo County.

(3) Three hundred fifty thousand dollars ($350,000) to the City of San Diego for the Grape and Hawthorne traffic system management

project.

(4) Two hundred fifty thousand dollars ($250,000) to the City of Oxnard for expenditure by the city for a pilot project of the Split Cycle and Offset Optimization Technic (SCOOT) traffic signal synchronization program for the City of Oxnard.

(5) One hundred fifty thousand dollars ($150,000) to the City of Santa Barbara for expenditure by the city for replacing outdated and inefficient equipment in the city traffic signal synchronization program.

(6) Five hundred thousand dollars ($500,000) to the County of San Diego for the development and implementation of the San Diego County Peak Hour Traffic Management Plan.

(7) One million dollars ($1,000,000) to the Department of Transportation for the acquisition of rail cars and equipment necessary to implement the rail service consistent with the authority granted the department by subdivision (e) of Section 14035 of the Government Code.

(8) One million dollars ($1,000,000) to the Department of Transportation for the purposes of demonstrating the energy conservation and traffic benefits of a comprehensive approach to signal synchronization, lane restripings, and other traffic engineering techniques on State Highway Route 39 from State Highway Route 405 to Lincoln Avenue in Los Angeles County.

(b) Transportation projects funded under this section shall comply with generally accepted engineering and public safety criteria applicable to the projects.

SEC. 2. Funds appropriated by this act from the petroleum violation escrow account shall be dispersed by the Controller, subject to approval by the Director of Finance as to which court judgment or federal agency order is the proper source of those funds.

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## CHAPTER 1429

An act to add Section 25402.3 to the Public Resources Code, relating to energy resources, and making an appropriation therefor.

[Approved by Governor September 26, 1988. Filed with Secretary of State September 27, 1988.]

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

SECTION 1. The Legislature finds and declares that the state has and will in the future receive funds from the federal petroleum violation escrow account, which the federal courts intend to be used to reduce energy costs of people who overpaid oil companies.

The Legislature further finds and declares that energy conservation rehabilitation of low-income housing is one of the quickest and most long-lasting ways to conserve energy.

The Legislature further finds and declares that low-income households are intended to be a primary beneficiary of petroleum violation escrow account funds, and that energy conservation rehabilitation of emergency shelters for the homeless, residential hotels, farmworker housing, and other housing reserved for low and very low income households is an effective way to reduce energy bills for lower income households.

The Legislature further finds and declares that the problems of low-income households in rural areas of the state are exacerbated by a serious underfunding of Low-Income Home Energy Assistance Program providers in those areas which combine low incomes with the highest energy costs in the state and that an increase in the minimum funding level for those providers is an effective way to reduce energy bills and provide emergency services for these low-income households.

The Legislature further declares that there is an ongoing need for weatherization and it is the intent of the Legislature that four million dollars ($4,000,000) will be allocated from future year Petroleum Violation Escrow Account funds for weatherization purposes.

SEC. 2. Section 25402.3 is added to the Public Resources Code, to read:

25402.3. For purposes of subdivision (e) of Section 25402.1, the commission shall contract with California building officials to establish two regional training centers to provide continuing education for local building officials and enforcement personnel as follows:

(a) One site shall be located in northern California and one site shall be located in southern California to serve the needs of the respective regions.

(b) The centers shall provide training on a monthly basis to ensure a uniform understanding and implementation of the energy efficient building standards. Existing resources shall be used as much as possible by utilizing members of the building official community in training activities.

(c) The centers shall provide similar training sessions, in the form of workshops given in designated rural areas, to ensure that adequate training is available throughout the state.

(1) A minimum of two workshops in northern California and two workshops in southern California shall be offered each year.

(2) The sites shall be selected to ensure the greatest number of participants will be served in areas of greatest need to decrease the financial burden on small rural or isolated local government agencies that would not be able to travel to the regional training centers for instruction.

SEC. 3. Notwithstanding Sections 13340 and 16361 of the Government Code, and to the extent permitted by federal law, the sum of nine million seven hundred thousand dollars ($9,700,000) of the money in the Federal Trust Fund created by Section 16360 of the Government Code and received by the state from federal oil

overcharge funds in the petroleum violation escrow account, as defined by Section 155 of the Further Continuing Appropriations Act of 1983 (Public Law 97-377) or other federal law, and received by the state from federal oil overcharge funds available pursuant to court judgments and federal agency orders, is hereby appropriated as follows:

(a) Two million dollars ($2,000,000) to the Department of Housing and Community Development for energy conservation housing rehabilitation for lower and very low income households, as defined by Sections 50079.5 and 50105, respectively, of the Health and Safety Code, for allocation in accordance with the following schedule:

(1) One million dollars ($1,000,000) for energy conservation rehabilitation of farmworker housing.

(2) One million dollars ($1,000,000) for energy conservation rehabilitation of residential hotels and rental housing for the elderly and handicapped, as defined in Section 50067 of the Health and Safety Code.

(b) Two million three hundred sixty-five thousand dollars ($2,365,000) to the Department of Economic Opportunity to provide a minimum funding level of one hundred sixty thousand dollars ($160,000) for weatherization services to each of the local public or private nonprofit agencies providing weatherization assistance pursuant to the Low-Income Home Energy Assistance Program and Sections 16367.5 to 16367.75, inclusive, and 16367.9 of the Government Code.

(c) Four million dollars ($4,000,000) to the Department of Economic Opportunity to be used for weatherization projects provided under subdivision (c) of Section 16367.5 of the Government Code and subdivision (d) of Section 16367.61 of the Government Code.

(2) The sum of four million dollars ($4,000,000) which was appropriated to the Department of Economic Opportunity for the purposes of paragraph (2) of subdivision (a) of Section 2 of Chapter 1342 of the Statutes of 1986, is hereby reappropriated to the department for carrying out its weatherization program under subdivision (c) of Section 16367.5 of the Government Code.

(d) One million three hundred thirty-five thousand dollars ($1,335,000) to the State Energy Resources Conservation and Development Commission, in consultation with the Energy Extension Service, for the establishment of regional training centers pursuant to Section 25402.3 of the Public Resources Code.

SEC. 4. Funds appropriated by this act from the petroleum violation escrow account shall be dispersed by the State Controller, subject to approval by the Director of Finance as to which court judgment or federal agency order is the proper source of those funds.

## CHAPTER 1430

An act to amend Section 1203.1b of the Penal Code, relating to crime.

[Approved by Governor September 26, 1988. Filed with Secretary of State September 27, 1988.]

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

SECTION 1. Section 1203.1b of the Penal Code, as amended by Chapter 284 of the Statutes of 1981, is amended to read:

1203.1b. (a) In any case in which a defendant is convicted of an offense and granted probation, the court may, after a hearing, make a determination of the ability of the defendant to pay all or a portion of the reasonable cost of probation; and of conducting the presentence investigation and preparing the presentence report made pursuant to Section 1203. The reasonable cost of these services and of probation shall not exceed the amount determined to be the actual average cost thereof. The court may, in its discretion, order the defendant to appear before a county officer designated by the court to make an inquiry into the ability of the defendant to pay all or a portion of such costs. At a hearing, the defendant shall be entitled to have, but shall not be limited to, the opportunity to be heard in person, to present witnesses and other documentary evidence, and to confront and cross-examine adverse witnesses, and to disclosure of the evidence against the defendant, and a written statement of the findings of the court or the county officer. If the court determines that the defendant has the ability to pay all or part of the costs, the court may set the amount to be reimbursed and order the defendant to pay that sum to the county in the manner in which the court believes reasonable and compatible with the defendant's financial ability; or with the consent of the defendant, the court may order the probation officer to set the amount of payment, which shall not exceed the maximum amount set by the court, and the manner in which the payment shall be made to the county. In making a determination of whether a defendant has the ability to pay the court shall take into account the amount of any fine imposed upon the defendant and any amount the defendant has been ordered to pay in restitution. The court may hold additional hearings during the probationary period.

If practicable, the court or the probation officer shall order payments to be made on a monthly basis. Execution may be issued on the order in the same manner as a judgment in a civil action. The order to pay all or part of the costs shall not be enforced by contempt.

A payment schedule for reimbursement of the costs of presentence investigation based on income shall be developed by the probation department of each county and approved by the presiding judges of the municipal and superior courts.

(b) The term "ability to pay" means the overall capability of the defendant to reimburse the costs, or a portion of the costs, of conducting the presentence investigation, preparing the presentence report, and probation, and shall include, but shall not be limited to, the defendant's:

(1) Present financial position.

(2) Reasonably discernible future financial position. In no event shall the court consider a period of more than six months from the date of the hearing for purposes of determining reasonably discernible future financial position.

(3) Likelihood that the defendant shall be able to obtain employment within the six-month period from the date of the hearing.

(4) Any other factor or factors which may bear upon the defendant's financial capability to reimburse the county for the costs.

(c) At any time during the pendency of the judgment rendered according to the terms of this section, a defendant against whom a judgment has been rendered may petition the rendering court to modify or vacate its previous judgment on the grounds of a change of circumstances with regard to the defendant's ability to pay the judgment. The court shall advise the defendant of this right at the time of rendering of the judgment.

(d) All sums paid by a defendant pursuant to this section shall be allocated for the operating expenses of the county probation department.

(e) The provisions of this section shall be operative in a county upon the adoption of an ordinance to that effect by the board of supervisors.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because this act does not mandate a new program or higher level of service on local government. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Chapter 4 (commencing with Section 17550) of Part 7 of Division 2 of Title 2 of the Government Code.

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## CHAPTER 1431

An act to amend Section 25297.1 of, and to add Section 25297.2 to, the Health and Safety Code, relating to hazardous substances, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 26, 1988. Filed with Secretary of State September 27, 1988.]

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

SECTION 1. Section 25297.1 of the Health and Safety Code is amended to read:

25297.1. (a) In addition to the authority granted to the board pursuant to Division 7 (commencing with Section 13000) of the Water Code and to the department pursuant to Chapter 6.8 (commencing with Section 25300), the board, in cooperation with the department, shall develop and implement a pilot program for the abatement of, and oversight of the abatement of, unauthorized releases of hazardous substances from underground storage tanks by local agencies. The board shall select local agencies for participation in the program from among those local agencies which apply to the board, giving first priority to those local agencies which have demonstrated prior experience in cleanup, abatement, or other actions necessary to remedy the effects of unauthorized releases of hazardous substances from underground storage tanks. The board shall select only those local agencies which have implemented this chapter and which have begun to collect and transmit to the board the surcharge or fees pursuant to subdivision (b) of Section 25287. The department shall make available funding to the board for purposes of this section pursuant to the Budget Act of 1988 (Chapter 313 of the Statutes of 1988), as specified in subdivision (g). The department shall develop and make available to the board a standard contract form which conforms to the requirements of Chapter 6.8 (commencing with Section 25300) for use by the board in entering into agreements with, and making disbursements to, local agencies under this section.

(b) In implementing the pilot program described in subdivision (a), the board or a regional board may enter into an agreement with any local agency to perform, or cause to be performed, any cleanup, abatement, or other action necessary to remedy the effects of a release of hazardous substances from an underground storage tank with respect to which the local agency has enforcement authority pursuant to this section. The board shall not enter into an agreement with a local agency for soil contamination cleanup or for groundwater contamination cleanup unless the board determines that the local agency has a demonstrated capability to oversee or perform the cleanup. The implementation of the cleanup, abatement, or other action shall be consistent with procedures adopted by the board pursuant to subdivision (d) and shall be based upon cleanup standards specified by the board or regional board.

(c) The board or regional board shall provide funding to a local agency which enters into an agreement pursuant to subdivision (b) for the reasonable costs incurred by the local agency in overseeing any cleanup, abatement, or other action taken by a responsible party to remedy the effects of unauthorized releases from underground storage tanks.

(d) The board shall adopt administrative and technical

procedures, as part of the state policy for water quality control adopted pursuant to Section 13140 of the Water Code, for cleanup and abatement actions taken pursuant to this section. The procedures shall include, but not be limited to, all of the following:

(1) Guidelines as to which sites may be assigned to the local agency.

(2) The content of the agreements which may be entered into by the state board or the regional board and the local agency.

(3) Procedures by which a responsible party may petition the board for review, pursuant to Article 2 (commencing with Section 13320) of Chapter 5 of Division 7 of the Water Code, actions or decisions of the local agency in implementing the cleanup, abatement, or other action.

(4) Protocols for assessing and recovering money from responsible parties for any reasonable and necessary costs incurred by the board, regional board, or local agency in implementing this section.

(5) Quantifiable measures to evaluate the outcome of a pilot program established pursuant to this section.

(e) Any agreement between the board or regional board and a local agency to carry out a pilot program pursuant to this section shall require both of the following:

(1) The local agency shall establish and maintain accurate accounting records of all costs it incurs pursuant to this section and shall periodically make these records available to the board.

(2) The board and the department shall make reasonable efforts to recover costs incurred pursuant to this section from responsible parties, and may pursue any available legal remedy for this purpose.

(f) The board shall develop a system for maintaining a data base for tracking expenditures of funds pursuant to this section, and shall make this data available to the Legislature upon request.

(g) It is the intent of the Legislature that the cost of implementing the pilot program established by this section, including the board's administrative costs, shall not exceed seven million five hundred thousand dollars ($7,500,000) per year, which shall be appropriated in the annual Budget Act.

(h) (1) Sections 25355.5 and 25356 do not apply to expenditures from the Hazardous Substance Cleanup Fund for oversight of abatement of releases from underground storage tanks as part of the pilot program established pursuant to this section.

(2) A local agency which enters into an agreement pursuant to subdivision (b), shall notify the responsible party, for any site subject to a cleanup, abatement, or other action pursuant to the pilot program established pursuant to this section, that the responsible party is liable for all direct and indirect costs incurred by the local agency or the state.

(i) Any aggrieved person may petition the board for review of the action or failure to act of a local agency, which enters into an agreement pursuant to subdivision (b), at a site subject to cleanup,

abatement, or other action conducted as part of the pilot program established pursuant to this section, in accordance with the procedures adopted by the board pursuant to subdivision (d).

(j) This section shall remain in effect until January 1, 1990, and as of that date is repealed, unless a later enacted statute, which becomes effective on or before January 1, 1990, deletes or extends that date.

SEC. 2. Section 25297.2 is added to the Health and Safety Code, to read:

25297.2. Any local agency which performs, or causes to be performed, any cleanup, abatement, or other action necessary to remedy the effects of a release of hazardous substances from an underground storage tank is immune from liability for this action to the same extent as the board or regional board is immune if the board or regional board had performed the cleanup, abatement, or other action.

SEC. 3. On or before March 1, 1990, the State Water Resources Control Board shall submit a report to the Legislature analyzing the results of the pilot program established pursuant to Section 25297.1 of the Health and Safety Code. The report shall include, but not be limited to, all of the following information:

(a) The number of cleanups, abatements, or other actions taken by local agencies to remedy the effects of a release of hazardous substances from underground storage tanks pursuant to the pilot program.

(b) The average administrative costs for all agencies involved in the pilot program, including the State Department of Health Services, the California regional water quality control boards, and the local agencies, to implement the cleanups, abatements, or other actions specified in subdivision (a) for a site, as compared to the average administrative costs for a remedial and removal action for a site when a California regional water quality control board takes action pursuant to subdivision (b) of Section 25297 of the Health and Safety Code.

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 assure the expeditious cleanup of leaking underground storage tanks throughout the state, and thereby protect the public health and safety and the environment, it is necessary for this act to take effect immediately.

# CHAPTER 1432

An act to add Sections 11450.3 and 18919 to the Welfare and Institutions Code, relating to public social services.

[Approved by Governor September 26, 1988. Filed with Secretary of State September 27, 1988 ]

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

SECTION 1. Section 11450.3 is added to the Welfare and Institutions Code, to read:

11450.3. (a) The director may establish, within the department, the Emergency Housing Apartment Program Demonstration Project.

(b) The director may, by formal order, waive the operation of specific provisions in paragraph (2) of subdivision (f) of Section 11450, as required for participation in the Emergency Housing Apartment Program Demonstration Project. The order establishing the waiver shall limit the operation of the demonstration project to San Francisco or Contra Costa Counties, or both, for no more than five years of operation, and shall not result in the reduction or elimination of any family's eligibility for assistance under paragraph (2) of subdivision (f) of Section 11450. The order establishing the waiver shall not take effect unless and until the following conditions have been met:

(1) The United States Department of Health and Human Services has approved federal financial participation for the demonstration project.

(2) A comprehensive plan, including an analysis of the expected costs and savings, has been published in a newspaper of general circulation in the county or counties conducting the demonstration project and filed with the policy and fiscal committees of each house of the Legislature.

(c) The county or counties participating in the demonstration project authorized by this section shall submit an annual report to the department on the demonstration project. The county or counties shall additionally collect and report any data and findings as required by the department and shall cooperate with the department in evaluating the demonstration project.

(d) Within nine months of the termination of the demonstration project authorized by this section, the department shall submit to the Legislature a report evaluating the effectiveness of the demonstration project. The report shall address, but not be limited to, all of the following:

(1) The number of families and individuals served by the demonstration project.

(2) Total expenditures, by source of funds, for the demonstration project, as well as estimated savings due to operation of the

demonstration project.

(3) The impact of the demonstration project on availability of affordable permanent housing for low-income families.

(4) The impact of the demonstration project on availability of affordable transitional, short-term housing for low-income homeless families.

(5) The extent to which the demonstration project enables low-income homeless families to make the transition into permanent housing.

(e) It is the intent of the Legislature that funding for the demonstration project authorized by this section be contained in annual Budget Act appropriations.

SEC. 2. Section 18919 is added to the Welfare and Institutions Code, to read:

18919. (a) The director may establish, within the Food Stamp Program, the Food Stamp Cash Out Demonstration Project.

(b) To enable San Diego County to conduct a demonstration project, the director may, by formal order, waive the enforcement of Section 18904 and specific regulations and standards. The order establishing the waiver shall provide alternative methods and procedures of administration and issuance, shall not be in conflict with the basic purposes or coverage provided by law, shall not reduce the amount of benefits that recipients would otherwise be entitled to under the Food Stamp Program, shall not be general in scope but shall apply only to this project, shall not exceed five years, and shall not take effect unless and until the following conditions have been met:

(1) The appropriate federal agency has agreed on or before June 30, 1989, to waive the federal requirements for the same project.

(2) A comprehensive plan, including an analysis of the expected costs and savings, has been published in a newspaper of general circulation in San Diego County and filed with the policy and fiscal committees of each house of the Legislature.

(c) During the duration of the demonstration project, cashed out food stamp benefits shall not be considered as income in determining eligibility, the amount of aid, or benefit levels in any other public benefit or subsidy program. Applicants and recipients shall be entitled to the same rights to fair hearings and appeals that they would otherwise be entitled to under the Food Stamp Program.

(d) San Diego County shall submit an annual report to the department on the demonstration project authorized by this section. The county shall additionally collect and report any data and findings as required by the department and shall cooperate with the department in evaluating the demonstration project.

(e) Within nine months of the termination of the demonstration project authorized by this section, the department shall submit to the Legislature a report evaluating the effectiveness of the demonstration project. The report shall address, but not be limited to, the impact of the demonstration project on all of the following:

(1) Food stamp processing and mailing costs.
(2) Eligibility staff time and other administrative costs.
(3) Losses caused by fraud and theft.
(4) Changes in program benefits received by, and receptivity to cashed out benefits of, food stamp recipients.
(5) Food stamp error rate prior to and during cash out of food stamps.

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 five hundred thousand dollars ($500,000), reimbursement shall be made from the State Mandates Claims Fund.

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## CHAPTER 1433

An act to amend Sections 70046.1, 73643, 73644, 73646, 73649, 73650, 73953, 73954, 73957, 73960, 74343, 74344, 74345, 74346, 74348, 74352, 74368, 74369, 75370, 74665, 74744, 74745, 74746, and 74749 of, to add Section 71040.8 to, and to repeal and add Section 74663 of, the Government Code, relating to courts.

[Approved by Governor September 26, 1988. Filed with Secretary of State September 27, 1988.]

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

SECTION 1. Section 70046.1 of the Government Code is amended to read:

70046.1. In Santa Clara County, the board of supervisors shall fix the salary of regular official reporters, which shall not be less than a biweekly salary of one thousand four hundred one dollars and fifty-two cents ($1,401.52), and the compensation of official reporters pro tempore, which shall be at a rate not less than eighty-four dollars and eighty cents ($84.80) per half day and one hundred sixty-nine dollars and sixty cents ($169.60) per day.

During the hours that the court is open for the transaction of judicial business, official reporters shall devote full time to the performance of the duties required of them by law and shall not engage in or solicit to engage in any other employment in their professional capacity.

SEC. 1.5. Section 71040.8 is added to the Government Code, to read:

71040.8. The Ukiah Justice Court District and the Little Lake Justice Court District are hereby consolidated, to be known as the

"Ukiah-Little Lake Justice Court District." The consolidated district shall have two judges.

SEC. 2. Section 73643 of the Government Code is amended to read:

73643. There shall be one court administrator who shall serve as clerk of the court, and who shall be appointed by the majority of the judges of the court. The biweekly salary of the court administrator shall be within the biweekly rate range ES-13 indicated in the Compensation Ordinance of the County of San Diego. The biweekly salary, and any advancement or reduction within the range, shall be determined in accordance with the provisions set forth under Article 3.5 of the Compensation Ordinance of the County of San Diego and of subdivision (a) of Section 74345.

SEC. 3. Section 73644 of the Government Code is amended to read:

73644. The court administrator may appoint, with the approval of the judges:

(a) One assistant court administrator. The assistant court administrator shall serve as the assistant clerk of the court and shall receive a biweekly salary within the biweekly rate range ES-10 indicated in the Compensation Ordinance of the County of San Diego. The biweekly salary, and any advancement or reduction within the range, shall be determined in accordance with the provisions set forth under Article 3.5 of the Compensation Ordinance of the County of San Diego and of subdivision (a) of Section 74345.

(b) One deputy clerk-administrative assistant I, II, or III as the case may be. A deputy clerk-administrative assistant I shall receive a biweekly salary at a rate equal to that specified for administrative assistant I in the classified service of the County of San Diego. A deputy clerk-administrative assistant II shall receive a biweekly salary at a rate equal to that specified for administrative assistant II in the classified service of the County of San Diego. A deputy clerk-administrative assistant III shall receive a biweekly salary at a rate equal to that specified for administrative assistant III in the classified service of the County of San Diego.

(c) Two deputy clerk-division managers III each of whom shall receive a biweekly salary at a rate 24.5 percent higher than that specified for deputy clerk-division manager II of the San Diego Judicial District.

(d) Five deputy clerk-division managers I or II, as the case may be. A division manager I shall receive a biweekly salary at a rate 10 percent higher than that specified for deputy clerk V of the San Diego Judicial District. A division manager II shall receive a biweekly salary at a rate 15.5 percent higher than that specified for deputy clerk V of the San Diego Judicial District.

(e) Eighteen deputy clerks IV or senior deputy clerks, as the case may be. Each of the deputy clerks IV shall receive a biweekly salary at a rate equal to the greater of that specified for superior court clerk in the classified service of the County of San Diego or 19.95 percent

higher than that specified for deputy clerk III. The class of senior deputy clerk shall not exceed five positions. Each of the senior deputy clerks shall receive a biweekly salary at a rate 5 percent higher than that specified for deputy clerk IV. The duties of the class of senior deputy clerk shall include supervisory responsibilities.

(f) Fifty-three deputy clerks III, II, or I, as the case may be. Each of the deputy clerks III shall receive a biweekly salary at a rate equal to that specified for legal procedures clerk III in the classified service of the County of San Diego. Each of the deputy clerks II shall receive a biweekly salary at a rate equal to that specified for legal procedures clerk II in the classified service of the County of San Diego. Each of the deputy clerks I shall receive a biweekly salary at a rate equal to that specified for legal procedures clerk I in the classified service of the County of San Diego. At the discretion of the court administrator, appointments to deputy clerk I may be at any step within the salary range.

(g) Four deputy clerk-data entry operators, each of whom shall receive a biweekly salary at a rate equal to that specified for data entry operator in the classified service of the County of San Diego.

(h) One deputy clerk-administrative secretary IV who shall receive a biweekly salary at a rate equal to that specified for administrative secretary IV in the classified service of the County of San Diego.

(i) Three deputy clerk-interpreters who shall receive a biweekly salary at a rate equal to that specified for deputy clerk III.

(j) One deputy clerk-research attorney I, deputy clerk-research attorney II, or deputy clerk-law clerk, as the case may be. A deputy clerk-research attorney I shall receive a biweekly salary equal to that specified for a deputy county counsel I in the classified service of the County of San Diego. A deputy clerk-research attorney II shall receive a biweekly salary equal to that specified for a deputy county counsel II in the classified service of the County of San Diego. A deputy clerk-law clerk shall receive a biweekly salary at a rate equal to that specified for a law clerk in the classified service of the County of San Diego.

(k) One deputy clerk-administrative secretary III, II, or I, as the case may be. A deputy clerk-administrative secretary III shall receive a biweekly salary at a rate equal to that specified for an administrative secretary III in the classified service of the County of San Diego. A deputy clerk-administrative secretary II shall receive a biweekly salary at a rate equal to that specified for an administrative secretary II in the classified service of the County of San Diego. A deputy clerk-administrative secretary I shall receive a biweekly salary at a rate equal to that specified for an administrative secretary I in the classified service of the County of San Diego.

(*l*) One deputy clerk-assistant, associate, or senior accountant as the case may be. A deputy clerk-assistant accountant shall receive a biweekly salary at a rate equal to that specified for the class of assistant accountant in the classified service of the County of San

Diego. A deputy clerk-associate accountant shall receive a biweekly salary at a rate equal to that specified for the class of associate accountant in the classified service of the County of San Diego. A deputy clerk-senior accountant shall receive a biweekly salary at a rate equal to that specified for the class of senior accountant in the classified service of the County of San Diego.

(m) Notwithstanding subdivision (b) of Section 73649, up to 10 extra help positions (hourly rate) to be appointed by and serve at the pleasure of the court administrator in the class and salary level deemed appropriate. These appointments shall be temporary for a period not to exceed six months, plus one additional period of up to six months, at the court administrator's option. Notwithstanding any other provisions of this section, the court administrator may fill these positions with personnel employed for a period not to exceed 90 working days or 720 hours, whichever is greater, during a fiscal year on a part-time basis.

(n) Notwithstanding subdivision (b) of Section 73649, up to 10 deputy clerk-court workers may be appointed by and serve at the pleasure of the court administrator. The class of deputy clerk-court worker provides for temporary appointments to positions in classes not listed in Sections 73640 to 73650, inclusive, pending a review and evaluation of the duties of these positions by the court administrator, and the establishment of specific classes as provided in this section. Prior to the establishment of those classes, the county personnel director shall conduct a classification review and make recommendations to the municipal court as to the establishment of those classes. The rate of pay for each individual employed in this class shall be within the range proposed for the class pending establishment, at a rate determined by the court administrator following consultation with the county personnel director. The rules regarding appointment and compensation as they relate to appointments to deputy clerk-court worker shall be the same as those applicable to the class that is pending establishment. Appointments shall be temporary and shall not exceed six months. Employee benefits, if applicable, shall be equal to those granted to the class in the service of the County of San Diego to which the pending class will be tied for benefit purposes. When such an appointment is made, the class, compensation (including salary and fringe benefits), and number of such positions may be established by joint action of the majority of the judges and the board of supervisors in accordance with established county personnel and budgetary procedures. The court administrator may then appoint additional attachés to such classes of positions in the same manner as those for which express provision is made, and they shall receive the compensation so provided. Persons occupying deputy clerk-court worker positions shall have their appointments expire not later than 30 calendar days following promulgation of a list of certified eligibles for the new class. Appointments to the new class shall continue at the stated compensation or as thereafter modified by joint action of the

majority of the judges and the board of supervisors.

(o) Notwithstanding subdivision (b) of Section 73649, the court administrator may appoint up to 15 temporary extra help deputy clerk-municipal court trainees I, II, or III, who shall be paid at an hourly rate and shall serve at the pleasure of the court administrator. A deputy clerk-municipal court trainee I shall receive an hourly salary at a rate equal to that specified for student worker I in the unclassified service of the County of San Diego. A deputy clerk-municipal court trainee II shall receive an hourly salary at a rate equal to that specified for student worker II in the unclassified service of the County of San Diego. A deputy clerk-municipal court trainee III shall receive an hourly salary at a rate equal to that specified for student worker III in the unclassified service of the County of San Diego. Persons who graduate and receive a degree in the field which qualified them for appointment to a deputy clerk-municipal court trainee class, may remain in the class and be employed on a full-time basis for up to six months from the first day of the month following their date of graduation.

(p) Two deputy administrative clerks III, II, or I, as the case may be. A deputy administrative clerk III shall receive a biweekly salary at a rate 19.95 percent higher than that specified for deputy administrative clerk II. A deputy administrative clerk II shall receive a biweekly salary at a rate equal to that specified for deputy clerk III. A deputy administrative clerk I shall receive a biweekly salary at a rate equal to that specified for deputy clerk II.

(q) Except as provided in this section, Section 74345 shall apply to the attachés appointed pursuant to this section and Section 73643.

(r) Notwithstanding any other provision of law, the number of positions in classifications authorized under subdivisions (b) to (*l*), inclusive, (n), (o), and (p) of this section and under Section 73646 may be increased by up to 30 additional positions by joint action of the majority of the judges and the board of supervisors in accordance with established county personnel and budgetary procedures. The rules regarding appointment and compensation (including salary and fringe benefits) as they relate to appointments of persons to those positions shall be the same as those applicable to the class of those positions. The action of the majority of the judges and the resolution of the board of supervisors adjusting such positions shall designate the class title or titles and number of positions to be added to each respective class. Any adjustment made pursuant to this subdivision shall be effective on adoption of the resolution by the board of supervisors and shall remain in effect only until January 1 of the second year following the year in which this subdivision becomes effective, unless earlier ratified by the Legislature. This subdivision shall remain in operation only until January 1 of the second year following the year in which it becomes operative, and as of that date is inoperative.

SEC. 4. Section 73646 of the Government Code is amended to read:

73646. By order entered in the minutes of the court, a majority of judges may appoint two judicial secretaries who shall serve at the pleasure of the judges. Each judicial secretary shall receive a biweekly salary at a rate equal to that specified for administrative secretary IV in the classified service of the County of San Diego commencing at step 4 at initial employment and advancing to step 5 at the end of one year of continuous service.

The position of judicial secretary shall be deemed comparable to the position of administrative secretary IV in the classified service of San Diego County. Whenever the salary of the class of administrative secretary IV is adjusted by the Board of Supervisors of San Diego County, the salary of the class of judicial secretaries shall be adjusted a commensurate percentage in the salary schedule on the same date.

Notwithstanding the provisions of Section 73649, the judicial secretaries shall receive and be entitled to the same number of holidays, leaves of absence, and all other fringe benefits as are now or may hereafter be provided for administrative secretary IV in the classified service of the County of San Diego. However, the class of judicial secretary shall be entitled to: (a) earn sick leave credit at the rate of 5.385 percent of each hour of paid service during the pay period; (b) earn vacation credit at the rate of 5.769 percent of each hour of paid service during the pay period and accumulate vacation credit not to exceed 25 working days where the employee has less than 10 years of continuous service; and (c) earn vacation credit at the rate of 8.075 percent of each hour of paid service during the pay period and accumulate vacation credit not to exceed 35 working days where the employee has 10 years or more of continuous service.

SEC. 5. Section 73649 of the Government Code is amended to read:

73649. (a) In addition to the salary provided in this article, the classes of attachés of the municipal court shall receive, and they shall be entitled to the same number of holidays, leaves of absence, and all other fringe benefits as are now or may hereafter be provided for the employees of the County of San Diego in the comparable classes specified in Section 74345. The court administrator shall receive the same number of holidays, leaves of absence, and all other fringe benefits as are now or may hereafter be received by the class of chief probation officer of the County of San Diego. The assistant court administrator shall receive the same number of holidays, leaves of absence, and all other fringe benefits as are now or may hereafter be received by the class of assistant chief probation officer of the County of San Diego. All persons employed as deputy clerk-division manager I, deputy clerk-division manager II, deputy clerk-division manager III, or deputy clerk-administrative assistant III shall receive the same number of holidays, leaves of absence, and all other fringe benefits as are now or may hereafter be received by the class of administrative assistant III in the classified service of the County of San Diego. However, all officers, employees, and attachés of the municipal court shall be eligible to enroll in the dental and vision

group insurance plans sponsored by the County of San Diego. The purpose and intent of this subdivision is to provide all court attachés except judicial secretaries employed and court reporters with any and all, but no more than, those fringe benefits which are available to their comparable classes in the service of the County of San Diego as specified in this section or in Section 74345. Whenever action or approval by the chief administrative officer or county personnel director is required for the county benefit, it shall be taken or given, as to municipal court officers and attachés other than those serving at the pleasure of the court, by the court administrator with the approval of the majority of the judges of the municipal court or their designees, or, as to those serving at the pleasure of the court, by the majority of the judges of the municipal court or their designees. Changes in fringe benefits shall be effective on the same date as those for employees of the County of San Diego in the specified comparable classes. The majority of all the municipal court judges may adopt rules for the conduct of and personnel privileges to be afforded the attachés of the court, excluding fringe benefits.

(b) All attachés other than court reporters, judicial secretaries, and other persons serving at the pleasure of their appointing authorities, may be appointed, promoted, removed, suspended, laid off, or discharged for cause by the appointing authority subject in such appointment, promotion, removal, suspension, layoff, or discharge to civil service provisions applicable to the classified personnel of the County of San Diego. Whenever such attachés are appointed or promoted to a position, they must serve a probationary period of at least six months, and not to exceed 18 months, as specified in the job announcement for the class prior to appointment.

SEC. 6. Section 73650 of the Government Code is amended to read:

73650. Official reporters in the Municipal Court of the El Cajon Judicial District appointed pursuant to Section 72194 shall be attachés of the court, and in lieu of any other compensation provided by law for their services in reporting testimony and proceedings in the court shall be paid a biweekly salary equal to that specified for official court reporters for the Superior Court of the County of San Diego. These salaries shall be a charge against the general fund of the county.

Notwithstanding Section 72194, by joint action of the majority of the judges and the board of supervisors in accordance with the county personnel and budgetary procedures, the class of chief reporter may be established. The action of the majority of the judges and the resolution of the board of supervisors shall designate that the class of chief reporter is limited to one position and shall receive a biweekly salary at a rate 15 percent higher than that specified for official reporters. The chief reporter shall be appointed by and serve at the pleasure of the judges and shall receive and be entitled to the same number of holidays, leaves of absence, and all other fringe benefits as are now or may hereafter be provided for official

reporters.

Pursuant to Section 72194, the judges of the court may appoint as many additional reporters as the business of the court may require, who shall be known as official reporters pro tempore, and who shall serve without salary but shall receive the fees provided by Sections 69947 to 69953, inclusive, except that in lieu of the per diem fees provided in those sections for reporting testimony and proceedings, the official reporters pro tempore shall in all cases be compensated at a rate equal to that paid to official reporters pro tempore for the Superior Court of the County of San Diego, which shall be a charge against the general fund of the County of San Diego.

Fees for transcription of testimony and proceedings in the court shall be paid by the litigants to official reporters and official reporters pro tempore as otherwise provided by law. In all cases where by law the court may direct the payment of transcription fees out of the county treasury, those fees shall, upon order of the court, be paid from the general fund, including fees for transcription of testimony and proceedings in criminal cases as provided in Sections 69947 to 69953, inclusive.

Official reporters of the court shall be members of any retirement system maintained by the county. For the purpose of the retirement system the salary provided in this article for those reporters shall be deemed their entire compensation.

Notwithstanding the provisions of Section 73649, official reporters serve at the pleasure of the judges and shall receive and be entitled to the same number of holidays, leaves of absence, and all other fringe benefits as are now or may hereafter be provided for the official reporters of the Superior Court of the County of San Diego.

SEC. 7. Section 73953 of the Government Code is amended to read:

73953. There shall be one court administrator who shall serve as clerk of the court, who shall be appointed by, and serve at the pleasure of the majority of the judges of the court. The biweekly salary of the court administrator shall be within the biweekly rate range ES-13 indicated in the Compensation Ordinance of the County of San Diego. The biweekly salary, and any advancement or reduction within the range, shall be determined in accordance with provisions set forth under Article 3.5 of the Compensation Ordinance of the County of San Diego and of subdivision (a) of Section 74345.

SEC. 8. Section 73954 of the Government Code is amended to read:

73954. The court administrator may appoint:

(a) One assistant court administrator at the direction of a majority of the judges of the court who shall serve at the pleasure of the majority of the judges. The biweekly salary of the assistant court administrator shall be within the biweekly rate range ES-10 indicated in the Compensation Ordinance of the County of San Diego. The biweekly salary and any advancement or reduction within the range shall be determined in accordance with the

provisions set forth under Article 3.5 of the Compensation Ordinance of the County of San Diego and of subdivision (a) of Section 74345.

(b) One deputy-clerk division manager III who shall receive a biweekly salary at a rate 24.5 percent higher than that specified for deputy-clerk division managers II.

(c) Five deputy clerk-division managers I or II, as the case may be. A division manager I shall receive a biweekly salary at a rate 10 percent higher than that specified for deputy clerk V in the San Diego Judicial District. A division manager II shall receive a biweekly salary at a rate 15.5 percent higher than that specified for deputy clerk V of the San Diego Judicial District.

(d) Twenty-one deputy clerks IV, or senior deputy clerks, as the case may be. Each of the deputy clerks IV shall receive a biweekly salary at a rate equal to the greater of that specified for superior court clerk in the classified service of the County of San Diego or 19.95 percent higher than that specified for deputy clerk III. The class of senior deputy clerk shall not exceed seven positions. Each of the senior deputy clerks shall receive a biweekly salary at a rate of 5 percent higher than that specified for deputy clerk IV. The duties of the class of senior deputy clerk shall include supervisory responsibilities.

(e) Eighty-two deputy clerks III, II, or I, as the case may be. Each of the deputy clerks III shall receive a biweekly salary at a rate equal to that specified for legal procedures clerk III in the classified service of the County of San Diego. Each deputy clerk II shall receive a biweekly salary at a rate equal to that specified for legal procedures clerk II in the classified service of the County of San Diego. Each of the deputy clerks I shall receive a biweekly salary at a rate equal to that specified for legal procedures clerk I in the classified service of the County of San Diego. At the discretion of the court administrator, appointments to the deputy clerk I class may be at any step within the salary range.

(f) Two deputy clerk-administrative secretaries IV, III, II, or I, as the case may be. A deputy clerk-administrative secretary IV shall receive a biweekly salary at a rate equal to that specified for administrative secretary IV in the classified service of the County of San Diego. A deputy clerk-administrative secretary III shall receive a biweekly salary at a rate equal to that specified for administrative secretary III in the classified service in the County of San Diego. A deputy clerk-administrative secretary II shall receive a biweekly salary at a rate equal to that specified for administrative secretary II in the classified service in the County of San Diego. A deputy clerk-administrative secretary I shall receive a biweekly salary at a rate equal to that specified for administrative secretary I in the classified service of the County of San Diego.

(g) Five deputy clerk interpreters who shall receive a biweekly salary at a rate equal to that specified for deputy clerk III.

(h) One deputy clerk-administrative assistant I, II, or III, as the case may be. The deputy clerk-administrative assistant I, II, or III,

shall receive a biweekly salary at a rate equal to that specified for administrative assistant I, II, or III, respectively, in the classified service of the County of San Diego.

(i) Three deputy administrative clerks III, II, or I, as the case may be. Each deputy administrative clerk III shall receive a biweekly salary at a rate 19.95 percent higher than that specified for deputy administrative clerk II. Each deputy administrative clerk II shall receive a biweekly salary at a rate equal to that specified for deputy clerk III. Each deputy administrative clerk I shall receive a biweekly salary at a rate equal to that specified for deputy clerk II. Funding of these positions is dependent upon enactment of an additional resolution by the Board of Supervisors of the County of San Diego.

(j) One deputy clerk-associate or assistant accountant, as the case may be. A deputy clerk-associate accountant shall receive a biweekly salary at a rate equal to that specified for associate accountant in the classified service in the County of San Diego. A deputy clerk-assistant accountant shall receive a biweekly salary at a rate equal to that specified for assistant accountant in the classified service of the County of San Diego.

(k) One deputy clerk-research attorney I or law clerk, as the case may be. A deputy clerk-research attorney I shall receive a biweekly salary at a rate equal to that specified for deputy county counsel I in the classified service of the County of San Diego. A deputy clerk-law clerk shall receive a biweekly salary at a rate equal to that specified for law clerk in the classified service of the County of San Diego.

(*l*) Notwithstanding subdivision (b) of Section 73957, up to 10 extra help positions (hourly rate) to be appointed by and serve at the pleasure of the court administrator in the class and salary level deemed appropriate. These appointments shall be temporary for a period not to exceed six months, plus one additional period of up to six months, at the court administrator's option. Notwithstanding any other provisions of this section, the court administrator may fill these positions with persons employed for a period not to exceed 90 working days or 720 hours, whichever is greater, during a fiscal year on a part-time basis.

(m) Notwithstanding subdivision (b) of Section 73957, up to 10 deputy clerk-court workers may be appointed by and serve at the pleasure of the court administrator. The class of deputy clerk-court worker provides for temporary appointments to positions in classes not listed in Sections 73950 to 73960, inclusive, pending a review and evaluation of the duties of these positions by the court administrator, and the establishment of specific classes as provided in this section. Prior to the establishment of those classes, the county personnel director shall conduct a classification review and make recommendations to the municipal court as to the establishment of such classes. The rate of pay for each individual employed in this class shall be within the range proposed for the class pending establishment at a rate determined by the court administrator following consultation with the county personnel director. The rules

regarding appointment and compensation as they relate to appointments to deputy clerk-court worker shall be the same as those applicable to the class that is pending establishment. Appointments shall be temporary and shall not exceed six months. Employee benefits, if applicable, shall be equal to those granted to the class in the service of the County of San Diego to which the pending class will be tied for benefit purposes. When such an appointment is made, the class, compensation (including salary and fringe benefits), and number of such positions may be established by joint action of the majority of the judges and the board of supervisors in accordance with established county personnel and budgetary procedures. The court administrator may then appoint additional attachés to such classes of positions in the same manner as those for which express provision is made, and they shall receive the compensation so provided. Persons occupying deputy clerk-court worker positions shall have their appointments expire not later than 30 calendar days following promulgation of a list of certified eligibles for the new class. Appointments to the new class shall continue at the stated compensation or as thereafter modified by joint action of the majority of the judges and the board of supervisors.

(n) Notwithstanding subdivision (b) of Section 73957, the court administrator may appoint up to 15 temporary extra help deputy clerk-municipal court trainees I, II, or III, who shall be paid at an hourly rate and shall serve at the pleasure of the court administrator. Deputy clerk-municipal court trainee I shall receive an hourly salary at a rate equal to that specified for student worker I in the unclassified service of the County of San Diego. Deputy clerk-municipal court trainee II shall receive an hourly salary at a rate equal to that specified for student worker II in the unclassified service of the County of San Diego. Deputy clerk-municipal court trainee III shall receive an hourly salary at a rate equal to that specified for student worker III in the unclassified service of the County of San Diego. Persons who graduate and receive a degree in the field which qualified them for appointment to a deputy clerk-municipal court trainee class, may remain in the class and be employed on a full-time basis for up to six months from the first day of the month following their date of graduation.

(o) Except as provided herein, the provisions of Section 74345 shall apply to the attachés appointed pursuant to this section and Section 73953.

(p) Notwithstanding any other provision of law, the number of positions in classifications authorized under subdivisions (b) to (k), inclusive, (m), and (n) of this section and under Section 73959 may be increased by up to 20 additional positions by joint action of the majority of the judges and the board of supervisors in accordance with established county personnel and budgetary procedures. The rules regarding appointment and compensation (including salary and fringe benefits) as they relate to appointments of persons to such positions shall be the same as those applicable to the class of such

positions. The action of the majority of the judges and the resolution of the board of supervisors adjusting such positions shall designate the class title or titles and number of positions to be added to each respective class. Any adjustment made pursuant to this subdivision shall be effective on adoption of the resolution by the board of supervisors and shall remain in effect only until January 1 of the second year following the year in which this subdivision becomes effective, unless earlier ratified by the Legislature. This subdivision shall remain in operation only until January 1 of the second year following the year in which it becomes operative, and as of such date is inoperative.

SEC. 9. Section 73957 of the Government Code is amended to read:

73957. (a) In addition to the salary provided in this article, the classes of attachés of the municipal court shall receive, and they shall be entitled to the same number of holidays, leaves of absence, and all other fringe benefits as are now or may hereafter be provided for the employees of the County of San Diego in the comparable classes specified in Section 74345. The court administrator shall receive the same number of holidays, leaves of absence, and all other fringe benefits as are now or may hereafter be received by the classification of chief probation officer of the County of San Diego. The assistant court administrator shall receive the same number of holidays, leaves of absence, and all other fringe benefits as are now or may hereafter be received by the classification of assistant chief probation officer of the County of San Diego. All persons employed as deputy clerk-division managers III, II, and I, shall receive the same number of holidays, leaves of absence, and all other fringe benefits as are now or may hereafter be received by an administrative assistant III of the classified service of the County of San Diego. However, all officers, employees, and attaches of the municipal court shall be eligible to enroll in the dental and vision group insurance plans sponsored by the County of San Diego. The purpose and intent of this subdivision is to provide all court attachés, except commissioners, court reporters, and judicial secretaries, with any and all fringe benefits but no more than those which are available to comparable classes in the classified service of the County of San Diego as specified in this section or in Section 74345. Whenever action or approval by the chief administrative officer or the county personnel director is required for the county benefit, it shall be taken or given, as to comparable municipal court officers and attachés other than those serving at the pleasure of the court, by the court administrator with the approval of the majority of the judges of the municipal court or their designees, or as to the court administrator and others serving at the pleasure of the court, by a majority of the judges or their designees. Changes in fringe benefits shall be effective on the same date as those for employees of the County of San Diego in the specified comparable classes. The majority of all the municipal court judges may adopt rules for the conduct of and personnel privileges to be

afforded the attachés of the court, excluding fringe benefits.

(b) All attachés, other than the court administrator, the assistant court administrator, commissioners, court reporters, judicial secretaries, and other persons serving at the pleasure of their appointing authorities, may be appointed, promoted, removed, suspended, laid off, or discharged for cause by the appointing authority subject to such appointment, promotion, removal, suspension, layoff, or discharge to civil service provisions applicable to the classified personnel of the County of San Diego. Whenever such attachés are appointed or promoted to a position, they shall serve a probationary period of at least six months and not to exceed 18 months, as specified in the job announcement for the class prior to the appointment.

SEC. 10. Section 73960 of the Government Code is amended to read:

73960. By order entered in the minutes of the court, a majority of judges may appoint one commissioner who shall serve at the pleasure of the judges. The commissioner shall receive a biweekly salary equal to, as determined by local rule of court, between 50 percent and 75 percent of the salary of a judge of a municipal court. The comparable county class to commissioner for the purposes of privileges and fringe benefits shall be deputy county counsel IV in the County of San Diego. However, the commissioner shall be entitled to: (a) earn sick leave credit at the rate of 5 percent of each hour of paid service during the pay period; and (b) earn vacation credit at the rate of 8.075 percent of each hour of paid service during the pay period.

SEC. 11. Section 74663 of the Government Code is repealed.

SEC. 12. Section 74343 of the Government Code is amended to read:

74343. There shall be one court administrator who shall serve as clerk of the court. Notwithstanding the provisions of Section 74348, the court administrator shall be appointed by and serve at the pleasure of the majority of the judges. The biweekly salary of the court administrator shall be within the biweekly rate range ES-15 indicated in the Compensation Ordinance of the County of San Diego. The biweekly salary, and any advancement or reduction within the range, shall be determined in accordance with the provisions set forth under Article 3.5 of the Compensation Ordinance of the County of San Diego and of subdivision (a) of Section 74345.

SEC. 13. Section 74344 of the Government Code is amended to read:

74344. The court administrator may appoint:

(a) One assistant court administrator, with the consent of a majority of the judges of the court, who shall be empowered to act in the place and stead of the court administrator in the event that the court administrator is absent or unavailable for any reason and who shall receive a biweekly salary within the biweekly rate range ES-12 indicated in the Compensation Ordinance of the County of San

Diego. The biweekly salary, and any advancement or reduction within the range, shall be determined in accordance with the provisions set forth under Article 3.5 of the Compensation Ordinance of the County of San Diego and of subdivision (a) of Section 74345.

(b) Four deputy clerk-division managers III who shall receive a biweekly salary at a rate 24.5 percent higher than that specified for deputy clerk-division manager II. One of these positions may be designated as branch manager. When a position is designated branch manager, the incumbent shall receive a bonus of 10 percent.

(c) Five deputy clerk-division managers II who shall receive a biweekly salary at a rate 15.5 percent higher than that specified for deputy clerk V.

(d) Eight deputy clerks V each of whom shall receive a biweekly salary at a rate 32.6 percent higher than that specified for deputy clerk III.

(e) Fifty-two deputy clerks IV, or senior deputy clerks, as the case may be. Each of the deputy clerks IV shall receive a biweekly salary at a rate equal to the greater of that specified for superior court clerks in the classified service of the County of San Diego or 19.95 percent higher than that specified for deputy clerk III. The class of senior deputy clerk shall not exceed 17 positions. Each of the senior deputy clerks shall receive a biweekly salary at a rate 5 percent higher than that specified for deputy clerk IV. The duties of the class of senior deputy clerk shall include supervisory responsibilities.

(f) One deputy clerk-data entry supervisor who shall receive a biweekly salary at a rate equal to that specified for data entry supervisor in the classified service of the County of San Diego. Each vacancy occurring in this class shall cause a corresponding reduction in the number of deputy clerk-data entry supervisors authorized; provided, however, that each of such vacancies shall increase by one, the number of positions designated as deputy clerk III.

(g) One hundred eighty-six deputy clerks III, II, or I, as the case may be. Each deputy clerk III shall receive a biweekly salary at a rate equal to that specified for legal procedures clerk III in the classified service of the County of San Diego. Each deputy clerk II shall receive a biweekly salary at a rate equal to that specified for legal procedures clerk II in the classified service of the County of San Diego. Each deputy clerk I shall receive a biweekly salary at a rate equal to that specified for legal procedures clerk I in the classified service of the County of San Diego. Appointments to deputy clerk I may be at any step within the salary range at the discretion of the court administrator.

(h) One deputy clerk-assistant, associate or senior accountant, as the case may be. A deputy clerk-assistant accountant shall receive a biweekly salary at a rate equal to that specified for assistant accountant in the classified service of the County of San Diego. A deputy clerk-associate accountant shall receive a biweekly salary at a rate equal to that specified for associate accountant in the classified service of the County of San Diego. A deputy clerk-senior accountant

shall receive a biweekly salary at a rate equal to that specified for senior accountant in the classified service of the County of San Diego.

(i) Eight deputy clerk interpreters, each of whom shall receive a biweekly salary at a rate equal to that specified for deputy clerk III.

(j) One deputy clerk-administrative secretary IV who shall receive a biweekly salary at a rate equal to that specified for administrative secretary IV in the classified service of the County of San Diego.

(k) One deputy clerk-administrative secretary III, II, or I, as the case may be. A deputy clerk-administrative secretary III shall receive a biweekly salary at a rate equal to that specified for administrative secretary III in the classified service of the County of San Diego. A deputy clerk-administrative secretary II shall receive a biweekly salary at a rate equal to that specified for administrative secretary II in the classified service of the County of San Diego. A deputy clerk-administrative secretary I shall receive a biweekly salary at a rate equal to that specified for administrative secretary I in the classified service of the County of San Diego.

(*l*) One deputy clerk-chief administrative services or administrative assistant III, as the case may be. A deputy clerk-chief administrative services shall receive a biweekly salary at a rate equal to that specified for chief administrative services in the classified service of the County of San Diego. A deputy clerk-administrative assistant III shall receive a biweekly salary at a rate equal to that specified for administrative assistant III in the classified service of the County of San Diego.

(m) One deputy clerk-administrative assistant II, I, or trainee as the case may be. A deputy clerk-administrative assistant II shall receive a biweekly salary at a rate equal to that specified for administrative assistant II in the classified service of the County of San Diego. A deputy clerk-administrative assistant I shall receive a biweekly salary at a rate equal to that specified for administrative assistant I in the classified service of the County of San Diego. A deputy clerk-administrative assistant trainee shall receive a biweekly salary at a rate equal to that specified for administrative assistant trainee in the classified service of the County of San Diego.

(n) One deputy clerk-DP systems manager who shall receive a biweekly salary at a rate equal to that specified for the class of EDP systems manager in the classified service of the County of San Diego.

(o) One deputy clerk-EDP coordinator who shall receive a biweekly salary at a rate equal to that specified for a departmental EDP coordinator in the classified service of the County of San Diego.

(p) Three deputy clerk-senior systems analysts, associate systems analysts, assistant systems analysts, or systems analyst trainees, as the case may be. A deputy clerk-senior systems analyst shall receive a biweekly salary at a rate equal to that specified for senior systems analyst in the classified service of the County of San Diego. A deputy clerk-associate systems analyst shall receive a biweekly salary at a rate equal to that specified for associate systems analyst in the

classified service of the County of San Diego. A deputy clerk-assistant systems analyst shall receive a biweekly salary at a rate equal to that specified for assistant systems analyst in the classified service of the County of San Diego. A deputy clerk-systems analyst trainee shall receive a biweekly salary at a rate equal to that specified for systems analyst trainee in the classified service of the County of San Diego.

(q) The positions identified in subdivisions (n), (o), and (p) shall be administered by the court administrator of the San Diego Judicial District subject to policy direction by the court administrators of the San Diego, North County, El Cajon, and South Bay Judicial Districts. The purpose and intent of this subdivision is to allow all four municipal court judicial districts to determine the work assignments of data-processing personnel.

(r) One deputy clerk-print shop helper, offset equipment operator, or publication supervisor, as the case may be. A deputy clerk-print shop helper shall receive a biweekly salary at a rate equal to that specified for print shop helper in the classified service of the County of San Diego. A deputy clerk-offset equipment operator shall receive a biweekly salary at a rate equal to that specified for offset equipment operator in the classified service of the County of San Diego. A deputy clerk-publication supervisor who shall receive a biweekly salary at a rate equal to that specified for publications supervisor in the classified service of the County of San Diego.

(s) One deputy clerk-research attorney I or research attorney II, as the case may be. A deputy clerk-research attorney I shall receive a biweekly salary at a rate equal to that specified for deputy county counsel I in the classified service of the County of San Diego. A deputy clerk-research attorney II shall receive a biweekly salary at a rate equal to that specified for deputy county counsel II in the classified service of the County of San Diego.

(t) Notwithstanding subdivision (b) of Section 74348, up to 10 deputy clerk-court workers may be appointed by and serve at the pleasure of the court administrator. The class of deputy clerk-court worker provides for temporary appointments to positions in classes not listed in Section 74345 pending a review and evaluation of the duties of these positions by the court administrator, and the establishment of specific classes as provided in this section. Prior to the establishment of those classes, the county personnel director shall conduct a classification review and make recommendations to the municipal court as to the establishment of those classes. The rate of pay for each individual employed in this class shall be within the designated range at a rate determined by the court administrator following consultation with the county personnel director. The rules regarding appointment and compensation as they relate to appointments to deputy clerk-court worker shall be the same as those applicable to the class that is pending establishment. Appointments shall be temporary and shall not exceed six months. Employee benefits, if applicable, shall be equal to those granted to the class in the classified service of the County of San Diego to which

the pending class will be tied for benefit purposes. When such an appointment is made, the class, compensation (including salary and fringe benefits), and number of such positions may be established by joint action of the majority of the judges and the board of supervisors in accordance with established county personnel and budgetary procedures. The court administrator may then appoint additional attachés to such classes of positions in the same manner as those for which express provision is made, and they shall receive the compensation so provided. Persons occupying deputy clerk-court worker positions shall have their appointments expire not later than 30 calendar days following promulgation of a list of certified eligibles for the new class. Appointments to the new class shall continue at the stated compensation or as thereafter modified by joint action of the majority of the judges and the board of supervisors.

(u) Notwithstanding subdivision (b) of Section 74348, up to 10 extra help deputy clerk-junior clerk positions (hourly rate) at the junior clerk-typist level, to be appointed by and serve at the pleasure of the court administrator. These appointments shall be temporary for a period not to exceed six months, plus one additional period at the court administrator's option, not to exceed six months.

(v) Notwithstanding subdivision (b) of Section 74348, up to 10 extra help positions (hourly rate) to be appointed by and serve at the pleasure of the court administrator in the class and salary level deemed appropriate. These appointments shall be temporary for a period not to exceed six months, plus one additional period of up to six months, at the court administrator's option. Notwithstanding any other provisions of this section, the court administrator may fill these positions with persons employed for a period not to exceed 90 working days or 720 hours, whichever is greater, during a fiscal year on a part-time basis.

(w) Notwithstanding subdivision (b) of Section 74348, the court administrator may appoint up to 30 temporary extra help deputy clerk-municipal court trainees I, II, or III, who shall be paid at an hourly rate and shall serve at the pleasure of the court administrator. A deputy clerk-municipal court trainee I shall receive an hourly salary at a rate equal to that specified for student worker I in the unclassified service of the County of San Diego. A deputy clerk-municipal court trainee II shall receive an hourly salary at a rate equal to that specified for student worker II in the unclassified service of the County of San Diego. A deputy clerk-municipal court trainee III shall receive an hourly salary at a rate equal to that specified for student worker III in the unclassified service of the County of San Diego. Persons who graduate and receive a degree in the field which qualified them for appointment to a deputy clerk-municipal court trainee class, may remain in the class and be employed on a full-time basis for up to six months from the first day of the month following their date of graduation.

(x) Two deputy administrative clerks III, II, or I, as the case may be. A deputy administrative clerk III shall receive a biweekly salary

at a rate 19.95 percent higher than that specified for deputy administrative clerk II. A deputy administrative clerk II shall receive a biweekly salary at a rate equal to that specified for deputy clerk III. A deputy administrative clerk I shall receive a biweekly salary at a rate equal to that specified for deputy clerk II.

(y) Two deputy clerk-analysts I, II, and III, as the case may be. A deputy clerk-analyst I, II, or III, shall receive a biweekly salary at a rate equal to that specified for analyst I, II, or III, respectively, in the classified service of the County of San Diego.

(z) Notwithstanding any other provision of law, the number of positions in classifications authorized under subdivisions (b) to (u), inclusive, (w), (x) and (y) of this section and under Section 74352 may be increased by up to 136 additional positions by joint action of the majority of the judges and the board of supervisors in accordance with established county personnel and budgetary procedures. The rules regarding appointment and compensation (including salary and fringe benefits) as they relate to appointments of persons to the positions shall be the same as those applicable to the class of those positions. The action of the majority of the judges and the resolution of the board of supervisors adjusting such positions shall designate the class title or titles and number of positions to be added to each respective class. Any adjustment made pursuant to this subdivision shall be effective on adoption of the resolution by the board of supervisors and shall remain in effect only until January 1 of the second year following the year in which this subdivision becomes effective, unless earlier ratified by the Legislature. This subdivision shall remain in operation only until January 1 of the second year following the year in which it becomes operative, and as of such date is inoperative.

SEC. 14. Section 74345 of the Government Code is amended to read:

74345. (a) All matters affecting the employment and compensation (including salary and fringe benefits) of municipal court officers and attachés not specifically provided for in this article or other provisions of state law shall be governed by the then-current ordinances and resolutions of the Board of Supervisors of the County of San Diego in the same manner as those employment and compensation provisions may now or hereafter affect employees of the County of San Diego in the comparable classes specified in this section or in Sections 73649, 73957, 74348, and 74749 if other comparable classes are specified in those sections. Whenever in the ordinances or resolutions action or approval is required to be taken or given by the chief administrative officer or the county personnel director, it shall be taken or given, as to municipal court officers and attachés other than those serving at the pleasure of the court, by the court administrator with the approval of the majority of the judges or their designees, or as to persons serving at the pleasure of the court, by the majority of the judges of the municipal court, or their designees.

(b) The hereinafter specified court classes are deemed to be comparable in job level to the specified comparable classes in the service of the County of San Diego. Whenever the salaries of such classes in the service of the County of San Diego are adjusted by the board of supervisors, the salaries of the comparable classes in the office of the court administrator shall be adjusted a commensurate amount effective on the same date. In no event shall the salary of the clerk or any deputy clerk who occupied his or her position on the day prior to the effective date of this section be less than his or her salary on that day. Any person whose title is changed as a result of the enactment of or of any amendments to this article shall receive credit for continued service which he or she would be entitled under his or her previous position and shall receive compensation at the step covering such length of service. Thereafter, any increments earned by additional service in grade shall take effect upon the first day of the pay period following completion of such required service. The comparable classes are as follows:

| Municipal court class | County class |
|---|---|
| Deputy clerk-division manager III | Legal procedures clerk III |
| Deputy clerk-division manager II | Legal procedures clerk III |
| Deputy clerk-division manager I | Legal procedures clerk III |
| Deputy clerk I | Legal procedures clerk I |
| Deputy clerk II | Legal procedures clerk II |
| Deputy clerk III | Legal procedures clerk III |
| Deputy clerk IV | Legal procedures clerk III |
| Deputy clerk V | Legal procedures clerk III |
| Deputy clerk-administrative clerk I, II, & III | Legal procedures clerk III |
| Deputy clerk-data entry supervisor | Data entry supervisor |
| Deputy clerk-data entry operator | Data entry operator |
| Deputy clerk interpreter | Legal procedures clerk III |
| Deputy clerk-administrative secretary III | Administrative secretary III |
| Deputy clerk-administrative secretary II | Administrative secretary II |
| Deputy clerk-administrative secretary I | Administrative secretary I |
| Deputy clerk-administrative secretary IV | Administrative secretary IV |
| Deputy clerk-chief administrative services | Chief, administrative services |
| Deputy clerk-administrative assistant III | Administrative assistant III |
| Deputy clerk-administrative assistant II | Administrative assistant II |
| Deputy clerk-administrative assistant I | Administrative assistant I |

| | |
|---|---|
| Deputy clerk-administrative assistant trainee | Administrative Assistant trainee |
| Deputy clerk-senior systems analyst | Senior systems analyst |
| Deputy clerk-associate systems analyst | Associate systems analyst |
| Deputy clerk-assistant systems analyst | Assistant systems analyst |
| Deputy clerk-systems analyst trainee | Systems analyst trainee |
| Deputy clerk-senior accountant | Senior accountant |
| Deputy clerk-associate accountant | Associate accountant |
| Deputy clerk-assistant accountant | Assistant accountant |
| Deputy clerk-junior clerk | Junior clerk-typist |
| Deputy clerk-law clerk | Law clerk |
| Deputy clerk-research attorney I | Deputy county counsel I |
| Deputy clerk-research attorney II | Deputy county counsel II |
| Deputy clerk-EDP coordinator | Departmental EDP coordinator |
| Deputy clerk-print shop helper | Print shop helper |
| Deputy clerk-publication supervisor | Publication supervisor |
| Deputy clerk-offset equipment operator | Offset equipment operator |
| Deputy clerk-DP systems manager | DP systems manager |
| Deputy clerk-administrative services manager I | Administrative services manager I |
| Deputy clerk-administrative services manager II | Administrative services manager II |
| Deputy clerk-administrative services manager III | Administrative services manager III |
| Senior deputy clerk | Legal procedures clerk III |
| Deputy clerk-analyst I | Analyst I |
| Deputy clerk-analyst II | Analyst II |
| Deputy clerk-analyst III | Analyst III |

Notwithstanding the comparable classes set forth above, if pursuant to subdivision (e) of Section 73644, subdivision (e) of Section 74344, subdivision (d) of Section 73954, and subdivision (g) of Section 74745, the class of deputy clerk IV is entitled to receive a biweekly salary at a rate equal to that specified for superior court clerks in the classified service of the County of San Diego, the comparable county class for deputy clerk IV and senior deputy clerk shall be the superior court clerk in the classified service of the County of San Diego, except with respect to benefits in which case the comparable county class shall be legal procedures clerk III.

(c) Persons employed on and after January 1, 1975, in a class eligible for advancement in range shall receive the same step

increases applicable to persons so employed in the County of San Diego on or after July 1, 1974. Persons employed prior to January 1, 1975, in a class eligible for advancement in range shall receive the same step increases applicable to persons so employed in the County of San Diego prior to July 1, 1974.

(d) Officers and attachés may be appointed to a class and position in the service of a court in one judicial district from the service of a court in another judicial district within the County of San Diego, from the service of the County of San Diego, from the service of the Superior Court of San Diego County, or from the service of the marshal, in the same manner that employees of the County of San Diego may be appointed in departments of the county. In determining the step of the salary range at which such employee shall be paid, the employee shall be given credit for the immediately preceding continuous prior service to a court, the marshal, or the County of San Diego.

(e) A promotion is an appointment to a class compensated at a higher base salary, at any like-numbered step, than the class relinquished. Upon promotion an employee shall be placed at the lowest step which provides at least a 5-percent increase over the base salary of the step occupied in the former class, but in no event higher than the top step of the class to which promoted.

(f) A demotion is an appointment to a class compensated at a lower base salary, at any like-numbered step, than the class relinquished. The demoted employee's step shall be set at the same numbered step for the demoted class as for the former class, except that the step shall not be set lower than the normal entry step. If the demotion is to the class in which the employee served immediately prior to being promoted, the employee's step shall be that held immediately prior to the promotion.

SEC. 15. Section 74346 of the Government Code is amended to read:

74346. (a) The traffic referee shall receive a salary equal to 60 percent of the salary of a judge of the municipal court. He or she shall, after each year of service, receive an increase of 5 percent of the salary of a judge of the municipal court but in no event shall he or she receive more than 65 percent of the salary of a judge of the municipal court.

(b) There shall be five commissioners who shall hold office at the pleasure of the judges. A commissioner shall receive a salary equal to 75 percent of the salary of a judge of the municipal court.

(c) A commissioner shall receive and be entitled to the same number of holidays, leaves of absence, and all other fringe benefits as are now or may hereafter be provided for a deputy county counsel IV in the classified service of the County of San Diego. However, a commissioner shall be entitled to: (a) earn sick leave credit at the rate of 5 percent of each hour of paid service during the pay period; and (b) earn vacation credit at the rate of 8.075 percent of each hour of paid service during the pay period.

(d) With the approval of the judges of the court and the board of supervisors, each traffic referee and commissioner may be reimbursed for any payment he or she makes for his or her annual State Bar of California membership fee.

SEC. 16. Section 74348 of the Government Code is amended to read:

74348. (a) In addition to the salary provided in this article, the classes of attachés of the municipal court shall receive, and they shall be entitled to the same number of holidays, leaves of absence, and all other fringe benefits as are now or may hereafter be provided for the employees of the County of San Diego in the comparable classes specified in Section 74345. The court administrator shall receive the same number of holidays, leaves of absence, and all other fringe benefits as are now or may hereafter be received by the classification of chief probation officer of the County of San Diego. The assistant court administrator shall receive the same number of holiday, leaves of absence, and all other fringe benefits as are now or may hereafter be received by the classification of assistant chief probation officer of the County of San Diego. All persons employed as deputy clerk-division managers I, II, or III, shall receive the same number of holidays, leaves of absence, and all other fringe benefits as are now or may hereafter be received by the classification of administrative assistant III of the classified service of the County of San Diego. However, all officers, employees, and attachés of the municipal court shall be eligible to enroll in the dental and vision group insurance plans sponsored by the County of San Diego. The purpose and intent of this subdivision is to provide all court attachés except judicial secretaries, commissioners, court reporters, and the traffic referee with any and all fringe benefits, but no more than those which are available to their comparable classes in the service of the County of San Diego as specified in this section or in Section 74345. Whenever action or approval by the chief administrative officer or the county personnel director is required for the county benefit, it shall be taken or given, as to comparable municipal court officers and attachés other than those serving at the pleasure of the court, by the court administrator with the approval of the majority of the judges of the municipal court or their designees, or as to the court administrator and others serving at the pleasure of the court, by the majority of the judges or their designees. Changes in fringe benefits shall be effective on the same date as those for employees of the County of San Diego in comparable classes. The majority of all the municipal court judges may adopt rules for the conduct of and personnel privileges to be afforded the attachés of the court, excluding fringe benefits.

(b) All attachés other than the traffic referee, commissioners, the court administrator, court reporters, judicial secretaries, and other persons serving at the pleasure of their appointing authorities, may be appointed, promoted, removed, suspended, laid off, or discharged for cause by the appointing authority subject in such appointment,

promotion, removal, suspension, layoff, or discharge to civil service provisions applicable to the classified personnel of the County of San Diego. Whenever such attachés are appointed or promoted to a position, they must serve a probationary period of at least six months, and not to exceed 18 months, as specified in the job announcement for the class prior to appointment.

SEC. 17. Section 74352 of the Government Code is amended to read:

74352. By order entered upon the minutes of the court, a majority of the judges of the municipal court of the San Diego Judicial District may appoint as many competent judicial secretaries as the business of the court requires, not to exceed six, who shall serve at the pleasure of the judges of the court. One of these secretaries shall be appointed by the majority of the judges of the court as the chief judicial secretary, who, while serving in that capacity, shall receive a biweekly salary at a rate 25 percent higher than that specified for judicial secretary. Appointment to such position shall be at step 5.

Each judicial secretary other than the chief judicial secretary shall receive a biweekly salary at a rate equal to that specified for administrative secretary IV in the classified service of the County of San Diego, commencing at step 4 at initial employment and advancing to step 5 at the end of one year of continuous service.

Whenever the salary of administrative secretary IV of the classified service of the County of San Diego is adjusted by the Board of Supervisors of San Diego County, the salaries of the chief judicial secretary and judicial secretaries shall be adjusted a commensurate percentage on the same date, such adjustments to take effect on the effective date of any amendments to this article.

Notwithstanding the provisions of Section 74348, the chief judicial secretary and judicial secretaries shall receive and be entitled to the number of holidays, leaves of absence and all other fringe benefits as are now or may hereafter be provided for administrative secretary IV in the classified service of the County of San Diego. However, the class of judicial secretary shall be entitled to: (a) earn sick leave credit at the rate of 5.385 percent of each hour of paid service during the pay period; (b) earn vacation credit at the rate of 5.769 percent of each hour of paid service during the pay period and accumulate vacation credit not to exceed 25 working days where the employee has less than 10 years of continuous service; and (c) earn vacation credit at the rate of 8.075 percent of each hour of paid service during the pay period and accumulate vacation credit not to exceed 35 working days where the employee has 10 years or more of continuous service.

SEC. 18. Section 74368 of the Government Code is amended to read:

74368. The marshal may make the following appointments:

(a) One assistant marshal.

(b) Four captains.

(c) Four lieutenants.

(d) Nineteen sergeants.

(e) One hundred sixty-three deputy marshals.

Any deputy marshal who may be assigned by the marshal to one of seven positions designated as lead deputy shall receive, while serving in that capacity, biweekly compensation at a rate 5 percent higher than that received by the deputy.

The marshal may, at his or her discretion, fill a deputy marshal or court service officer position by accepting a lateral transfer from another California peace officer agency. The transferee must have completed a California P.O.S.T. certified basic academy and been employed for at least one year in a position enumerated in Section 830.1, 830.2, 830.3, or 830.4 of the Penal Code within the past three years.

(f) One administrative secretary I, II, or III.

(g) One administrative services manager I, II, or III or administrative assistant III.

(h) Twenty intermediate typists.

(i) Six senior typists.

(j) Thirty-five field service officers.

Notwithstanding any other provisions of this article, in no event shall a field service officer's salary be less than 65 percent of the salary of a deputy marshal at the corresponding pay step. The field service officer is a peace officer trainee position which requires appointees to be at least 18 years of age and meet the qualifications and standards prescribed for deputy marshals. At the time an incumbent in the class of field service officer attains the age of 21, he or she may be appointed by the marshal to a position in the class of deputy marshal or court service officer, provided such position is open, without further qualification or examination.

A field service officer shall receive 65 percent of the uniform allowance prescribed for deputy marshals. In the event that a field service officer is appointed to the class of deputy marshal or court service officer, he or she shall receive the amount of reimbursement of the cost of required uniforms and equipment prescribed for a newly hired deputy marshal or court service officer, less any reimbursement received by him or her for the cost of required field service officer uniforms and equipment.

(k) One junior typist. Each vacancy occurring in this class shall cause a corresponding reduction in the number of junior typists hereby authorized, provided, however, that such vacancy shall increase by one, a position in the class intermediate typist under subdivision (h).

(*l*) Nine legal procedures clerks III.

(m) Thirty legal procedures clerks II or I.

(n) Sixty court service officers. In no event shall a court service officer's salary be less than 80 percent of a deputy marshal at the corresponding pay step. A court service officer shall receive the same uniform allowance prescribed for a deputy marshal, under the same conditions prescribed for deputy marshals. The marshal may appoint

a court service officer to a vacant position of deputy marshal without further qualification or examination. In the event that a court service officer is appointed to the class of deputy marshal, he or she shall receive the amount of reimbursement prescribed for a newly hired deputy marshal, less any reimbursement received by him or her for the cost of required court service officer uniforms and equipment. Court service officers shall be peace officers pursuant to Section 830.4 of the Penal Code. Notwithstanding any other provision of law, court service officers shall be general members of the county employees retirement system.

Any court service officer who meets length of service, educational and performance requirements established by the marshal and approved by the county personnel director may receive a biweekly compensation at a rate 7½ percent higher than that otherwise received by a court service officer. The number of court service officer positions so compensated shall not exceed one-half the total number of court service officers then employed by the marshal.

(o) Any person specified in subdivisions (f), (h), and (i), who may be assigned by the marshal to one of the positions designated as executive secretary or administrative-personnel secretary shall receive, while serving in that capacity, biweekly compensation at a rate 10 percent higher than that specified for such person's class and step.

(p) Two supervising legal services clerks.

(q) Three communications dispatchers I or II.

(r) Two administrative assistants III, II, I, or trainee.

(s) One EDP coordinator, or senior systems analyst.

(t) Notwithstanding Section 74369, up to 15 extra help positions (hourly rate) to be appointed at a level as determined by and serve at the pleasure of the marshal. Such appointments shall be temporary for a period not to exceed six months, plus one additional period at the marshal's option, not to exceed six months. Notwithstanding any other provisions of this section, the marshal may fill these positions with persons employed for less than 91 working days during a fiscal year on a part-time basis.

(u) Notwithstanding Section 74369, the marshal may appoint up to six temporary extra help marshal student workers I, II, or III who shall be paid at an hourly rate and shall serve at the pleasure of the marshal. A marshal student worker I, II, or III shall receive an hourly salary at the rate equal to that specified for the class of student worker I, II, or III respectively in the unclassified service of the County of San Diego. Persons who graduate and receive a degree in the field which qualified them for appointment to a marshal student worker class may remain in the class and be employed on a full-time basis for up to six months from the first day of the month following their date of graduation.

(v) Two associate systems analysts or assistant systems analysts.

(w) Notwithstanding Section 74369, up to five provisional workers may be appointed by and serve at the pleasure of the marshal. The

class of provisional worker provides for temporary appointments to positions in classes not listed in Section 74370 pending a review and evaluation of the duties of these positions by the marshal, and the establishment of specific classes as provided in this subdivision. Prior to the establishment of those classes, the county personnel director shall conduct a classification review and make recommendations to the marshal as to the establishment of such classes. The rate of pay for each individual employed in this class shall be within the range proposed for the class pending establishment, at a rate determined by the marshal following consultation with the county personnel director. The rules regarding appointment and compensation as they relate to appointments to provisional workers shall be the same as those applicable to the class that is pending establishment. Appointments shall be temporary and shall not exceed six months. Employee benefits, if applicable, shall be equal to those granted to the class in the service of the County of San Diego to which the pending class will be tied for benefit purposes. When such an appointment is made, the class, compensation (including salary and fringe benefits), and number of such positions may be established by joint action of the marshal and the board of supervisors in accordance with established county personnel and budgetary procedures. The marshal may then appoint additional attachés to such classes of positions in the same manner as those for which express provision is made, and they shall receive the compensation so provided. Persons occupying provisional worker positions shall have their appointments expire not later than 30 calendar days following promulgation of a list of certified eligibles for the new class. Appointments to the new class shall continue at the stated compensation or as thereafter modified by joint action of the marshal and the board of supervisors.

(x) Notwithstanding any other provision of law, the number of positions in classifications authorized under subdivisions (b) to (s), inclusive, (u), (v) and (w) of this section may be increased by up to 100 additional positions by joint action of the majority of the judges and the board of supervisors in accordance with established county personnel and budgetary procedures. The rules regarding appointment and compensation (including salary and fringe benefits) as they relate to appointments of persons to such positions shall be the same as those applicable to the class of such positions. The action of the majority of the judges and the resolution of the board of supervisors adjusting those positions shall designate the class title or titles and number of positions to be added to each respective class. Any adjustment made pursuant to this subdivision shall be effective on adoption of the resolution by the board of supervisors and shall remain in effect only until January 1 of the second year following the year in which this subdivision becomes effective, unless earlier ratified by the Legislature. This subdivision shall remain in operation only until January 1 of the second year following the year in which it becomes operative, and as of such date is inoperative.

SEC. 19. Section 74369 of the Government Code is amended to read:

74369. Except where this article or other provisions of state law specifically otherwise provides, the provisions of then current ordinances and resolutions of the board of supervisors and the rules for the classified service of the County of San Diego shall govern the appointment and assignment of officers, deputies, and attaches to the offices and positions enumerated in this article, and shall define their compensation (including salary and fringe benefits), rights, and privileges. All assistants, deputies, and other employees of the Marshal of San Diego County, other than those specified as serving at the pleasure of the marshal, may be appointed, promoted, removed, suspended, laid off, or discharged for cause by the said marshal, subject in such appointment, promotion, removal, suspension, lay off, or discharge to all civil service provisions applicable to the classified personnel of the office of Sheriff, County of San Diego.

SEC. 20. Section 74370 of the Government Code is amended to read:

74370. (a) The hereinafter enumerated classes of positions in the marshal's office of San Diego County are deemed to be equivalent in job, salary level, and fringe benefit level to certain classes in the service of the County of San Diego and whenever the salary of a class in the service of the County of San Diego is adjusted by the board of supervisors, the salary of the equivalent class in the marshal's office shall be adjusted in the same amount, effective on the same date.

The equivalent classes are as follows:

| Marshal class | County class |
|---|---|
| Assistant marshal | Assistant sheriff |
| Captain | Deputy sheriff-captain |
| Lieutenant | Deputy sheriff-lieutenant |
| Sergeant | Deputy sheriff-sergeant |
| Deputy marshal | Deputy sheriff |
| Court service officer | Revenue and recovery officer II |
| Field service officer | Revenue and recovery officer trainee |
| Legal procedures clerk III | Legal procedures clerk III |
| Legal procedures clerk II | Legal procedures clerk II |
| Legal procedures clerk I | Legal procedures clerk I |
| Senior typist | Senior clerk-typist |
| Intermediate typist | Intermediate clerk-typist |
| Junior typist | Junior clerk-typist |
| Administrative assistant III | Administrative assistant III |
| Administrative assistant II | Administrative assistant II |
| Administrative assistant I | Administrative assistant I |
| Administrative trainee | Administrative trainee |
| EDP coordinator | EDP coordinator |

| | |
|---|---|
| Senior systems analyst | Senior systems analyst |
| Associate systems analyst | Associate systems analyst |
| Assistant systems analyst | Assistant systems analyst |
| Administrative secretary III | Administrative secretary III |
| Administrative secretary II | Administrative secretary II |
| Administrative secretary I | Administrative secretary I |
| Administrative services manager I | Administrative services manager I |
| Administrative services manager II | Administrative services manager II |
| Administrative services manager III | Administrative services manager III |
| Supervising legal services clerk | Supervising legal services clerk |
| Communications dispatcher I | Communications dispatcher I |
| Communications dispatcher II | Communications dispatcher II |

(b) In addition to the salary provided in this article officers, deputies, and other attachés of the marshal's office shall receive, and they shall be entitled to the same number of holidays, leaves of absence, retirement benefits, deferred compensation benefits, and all other fringe benefits as are now or may hereafter be provided for the specified comparable employees of the County of San Diego.

For purposes of providing the fringe benefits specified in this section, each class in the marshal's office shall receive benefits equal to those of the comparable class in the service of the County of San Diego as specified in this section. The marshal shall receive the same fringe benefits received by the classification of Chief Probation Officer of the County of San Diego. However, all officers, deputies, and other attaches of the marshal's office shall be eligible to enroll in the dental and vision group insurance plans sponsored by the County of San Diego.

The purpose and intent of this subdivision is to provide all marshal's personnel with any and all fringe benefits, but no more than those, which are available to their comparable classes in the service of the County of San Diego, as specified in this section. Whenever action or approval by the chief administrative officer or the county personnel director is required for a county benefit, it shall be taken or given as to comparable marshal's employees, by the marshal, or as to the marshal by the majority of the judges or their designees. Changes in fringe benefits shall be effective on the same date as those for employees of the County of San Diego in the specified comparable classes. The marshal may adopt rules for the conduct of and personnel privileges to be afforded marshal employees, excluding fringe benefits.

SEC. 21. Section 74663 is added to the Government Code, to read:

74663. In the Santa Clara County Judicial District there shall be

one clerk-administrative officer who shall receive a salary of two thousand five hundred sixty-nine dollars and seventy-six cents ($2,569.76) biweekly and shall, notwithstanding the provisions of Section 74666, be appointed by and serve at the pleasure of a majority of the judges of the municipal court. In addition, there will be one legal aide (unclassified) who shall serve a one-year term. The legal aide shall be appointed by and serve at the pleasure of a majority of the judges and shall receive a salary as specified in range 42.5B of the Santa Clara County Salary Ordinance No. NS-5.87, as amended, for the fiscal year July 1, 1987, through June 30, 1988.

The clerk-administrative officer may appoint all of the following:

(a) One assistant clerk-administrative officer who shall receive a salary of two thousand one hundred sixty-five dollars and eighty-four cents ($2,165.84) biweekly.

(b) One administrative assistant to the clerk-administrative officer who shall receive a salary as specified in range 34.5A.

(c) One administrative assistant to the presiding judge who shall receive a salary as specified in range 34.5A.

(d) One administrative services manager II who shall receive a salary as specified in range 35.7A.

(e) Two management analysts who shall receive a salary as specified in range 31.2A, or associate management analyst B who shall receive a salary as specified in range 27.7A, or associate management analyst A who shall receive a salary as specified in range 23.7A.

(f) One accountant III who shall receive a salary as specified in range 31.2A, or accountant II who shall receive a salary as specified in range 46.4B, or accountant/auditor appraiser who shall receive a salary as specified in range 42.7B.

(g) One accountant II who shall receive a salary as specified in range 46.4B, or accountant/auditor appraiser who shall receive a salary as specified in range 42.7B.

(h) One office management coordinator who shall receive a salary as specified in range 24.7A.

(i) One secretary III who shall receive a salary as specified in range 43.4B, or secretary II who shall receive a salary as specified in range 41.4B, or secretary I who shall receive a salary as specified in range 38.4B.

(j) One secretary II who shall receive a salary as specified in range 41.4B, or secretary I who shall receive a salary as specified in range 38.4B.

(k) One secretary I who shall receive a salary as specified in range 38.4B.

(*l*) One municipal court division manager III who shall receive a salary of one thousand eight hundred eighty-nine dollars and twenty cents ($1,889.20) biweekly.

(m) Three municipal court division managers II who shall receive a salary of one thousand seven hundred thirty-eight dollars and eighty-eight cents ($1,738.88) biweekly.

(n) Three municipal court division managers I who shall receive a salary of one thousand six hundred thirty-one dollars and sixty cents ($1,631.60) biweekly.

(o) One chief deputy court clerk II who shall receive a salary as specified in range 31.3A.

(p) Six chief deputy court clerks I who shall receive a salary as specified in range 30.3A.

(q) Nine supervising deputy court clerks II who shall receive a salary as specified in range 28.3A.

(r) Three supervising deputy court clerks I who shall receive a salary as specified in range 25.3A.

(s) Ten assistant supervising deputy court clerks who shall receive a salary as specified in range 22.4A.

(t) Forty-nine municipal courtroom clerks who shall receive a salary as specified in range 44.1B.

(u) One hundred eighty-one deputy court clerks II who shall receive a salary as specified in range 38.4B, or deputy court clerk I who shall receive a salary as specified in range 35.9B.

(v) Seven accountant assistants who shall receive a salary as specified in range 40.1B.

(w) One senior data entry operator who shall receive a salary as specified in range 39.2B.

(x) Eleven data entry operators who shall receive a salary as specified in range 37.5B.

(y) One security guard who shall receive a salary as specified in range 37.5B.

(z) One messenger-driver who shall receive a salary as specified in range 34.7B.

SEC. 22. Section 74665 of the Government Code is amended to read:

74665. In the Santa Clara County Judicial District the judges of such courts, pursuant to Section 72194, may appoint as many additional reporters as the business of the courts may require, who shall be known as official reporters pro tempore, and who shall serve without salary but shall receive the fees provided by Sections 69947 to 69953, inclusive, except that in lieu of the per diem fees provided in said sections for reporting testimony and proceedings, the official reporters pro tempore shall in all cases receive eighty-four dollars and eighty cents ($84.80) per half day and one hundred sixty-nine dollars and sixty cents ($169.60) per day, which shall, upon order of the court, be a charge against the general fund of the county. If the board of supervisors increases the per diem fees for official court reporters pro tempore in the superior court pursuant to Section 70046.1, such increase shall apply equally for all official reporters pro tempore in the municipal courts, but all such increases shall be effective only until the second year following the calendar year in which the adjustment is made.

SEC. 23. Section 74744 of the Government Code is amended to read:

74744. There shall be one court administrator who shall serve as clerk of the court and who shall be appointed by a majority of the judges of the court. The salary of the court administrator shall be within the biweekly rate range ES-13 indicated in the Compensation Ordinance of the County of San Diego. The biweekly salary, and any advancement or reduction within the range, shall be determined in accordance with the provisions set forth under Article 3.5 of the Compensation Ordinance of the County of San Diego and of subdivision (a) of Section 74345.

SEC. 24. Section 74745 of the Government Code is amended to read:

74745. The court administrator may appoint with the approval of the judges:

(a) One assistant court administrator. The assistant court administrator shall serve as the assistant clerk of the court and shall receive a biweekly salary within the biweekly rate range ES-10 indicated in the Compensation Ordinance of the County of San Diego. The biweekly salary, and any advancement or reduction within the range, shall be determined in accordance with the provisions set forth under Article 3.5 of the Compensation Ordinance of the County of San Diego and of subdivision (a) of Section 74345.

(b) One deputy clerk-administrative services manager I, II, or III, as the case may be. A deputy clerk-administrative services manager I shall receive a biweekly salary at a rate equal to that specified for administrative services manager I in the classified service of the County of San Diego. A deputy clerk-administrative service manager II shall receive a biweekly salary at a rate equal to that specified for administrative services manager II in the classified service of the County of San Diego. A deputy clerk-administrative services manager III shall receive a biweekly salary at a rate equal to that specified for administrative services manager III in the classified service of the County of San Diego.

(c) One deputy clerk-administrative assistant I, II, or III, as the case may be. A deputy clerk-administrative assistant I shall receive a biweekly salary at a rate equal to that specified for administrative assistant I in the classified service of the County of San Diego. A deputy clerk-administrative assistant II shall receive a biweekly salary at a rate equal to that specified for administrative assistant II in the classified service of the County of San Diego. A deputy clerk-administrative assistant III shall receive a biweekly salary at a rate equal to that specified for administrative assistant III in the classified service of the County of San Diego.

(d) One deputy clerk-division manager III who shall receive a biweekly salary at a rate 24.5 percent higher than that specified for deputy clerk-division manager II in the South Bay Judicial District.

(e) Three deputy clerk-division managers I or II, as the case may be. A division manager I shall receive a biweekly salary at a rate 10 percent higher than that specified for deputy clerk V in the San Diego Judicial District. A division manager II shall receive a

biweekly salary at a rate 15.5 percent higher than that specified for deputy clerk V in the San Diego Judicial District.

(f) One deputy clerk-assistant, associate, or senior accountant, as the case may be. A deputy clerk-assistant accountant shall receive a biweekly salary at a rate equal to that specified for assistant accountant in the classified service of the County of San Diego. A deputy clerk-associate accountant shall receive a biweekly salary at a rate equal to that specified for associate accountant in the classified service of the County of San Diego. A deputy clerk-senior accountant shall receive a biweekly salary at a rate equal to that specified for senior accountant in the classified service of the County of San Diego.

(g) Eleven deputy clerks IV, or senior deputy clerks, as the case may be. Each of the deputy clerks IV shall receive a biweekly salary at a rate equal to the greater of that specified for superior court clerk in the classified service of the County of San Diego or 19.95 percent higher than that specified for deputy clerk III. The class of senior deputy clerk shall not exceed three positions. Each of the senior deputy clerks shall receive a biweekly salary at a rate 5 percent higher than that specified for deputy clerk IV. The duties of the class of senior deputy clerk shall include supervisory responsibilities.

(h) Thirty-seven deputy clerks III, II, or I, as the case may be. Each of the deputy clerks III shall receive a biweekly salary at a rate equal to that specified for legal procedures clerk III in the classified service of the County of San Diego. Each of the deputy clerks II shall receive a biweekly salary at a rate equal to that specified for legal procedures clerk II in the classified service of the County of San Diego. Each of the deputy clerks I shall receive a biweekly salary at a rate equal to that specified for legal procedures clerk I in the classified service of the County of San Diego. At the discretion of the court administrator, appointments to the deputy clerk I classification may be at any step within the salary range.

(i) Three deputy clerk data entry operators, each of whom shall receive a biweekly salary at a rate equal to that specified for data entry operator in the classified service of the County of San Diego.

(j) Two deputy clerk-administrative secretaries IV, III, II, or I, as the case may be. A deputy clerk-administrative secretary IV shall receive a biweekly salary at a rate equal to that specified for administrative secretary IV in the classified service of the County of San Diego. A deputy clerk-administrative secretary III shall receive a biweekly salary at a rate equal to that specified for administrative secretary III in the classified service of the County of San Diego. A deputy clerk-administrative secretary II shall receive a biweekly salary at a rate equal to that specified for administrative secretary II in the classified service of the County of San Diego. A deputy clerk administrative secretary I shall receive a biweekly salary at a rate equal to that specified for administrative secretary I in the classified service of the County of San Diego.

(k) Four deputy clerk interpreters who shall receive a biweekly salary at a rate equal to that specified for deputy clerk III.

(*l*) Notwithstanding subdivision (b) of Section 74749, up to 10 deputy clerk-court workers may be appointed by and serve at the pleasure of the court administrator. The class of deputy clerk-court worker provides for temporary appointments to positions in classes not listed in Sections 74740 to 74750, inclusive, pending a review and evaluation of the duties of these positions by the court administrator, and the establishment of specific classes as provided in this section. Prior to the establishment of those classes, the county personnel director shall conduct a classification review and make recommendations to the municipal court as to the establishment of those classes. The rate of pay for each individual employed in this class shall be within the range proposed for the class pending establishment, at a rate determined by the court administrator following consultation with the county personnel director. The rules regarding appointment and compensation as they relate to appointments to deputy clerk-court worker shall be the same as those applicable to the class that is pending establishment. Appointments shall be temporary and shall not exceed six months. Employee benefits, if applicable, shall be equal to those granted to the class in the service of the County of San Diego to which the pending class shall be tied for benefit purposes. When such an appointment is made, the class, compensation (including salary and fringe benefits), and number of such positions may be established by joint action of the majority of the judges and the board of supervisors in accordance with established county personnel and budgetary procedures. The court administrator may then appoint additional attachés to such classes of positions in the same manner as those for which express provision is made, and they shall receive the compensation so provided. Persons occupying deputy clerk-court worker positions shall have their appointments expire not later than 30 calendar days following promulgation of a list of certified eligibles for the new class. Appointments to the new class shall continue at the stated compensation or as thereafter modified by joint action of the majority of the judges and the board of supervisors.

(m) Notwithstanding subdivision (b) of Section 74749, up to 10 extra help positions (hourly rate) to be appointed by and serve at the pleasure of the court administrator in the class and salary level deemed appropriate. These appointments shall be temporary for a period not to exceed six months, plus one additional period of up to six months, at the court administrator's option. Notwithstanding any other provisions of this section, the court administrator may fill these positions with persons employed for a period not to exceed 90 working days or 720 hours, whichever is greater, during a fiscal year on a part-time basis.

(n) Notwithstanding subdivision (c) of Section 74749, the court administrator may appoint up to 15 temporary extra help deputy clerk-municipal court trainees I, II, or III, who shall be paid at an hourly rate and shall serve at the pleasure of the court administrator. A deputy clerk-municipal court trainee I shall receive an hourly

salary at a rate equal to that specified for student worker I in the unclassified service of the County of San Diego. A deputy clerk-municipal court trainee II shall receive an hourly salary at a rate equal to that specified for student worker II in service of the County of San Diego. A deputy clerk-municipal court trainee III shall receive an hourly salary at a rate equal to that specified for student worker III in the unclassified service of the County of San Diego. Persons who graduate and receive a degree in the field which qualified them for appointment to a deputy clerk-municipal court trainee class, may remain in the class and be employed on a full-time basis for up to six months from the first day of the month following their date of graduation.

(o) Except as provided herein, the provisions of Section 74345 shall apply to the attachés appointed pursuant to this section and Section 74744.

(p) Two deputy administrative clerks III, II, or I, as the case may be. A deputy administrative clerk III shall receive a biweekly salary at a rate 19.95 percent higher than that specified for deputy administrative clerk II. A deputy administrative clerk II shall receive a biweekly salary at a rate equal to that specified for deputy clerk III. A deputy administrative clerk I shall receive a biweekly salary at a rate equal to that specified for deputy clerk II.

(q) Notwithstanding any other provision of law, the number of positions in classifications authorized under subdivision (b) to (*l*), inclusive, (n) and (p) of this section may be increased by up to 20 additional positions by joint action of the majority of the judges and the board of supervisors in accordance with established county personnel and budgetary procedures. The rules regarding appointment and compensation (including salary and fringe benefits) as they relate to appointments of persons to such positions shall be the same as those applicable to the class of such positions. The action of the majority of the judges and the resolution of the board of supervisors adjusting those positions shall designate the class title or titles and number of positions to be added to each respective class. Any adjustment made pursuant to this subdivision shall be effective on adoption of the resolution by the board of supervisors and shall remain in effect only until January 1 of the second year following the year in which this subdivision becomes effective, unless earlier ratified by the Legislature. This subdivision shall remain in operation only until January 1 of the second year following the year in which this subdivision becomes operative, and as of such date is inoperative.

SEC. 25. Section 74746 of the Government Code is amended to read:

74746. In the event that there shall be an increase in the number of judges as provided in Section 74743, the court administrator may appoint one deputy clerk IV, one deputy clerk III, and one deputy clerk II, for each respective additional judge so appointed. Such additional deputy clerks shall receive the biweekly salaries specified for their respective classes by Section 74745.

SEC. 26. Section 74749 of the Government Code is amended to read:

74749. (a) In addition to the salary provided in this article, the attachés of the municipal court shall receive, and they shall be entitled to the same number of holidays, leaves of absence, and all other fringe benefits as now or may hereafter be provided for the employees of the County of San Diego in the comparable classes specified in Section 74345.

The court administrator shall receive the same number of holidays, leaves of absence, and all other fringe benefits as are now or may be hereafter received by the classification of chief probation officer of the County of San Diego. The assistant court administrator shall receive the same number of holidays, leaves of absence, and all other fringe benefits as are now or may be hereafter received by the classification of assistant chief probation officer of the County of San Diego. All persons employed as deputy clerk-division manager III, deputy clerk-division manager II, or deputy clerk-division manager I, shall receive the same number of holidays, leaves of absence, and all other fringe benefits as are now or may hereafter be received by the class of administrative assistant III in the classified service of the County of San Diego. However, all officers, employees and attachés of the municipal court shall be eligible to enroll in the dental and vision group insurance plans sponsored by the County of San Diego.

The purpose and intent of this subdivision is to provide all court attachés except the commissioner and court reporters with any and all fringe benefits but no more than those which are available to their comparable classes in the service of the County of San Diego as specified herein or in Section 74345. Whenever action or approval by the chief administrative officer or county personnel director is required for the county benefit, it shall be taken or given, as to comparable municipal court officers and attachés other than those serving at the pleasure of the court, by the court administrator with the approval of the majority of the judges of the municipal court or their designees, or as to those serving at the pleasure of the court, by the majority of the judges or their designees. Changes in benefits shall be effective on the same date as those for employees of the County of San Diego in the specified comparable classes. The majority of all the municipal court judges may adopt rules for the conduct of the personnel privileges to be afforded the attachés of the court excluding fringe benefits.

(b) All attachés other than the commissioner and the court reporters, and other persons serving at the pleasure of their appointing authorities, may be appointed, promoted, removed, suspended, laid off, or discharged for cause by the appointing authority subject in such appointment, promotion, removal, suspension, lay off, or discharge to civil service provisions applicable to the classified personnel of the County of San Diego. Whenever such attachés are appointed or promoted to a position, they must serve a probationary period of at least six months and not to exceed

18 months, as specified in the job announcement for the class prior to appointment.

SEC. 27. 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.

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## CHAPTER 1434

An act to amend Section 14031.10 of the Government Code, and to add Division 16 (commencing with Section 160000) to, and to repeal Section 99234.7 of, the Public Utilities Code, relating to transportation, and making an appropriation therefor.

[Approved by Governor September 26, 1988. Filed with Secretary of State September 27, 1988.]

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

SECTION 1. Section 14031.10 of the Government Code is amended to read:

14031.10. For purposes of Sections 14031.8 and 14031.9:

(a) "Avoidable cost" means all costs associated with a particular service which would not be incurred if the service were not provided.

(b) "Operating costs" means all costs, exclusive of capital costs, amortization and depreciation costs, costs of demonstration projects of no more than two years duration designed to increase efficiency of operations and improve farebox ratios, and lease-with-an-option-to-purchase costs, associated with a particular service which would be incurred only if the service were provided.

(c) "Fare revenues" means the total revenues collected from the operation of a particular service. Until June 30, 1990, "fare revenues" shall also include that portion of the local operating support for any existing commuter services funded under Section 14031.6 which exceeds the level of local operating support as required by the terms of any agreement in existence on January 1, 1986, between the department and local agencies.

SEC. 2. The Legislature hereby finds and declares as follows:

(a) The passenger rail service presently operated between San Francisco and San Jose and points in between, which is known as Caltrain, is a crucial part of the transportation system serving the peninsula. Fifty-two trains operate each day, carrying over five million passengers annually.

(b) The present agreement by which the passenger rail service is operated expires in June 1990.

(c) It is the intent of the Legislature that the State of California

assist the local governments of the peninsula to acquire the rights-of-way, rolling stock, stations, and other property associated with Caltrain in order that the local governments, through a newly created transit district, might assume responsibility for the operation of Caltrain on and after July 1, 1990.

SEC. 3. Section 99234.7 of the Public Utilities Code is repealed.

SEC. 4. Division 16 (commencing with Section 160000) is added to the Public Utilities Code, to read:

## DIVISION 16. PENINSULA RAIL TRANSIT DISTRICT

### CHAPTER 1. GENERAL PROVISIONS AND DEFINITIONS

160000. The Peninsula Corridor Study Joint Powers Board, created pursuant to Section 1 of Chapter 1328 of the Statutes of 1987, is hereby redesignated the Peninsula Rail Transit District and, as such, has the additional powers provided for in Chapter 2 (commencing with Section 160005).

160001. As used in this division, "district" means the Peninsula Rail Transit District.

160002. The district board shall be comprised of nine members appointed as follows:

(a) The governing bodies of the municipal railway operated by the City and County of San Francisco, the San Mateo County Transit District, and the Santa Clara County Transit District shall each appoint one member.

(b) The Boards of Supervisors of the City and County of San Francisco, the County of San Mateo, and the County of Santa Clara shall each appoint one member.

(c) The Mayor of the City and County of San Francisco shall appoint one member.

(d) The city councils of cities within the County of San Mateo, shall jointly appoint one member.

(e) The city councils of cities within the County of Santa Clara shall jointly appoint one member.

### CHAPTER 2. POWERS OF THE DISTRICT

160005. In addition to powers delegated to the Peninsula Corridor Study Joint Powers Board by a joint exercise of powers agreement pursuant to Section 1 of Chapter 1328 of the Statutes of 1987, the district has all of the following powers:

(a) To acquire real and personal property of every kind for rail purposes by grant, gift, devise, lease, or eminent domain, and to hold, use, sell, lease, or transfer any such property.

(b) To enter into any contract necessary for its powers.

(c) To establish or change rates, charges, and services. The Public Utilities Commission has no jurisdiction over the district or any of its activities except as to matters of public safety.

(d) To indemnify and defend any railroad corporation, regardless of its negligence, that operates rail services for the district pursuant to contract.

(e) To appoint an executive officer, and to employ staff and legal counsel.

(f) To sue and be sued.

(g) To indemnify and defend the Department of Transportation with respect to the transfer of rights-of-way, stations, rail passenger equipment, and facilities, and contracts, leases, or agreements relative to those properties whose ownership or responsibility is transferred to the district in accordance with the terms of an agreement to be negotiated.

160006. (a) If the district acquires stations, facilities, and passenger equipment owned or leased by the Department of Transportation for the passenger rail service provided by the Southern Pacific Transportation Company between San Francisco and San Jose and points in between, and if the district acquires from the Department of Transportation the right-of-way between San Francisco and San Jose presently owned by the Southern Pacific Transportation Company, the district may own, operate, construct, manage, and maintain rights-of-way, stations, facilities, and equipment necessary for the operation of rail passenger and freight services between San Francisco and Alma and points in between, and may contract with any railroad corporation for the purchase of, or to subsidize, service between San Francisco and Alma and points in between.

(b) Any assets transferred from the Department of Transportation to the district without compensation shall be transferred with all attendant obligations, liabilities, debts, and grant conditions established by the department, including Urban Mass Transportation Administration grants and sale and leaseback contracts.

SEC. 5. The Peninsula Corridor Study Joint Powers Board, in consultation with the Department of Transportation, shall determine the estimated date for the acquisition by the Peninsula Rail Transit District of the stations, facilities, passenger equipment, and rights-of-way specified in Section 160006 of the Public Utilities Code, and shall jointly notify the Legislature of that date at least 30 days prior to the occurrence of that acquisition.

SEC. 6. Any air rights existing above the Transbay Terminal in the City and County of San Francisco may be acquired by the Peninsula Corridor Study Joint Powers Board from the Department of Transportation.

SEC. 7. The Peninsula Corridor Study Joint Powers Board shall appoint an executive officer not later than March 1, 1989, and shall provide for the compensation of the members of the board.

SEC. 8. Any tax revenue generated in the County of San Mateo pursuant to Division 12.5 (commencing with Section 131000) of the Public Utilities Code may be expended outside that county if so

provided in the adopted county transportation expenditure plan and in accordance with the terms of a joint powers agency agreement for the operation of the peninsula commuter rail service.

SEC. 9. Notwithstanding Section 13340 and 16361 of the Government Code, and to the extent permitted by federal law, the sum of twenty-nine million nine hundred forty-five thousand dollars ($29,945,000) of the moneys in the Federal Trust Fund, created by Section 16360 of the Government Code, received by the state from federal oil overcharge funds in the Petroleum Violation Escrow Account as defined by Section 155 of the Further Continuing Appropriations Act of 1983 (Public Law 97-377) or other federal law, and received by the state from federal oil overcharge funds available pursuant to court judgments and federal agency orders, is hereby appropriated to the Department of Transportation for Transit Capital Improvements. Funds appropriated by this act from the Petroleum Violation Escrow Account shall be dispersed by the State Controller, subject to approval by the Director of Finance as to which court judgment or federal agency order is the proper source of funds.

SEC. 10. Section 2 of this act shall become operative on the January 1, following the acquisition by the Peninsula Rail Transit District of stations, facilities, passenger equipment, and rights-of-way specified in Section 160006 of the Public Utilities Code.

SEC. 11. (a) Section 4 of this act shall not become operative until the governing bodies of the City and County of San Francisco, the County of San Mateo, and the County of Santa Clara have determined to their satisfaction the sources of financing by which the rail transit system is to be acquired and operated. No county shall be included in the district without its consent.

(b) The continued participation of each county or city and county in the district may be terminated upon the action by one or more of the other counties, or city and county, either to withdraw from the district or to fail to fulfill agreed financial obligations.

SEC. 12. 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 five hundred thousand dollars ($500,000), reimbursement shall be made from the State Mandates Claims Fund.

## CHAPTER 1435

An act to add Section 11016.9 to the Government Code, relating to transportation management, and making an appropriation therefor.

[Approved by Governor September 26, 1988. Filed with Secretary of State September 27, 1988.]

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

SECTION 1. Section 11016.9 is added to the Government Code, to read:

11016.9. (a) Each state agency shall establish clear flextime policies and shall direct its managers to encourage the use of flextime.

(b) Each state agency shall enroll in a local or regional transportation management association, where appropriate.

SEC. 2. Nothwithstanding Sections 13340 and 16361 of the Government Code, and to the extent permitted by federal law, the sum of ten million dollars ($10,000,000) of the money in the Federal Trust Fund, which is created by Section 16360 of the Government Code, received by the state from federal oil overcharge funds in the petroleum violations escrow account, as defined by Section 155 of the Further Continuing Appropriations Act of 1983 (P.L. 97-377) or other federal law, and from federal oil overcharge funds available pursuant to court judgments or federal agency orders, is hereby appropriated to the Department of Transportation for expenditure as follows:

(a) Four million dollars ($4,000,000) for vanpool loans pursuant to Section 25380 of the Public Resources Code, with one-half for vanpools operating within the area of jurisdiction of the Metropolitan Transportation Commission and one-half for vanpools operating within the area of jurisdiction of the Southern California Association of Governments.

(b) Six million dollars ($6,000,000) to be used for grants to persons to cover all of, or a portion of, the cost of leasing vanpool vehicles or the cost of the down payment on vanpool vehicles, with one-half for vanpools operating within the area of jurisdiction of the Metropolitan Transportation Commission and one-half for vanpools operating within the area of jurisdiction of the Southern California Association of Governments.

SEC. 3. Notwithstanding Sections 13340 and 16361 of the Government Code, and to the extent permitted by federal law, the sum of one million dollars ($1,000,000) of the money in the Federal Trust Fund, which is created by Section 16360 of the Government Code, received by the state from federal oil overcharge funds in the petroleum violations escrow account, as defined by Section 155 of the Further Continuing Appropriations Act of 1983 (P.L. 97-377) or other federal law, and from federal oil overcharge funds available

pursuant to court judgments or federal agency orders, is hereby appropriated to the Department of Transportation for the purposes of matching or augmenting federal funds made available for financing transportation demonstration projects to conserve gasoline and diesel fuel by improving transportation flow through more effective utilization of computerized traffic management systems and programs of event management at high traffic generation sites.

The allocation of funds to any specific program shall be contingent upon the receipt of federal funds.

SEC. 4. Notwithstanding Sections 13340 and 16361 of the Government Code, and to the extent permitted by federal law, the sum of five million one hundred fifteen thousand dollars ($5,115,000) of the moneys in the Federal Trust Fund, created by Section 16360 of the Government Code, received by the state from federal oil overcharge funds in the petroleum violations escrow account, as defined by Section 155 of the Further Continuing Appropriations Act of 1983 (P.L. 97-377) or other federal law, and from federal oil overcharge funds available pursuant to court judgments or federal agency orders, is hereby appropriated to the State Energy Resources Conservation and Development Commission for an alternative fuels demonstration program for a project to provide funding for a demonstration and evaluation program with engine or vehicle manufacturers, vehicle users, and fuel suppliers to enhance the market introduction of alternative fuels such as compressed natural gas, electric vehicles, and optimum methanol engine technology.

The commission shall consider allocating up to one hundred fifteen thousand dollars ($115,000) of the funds appropriated in this section for implementation of an industrial feedstock crop demonstration program.

SEC. 5. Funds appropriated by this act from the petroleum violation escrow account shall be dispersed by the Controller, subject to approval by the Director of Finance as to which court judgment or federal agency order is the proper source of funds.

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## CHAPTER 1436

An act relating to petroleum violation funds, and making an appropriation therefor.

[Approved by Governor September 26, 1988 Filed with Secretary of State September 27, 1988.]

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

SECTION 1. Notwithstanding Sections 13340 and 16361 of the Government Code, and to the extent permitted by federal law, the sum of twenty-five million two hundred eighty-five thousand dollars ($25,285,000) of the money in the Federal Trust Fund, created

pursuant to Section 16360 of the Government Code, received by the state either from federal oil overcharge funds in the petroleum violations escrow account, as defined by Section 155 of the Further Continuing Appropriations Act of 1983 (Public Law 97-377) or by any other federal law, or from federal oil overcharge funds available pursuant to court judgments or federal agency orders, is hereby appropriated for allocation as follows:

(a) Twenty million dollars ($20,000,000) to the Department of Economic Opportunity to be used over a three-year period as follows:

(1) Ten million dollars ($10,000,000) for the Energy Crisis Intervention Program provided under subdivision (d) of Section 16367.5 of the Government Code, to be allocated for pilot projects which are designed to provide program services aimed at increasing the self-sufficiency of low-income persons. The department shall, as soon as practicable, enter into contracts with nonprofit community action agencies and community-based organizations eligible to administer energy crisis intervention program funds, and shall require contractors receiving funds under this paragraph to conduct pilot projects, as determined to be appropriate by the department, involving one or more of the following:

(A) Establishment of a mandatory referral system of energy crisis intervention program recipients to the department's weatherization program.

(B) Development of a copayment plan to require energy crisis intervention program applicants to pay for a portion of the delinquent energy bill, or assisting clients with arranging for an affordable payment plan.

(C) Development of a process to assist energy crisis intervention applicants to enter into agreements with energy utility companies to pay their utility bills in levelized payments throughout the year.

(D) Development of a program to maximize the number of clients served during the year by employing methods including limiting assistance to one time per year per client.

(E) Establishment of an education program to provide information to energy crisis intervention program clients which would promote long-term reductions in utility bills.

(F) Establishment of procedures to eliminate any person from receiving energy crisis intervention program assistance for a current, as opposed to a delinquent, utility bill.

Department contracts for implementing the pilot projects set forth in subparagraphs (A) to (F), inclusive, shall include provisions for providing special consideration or exemptions for senior citizens, for persons with life-threatening medical conditions, and for other severely handicapped individuals who would suffer substantial hardship if compelled to comply with this paragraph.

The department shall submit a report to the Legislature within nine months after the conclusion of the three-year expenditure period on the results of the pilot projects required under this

paragraph, including recommendations for those pilot projects which should be permanently included under subdivision (d) of Section 16367.5 of the Government Code. Ninety days prior to submitting the report to the Legislature, the department shall provide a draft report to the contractors, the Legislative Analyst, and the Auditor General for a 45-day review and comment period. The final report shall include the comments of the Legislative Analyst and the Auditor General as well as any response determined to be appropriate by the department.

(2) Ten million dollars ($10,000,000) for the home energy assistance program provided under subdivision (e) of Section 16367.5 of the Government Code.

(b) Five million two hundred eighty-five thousand dollars ($5,285,000) to the State Energy Resources Conservation and Development Commission to be used as follows:

(1) Four million dollars ($4,000,000) to be used for the Institutional Conservation Program, Schools and Hospitals Grants Program, to furnish up to 50 percent matching grant funds for technical assistance studies and the installation of energy efficiency measures in public and nonprofit private schools and hospitals.

(2) One million dollars ($1,000,000) to be deposited in the Energy Technologies Research, Development, and Demonstration Account in the General Fund to be used to carry out new energy technology demonstration contract research projects pursuant to Chapter 7.8 (commencing with Section 25680) of Division 15 of the Public Resources Code.

(3) Two hundred eighty-five thousand dollars ($285,000) to establish an intervenor award program, administered by the commission's Public Advisor, to provide intervenors facing financial hardship with reasonable awards to pay for the costs of participating in commission proceedings other than those conducted under Chapter 6 (commencing with Section 25500) of Division 15 of the Public Resources Code. The commission and the Public Advisor shall implement the intervenor award program within eight months after receipt of these funds, and shall report to the Legislature on the program's status within two years after receipt of the funds.

SEC. 2. Funds appropriated in Section 1 of this act shall be disbursed by the Controller, subject to approval by the Director of Finance as to which court judgment or federal agency order is the proper source of those funds.

## CHAPTER 1437

An act to add Sections 17149 and 24343.5 to the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor September 26, 1988. Filed with Secretary of State September 27, 1988 ]

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

SECTION 1. Section 17149 is added to the Revenue and Taxation Code, to read:

17149. (a) Gross income does not include compensation or the fair market value of any other benefit, except salary or wages, received by an employee from an employer for participation in any ridesharing arrangement in California specified in subdivision (b).

(b) For purposes of this section, compensation or the fair market value of any other benefit received for participation in a ridesharing arrangement in California includes compensation or other benefit received for:

(1) Commuting in a third-party vanpool.

(2) Commuting in a private commuter bus.

(3) A monthly transit pass for use by the employee or his or her dependents, other than transit passes for use by elementary and secondary school students who are dependents of the employee.

(4) Commuting in a subscription taxipool.

(c) For purposes of this section:

(1) "Third-party vanpool" means a vanpool that is not administered and operated by an employer or his or her employees, but is administered and operated by an outside organization, including a government agency, which makes vehicles and other equipment and services available for use by employers and their employees.

(2) "Vanpool" means seven or more persons commuting on a daily basis to and from work by means of a vehicle with a seating arrangement designed to carry 7 to 15 adults, including the driver.

(3) "Monthly transit pass" means any bulk purchase of transit rides that entitles the purchaser to 40 or more rides per month, whether at a discount rate or the base fare rate.

(4) "Transit" means transportation service for use by the general public that utilizes buses, railcars, or ferries with a seating capacity of 16 or more persons.

(5) "Subscription taxipool" means a type of service in which employers or groups of employees contract with a public or private taxi operator to provide daily commuter service for a group of preassembled subscribers on a prepaid or daily-fare basis following a relatively fixed route and schedule tailored to meet the needs of the subscribers.

(6) "Ridesharing arrangement" means the transportation of persons in a motor vehicle where that transportation is incidental to another purpose of the driver. The term includes ridesharing arrangements known as carpools, vanpools, and buspools.

(7) "Carpool" means two or more persons commuting on a daily basis to and from work by means of a vehicle with a seating arrangement designed to carry less than seven adults, including the driver.

(8) "Buspool" means 16 or more persons commuting on a daily basis to and from work by means of a vehicle with a seating arrangement designed to carry more than 15 adult passengers.

(9) "Private commuter bus" means a highway vehicle which meets all of the following criteria:

(A) Has a seating capacity of at least seven adults, including the driver.

(B) At least 50 percent of the mileage of which can be reasonably expected to be used for the purpose of transporting employees to and from work.

(C) Is acquired by the taxpayer on or after the date of enactment of this section.

(D) With respect to which the taxpayer makes an election under this paragraph on his or her return for the taxable year in which the vehicle is placed in service.

(d) The exclusion provided by this section is in addition to any exclusion provided pursuant to Section 124 of the Internal Revenue Code.

SEC. 2. Section 24343.5 is added to the Revenue and Taxation Code, to read:

24343.5. (a) Except as otherwise provided in this section, there shall be allowed to an employer a deduction as an ordinary and necessary expense paid or incurred during the income year in carrying on any trade or business those expenses involved in each of the following activities:

(1) Subsidizing employees commuting in third-party vanpools.

(2) Subsidizing employees commuting in private commuter buses.

(3) Subsidizing monthly transit passes for its employees or for use by the employee's dependents, except that no deduction shall be allowed for transit passes issued for the use of elementary and secondary school students.

(4) Subsidizing employees commuting in subscription taxipools.

(5) In the case of an employer who offers free parking to its employees, offering a cash equivalent to employees who do not require parking.

(6) Providing free or preferential parking to carpools and vanpools.

(7) Making facility improvements to encourage employees, for the purpose of commuting from their homes, to participate in ridesharing arrangements, to use bicycles, or to walk. These facility

improvements may include, but are not limited to, any of the following: the construction of bus shelters; the installation of bicycle racks and other bicycle-related facilities, such as showers and locker rooms; and parking lot modifications to provide carpools, vanpools, or buspools with preferential treatment. The cost of these facility improvements shall be allowed as a depreciation deduction. Notwithstanding subdivision (c), the depreciation deduction shall be allowable over a 36-month period.

(8) Providing company commuter van or bus service to its employees and to others for commuting from their homes, but not for transportation required as part of the employer's business activities, except as otherwise provided in this section. The capital costs of providing this service shall not be an eligible deduction under this section.

(9) Providing to employees transportation services which are required as part of the employer's business activities to the extent that the transportation would be provided by employees without reimbursement in the absence of an employer-sponsored ridesharing incentive program. The capital costs of providing this service shall not be an eligible deduction under this section.

(b) For purposes of this section:

(1) "Employer" means either of the following:

(A) A taxpayer for whom services are performed by employees, except government agencies.

(B) A taxpayer which is a private educational institution which enrolls students at higher than the secondary level.

(2) "Employee" means either of the following:

(A) An individual who performs service for an employer for more than eight hours per week for remuneration.

(B) Any commuting student, as defined in paragraph (3).

(3) "Commuting student" means a registered full-time student at a college, university, or other postsecondary educational institution, who lives apart from the property which is designated as the "employment site" for the purpose of this section, and who travels between his or her residence and the designated employment site on a regular, though not necessarily daily, basis.

(4) "Employer-sponsored ridesharing incentive program" means a program undertaken by an employer either alone or in cooperation with other employers to encourage or provide, or both, fiscal other incentives to employees to make the home-to-work commute trip by any mode other than the single-occupant motor vehicle.

(5) "Company commuter bus or van" means a highway vehicle which meets all of the following criteria:

(A) Has at least seven or more persons commuting on a daily basis to and from work.

(B) At least 50 percent of the mileage of which can be reasonably expected to be used for the purpose of transporting employees to and from work.

(C) Is acquired by the taxpayer on or after the date of enactment

of this legislation.

(6) "Third-party vanpool" means a vanpool that is not administered and operated by an employer or its employees, but is administered and operated by an outside organization, including a government agency, which makes vehicles and other equipment and services available for use by employers and their employees.

(7) "Vanpool" means seven or more persons commuting on a daily basis to and from work by means of a vehicle with a seating arrangement designed to carry 7 to 15 adult persons.

(8) "Monthly transit pass" means any bulk purchase of transit rides that entitles the purchaser to 40 or more rides per month, whether at a discount rate or the base fare rate.

(9) "Transit" means transportation service for use by the general public that utilizes buses, railcars, or ferries with a seating capacity of 16 or more persons.

(10) "Subscription taxipool" means a type of service in which employers or groups of employees contract with a public or private taxi operator to provide daily commuter service for a group of preassembled subscribers on a prepaid or daily-fare basis, following a relatively fixed route and schedule tailored to meet the needs of the subscribers.

(11) "Ridesharing arrangement" means the transportation of persons in a motor vehicle where that transportation is incidental to another purpose of the driver. The term includes ridesharing arrangements known as carpools, vanpools, and buspools.

(12) "Carpool" means two or more persons commuting on a daily basis to and from work by means of a vehicle with a seating arrangement designed to carry less than seven adults, including the driver.

(13) "Buspool" means 16 or more persons commuting on a daily basis to and from work by means of a vehicle with a seating arrangement designed to carry more than 15 adult passengers.

(14) "Private commuter bus" means a highway vehicle which meets all of the following criteria:

(A) Has a seating capacity of at least seven adults, including the driver.

(B) At least 50 percent of the mileage of which can be reasonably expected to be used for the purpose of transporting employees to and from work.

(C) Is acquired by the taxpayer on or after the date of enactment of this section.

(D) With respect to which the taxpayer makes an election under this paragraph on his or her return for the income year in which the vehicle is placed in service.

SEC. 3. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.

## CHAPTER 1438

An act relating to a housing foundation deterioration study, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 26, 1988. Filed with Secretary of State September 27, 1988.]

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

SECTION 1. (a) The Legislature finds that the conditions contributing to the deterioration of residential house foundations in certain areas of the Cities of La Palma, Lakewood, and Cypress need to be accurately determined, but these cities do not qualify for funding to conduct a study under the Safe Drinking Water Act or as a toxic superfund site.

(b) The Division of Mines and Geology of the Department of Conservation shall contract with a state public university or college, or a private university or college, to conduct a study of the causes of that deterioration of residential house foundations in the areas of La Palma, Lakewood, and Cypress. The study shall include, but not be limited to, a review and summary of existing information, analysis of water quality, perched water tables, soil composition, and any contributing geologic factors. The study shall include recommendations to mitigate this house foundation deterioration problem. The university or college shall provide the Senate Committee on Rules, the Speaker of the Assembly, and appropriate policy committees of the Legislature with a preliminary report of its findings on or before July 31, 1989. A final report shall be completed and submitted on or before December 31, 1989.

(c) The department may, to the extent that funds appropriated in this act are available, conduct a further study of other regions within the state which are affected by this problem.

SEC. 2. The sum of three hundred fifty thousand dollars ($350,000) is hereby appropriated from the Special Account for Capital Outlay in the General Fund to the Division of Mines and Geology of the Department of Conservation for the purposes of this act.

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 determine as soon as possible the causes of the very serious problem of the deterioration of residential house foundations in certain areas, it is necessary that this act take effect immediately.

## CHAPTER 1439

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

[Approved by Governor September 27, 1988. Filed with Secretary of State September 27, 1988 ]

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

SECTION 1. There is hereby appropriated from the General Fund to the Controller for disbursement to the County of Placer the sum of ninety thousand dollars ($90,000) to reimburse the county for the cost of substitute judges who presided over municipal court proceedings while the California Supreme Court decided whether suspended Judge Richard J. Ryan should be removed from the bench.

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 needed financial relief for Placer County as soon as possible, it is necessary that this act take effect immediately.

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## CHAPTER 1440

An act to add Section 65096 to the Government Code, and to add Chapter 5 (commencing with Section 8120) of Part 1 of Division 8 to the Health and Safety Code, relating to cemeteries.

[Approved by Governor September 27, 1988. Filed with Secretary of State September 27, 1988.]

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

SECTION 1. Section 65096 is added to the Government Code, to read:

65096. (a) Notwithstanding any other provision of law, whenever a person applies to a city, including a charter city, county, or city and county, for a zoning variance, special use permit, conditional use permit, zoning ordinance amendment, general or specific plan amendment, or any entitlement for use which would permit all or any part of a cemetery to be used for other than cemetery purposes, the city, county, or city and county shall give notice pursuant to Sections 65091, 65092, 65093, and 65094.

(b) Those requesting notice shall be notified by the local agency at the address provided at the time of the request.

(c) Notwithstanding Section 65092, a local agency shall not

require a request made pursuant to this section to be annually renewed.

(d) "Cemetery," as used in this section, has the same meaning as that word is defined in Section 8100 of the Health and Safety Code.

SEC. 2. Chapter 5 (commencing with Section 8120) is added to Part 1 of Division 8 of the Health and Safety Code, to read:

### CHAPTER 5. CHANGE IN USE

8120. (a) On or after January 1, 1990, the cemetery authority shall provide written notice to each person who purchases or agrees to purchase interment rights in the cemetery of that person's ability to receive notice, pursuant to Section 65096 of the Government Code, of a proposed change in the use of the cemetery for other than cemetery purposes. Irrespective of any other provisions of the law, this section refers to all cemeteries in the State of California.

(b) The written notice shall be substantially as follows:

"State law gives you the right to know about future plans to use this cemetery for any other purpose. If you want to receive information about a future change, you must contact the local planning office and pay a small fee."

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.

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## CHAPTER 1441

An act to amend Sections 14083 and 16704 of, to add Section 11104.1 to, and to repeal and add Section 14007.5 of, the Welfare and Institutions Code, relating to Medi-Cal, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 27, 1988. Filed with Secretary of State September 27, 1988.]

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

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

(a) The State of California has a compelling interest in providing medical care to aliens entitled to new Medicaid (Medi-Cal in California) benefits under recently enacted federal legislation. Both the Immigration Reform and Control Act of 1986 (IRCA) (Public Law 99-603) and the Omnibus Budget Reconciliation Act of 1986 (OBRA) (Public Law 99-509) extend new benefits to aliens.

(b) Current state law prohibits the payment of Medi-Cal benefits to aliens who are not found to be lawful permanent or color-of-law residents by the Immigration and Naturalization Service. This has required county hospitals, trauma centers, emergency clinics, and other medical providers to render emergency medical care to illegal aliens without the benefit of federal or state reimbursement.

(c) OBRA allows Medi-Cal coverage of undocumented aliens who are otherwise eligible for Medi-Cal. It provides federal financial participation in the costs of emergency medical care provided to such aliens. Adoption of enabling state legislation to implement OBRA in California is necessary to maximize the amount of federal financial participation available to the state, and to authorize Medi-Cal reimbursement to county hospitals, emergency clinics, trauma centers, and other providers who currently render unfunded emergency care to undocumented aliens.

(d) IRCA provides for impact assistance grant funds to cover costs attributed to newly legalized amnesty aliens. Adoption of enabling state legislation to implement IRCA in the Medi-Cal program is necessary to provide the care these aliens are entitled to and to maximize the amount of federal financial participation available to the state.

(e) Current state law does not conform to the scope of medical benefits available to certain aliens as mandated by IRCA and OBRA. IRCA provides emergency care and pregnancy-related services to amnesty aliens who are otherwise eligible for Medi-Cal but who are not aged, blind, disabled, or children under 18. Similarly, OBRA provides emergency care to aliens who are otherwise eligible for Medi-Cal but who are not permanent or color-of-law United States residents.

(f) (1) All aliens otherwise eligible for Medi-Cal program services shall be eligible only for the scope of services their specific alien status entitles them to under federal law. In implementing this intent, the State Department of Health Services shall develop policies and procedures and take action to assure that those aliens having medical needs for long-term care services or renal dialysis services shall be considered "permanently residing under color of law" for the purpose of determining their eligibility for Medi-Cal. The department's definition of "permanently residing under color of law" shall conform to federal statute, and shall take into account the policy and practice of the federal Department of Health and Human Services, Health Care Financing Administration, for the purpose of obtaining federal financial participation in the Medi-Cal program and ensuring that every alien entitled to benefits under federal law shall be eligible for Medi-Cal coverage to the fullest extent to which federal financial participation is authorized by federal law.

(2) The State Department of Health Services shall report to the Legislature on an annual basis the number of Medi-Cal beneficiaries currently receiving long-term care or renal dialysis services who are subsequentiy denied continuation of Medi-Cal coverage because

they have not been designated as aliens permanently residing under color of law (PRUCOL) as recognized by the United States Department of Health and Human Services for the purpose of federal financial participation.

(3) If aliens, who are receiving long-term care or renal dialysis services under the Medi-Cal program are subsequently denied full-scope Medi-Cal benefits because they have not qualified as permanently residing under color of law, they shall have the appeal rights and entitlement to continuation of benefits set forth in Chapter 7 (commencing with Section 10950) of Part 2 of Division 9 of the Welfare and Institutions Code. If, after exhausting those appeal rights, continuation of the alien's full-scope Medi-Cal coverage is not granted, the alien shall be eligible only for continuation of long-term care and renal dialysis services. Aliens shall be eligible for that continuation of long-term care or renal dialysis coverage only if otherwise eligible for Medi-Cal aside from alien status.

(g) IRCA provides Medicaid coverage to amnesty aliens for pregnancy-related services, whereas OBRA provides Medicaid coverage for emergency labor and delivery. To the extent these definitions may differ, it is the state's intent to assure access to appropriate pregnancy-related care for all eligible aliens. This care is critical to the health of expectant mothers and their unborn children. Therefore, the State of California shall pay, through the Medi-Cal program, for the same level of pregnancy-related services for aliens covered under OBRA as it does for those amnesty aliens under IRCA. Medi-Cal coverage shall be provided for these pregnancy-related services, including postpartum services, as defined in Section 14005.3 of the Welfare and Institutions Code, as added by Chapter 570 of the Statutes of 1987. Furthermore, the state shall petition Congress to clearly reconcile coverage under IRCA and OBRA to assure full range of pregnancy-related services for all eligible aliens.

(h) The State Department of Health Services shall develop data, using existing sources and timeframes whenever possible, relating to persons who qualify for Medi-Cal services under Section 14007.5 of the Welfare and Institutions Code and are eligible for services under OBRA or IRCA. The data shall summarize, for both OBRA and IRCA aliens, the number of eligible aliens, dollars expended by aid code, and dollars expended by claim type. This data shall be included as part of the normal fiscal planning estimates provided to the legislative fiscal committees pursuant to Section 14100.5 of the Welfare and Institutions Code.

(i) Current state law requires all aliens to certify that they belong to one of four alien statuses. This certification is forwarded to the Immigration and Naturalization Service for verification. Many undocumented aliens who would qualify for Medi-Cal emergency services upon implementation of OBRA would be reluctant to apply for such services for fear that the forwarding of their statutorily

mandated certification to the Immigration and Naturalization Service would result in their deportation. In order to maximize aliens' access to emergency medical care, and the federal financial participation for such care, it is necessary to repeal such law.

(j) To the extent that the Secretary of the Health and Welfare Agency determines that sufficient State Legalization Impact-Assistance Grant funds are available to the state for these purposes, the state shall use part of its State Legalization Impact-Assistance Grant allocation to reimburse counties for the costs of providing medical assistance to indigent eligible legalized aliens.

(k) The Legislature recognizes the breadth of the problem of uncompensated and undercompensated care facing California health care providers. This measure addresses one component of that problem.

SEC. 1.5. Section 11104.1 is added to the Welfare and Institutions Code, to read:

11104.1. The State Department of Social Services and the State Department of Health Services shall not take any compliance, disallowance, penalty, or other regulatory action against a county, as long as the United States Department of Health and Human Services has not taken any compliance, disallowance, penalty, or other action against the state, with respect to any error in the county's determination to make an individual eligible for benefits under the Aid to Families with Dependent Children, Food Stamps, and Medi-Cal programs based on citizenship or immigration status, under any of the following circumstances:

(a) The county has determined the eligibility based on a verification of satisfactory immigration status by the Immigration and Naturalization Service.

(b) The county was required by federal law to provide the applicant or recipient a reasonable opportunity to submit documentation.

(c) The county was required by federal law to wait for the response of the Immigration and Naturalization Service to the county's request for official verification of the immigration status of the individual.

(d) A fair hearing process was required pursuant to federal law.

SEC. 2. Section 14007.5 of the Welfare and Institutions Code is repealed.

SEC. 3. Section 14007.5 is added to the Welfare and Institutions Code, to read:

14007.5. (a) Aliens shall be eligible for Medi-Cal, whether federally funded or state-funded, only to the same extent as permitted under federal law and regulations for receipt of federal financial participation under Title XIX of the Social Security Act, except as otherwise provided in this section.

(b) In accordance with Section 1903(v)(1) of the federal Social Security Act (42 U.S.C. Sec. 1396b(v)(1)), and except as otherwise

provided in this section, an alien shall only be eligible for the full scope of Medi-Cal benefits, including, but not limited to, renal dialysis and long-term care, if the alien has been lawfully admitted for permanent residence, or is otherwise permanently residing in the United States under color of law.

For purposes of this section, aliens "permanently residing in the United States under color of law" shall be interpreted to include all aliens residing in the United States with the knowledge and permission of the Immigration and Naturalization Service and whose departure the Immigration and Naturalization Service does not contemplate enforcing and with respect to whom federal financial participation is available under Title XIX of the Social Security Act.

(c) Any alien whose immigration status has been adjusted either to lawful temporary resident or lawful permanent resident in accordance with the provisions of Section 210, 210A, or 245A of the federal Immigration and Nationality Act, and who meets all other eligibility requirements, shall be eligible only for care and services under Medi-Cal for which the alien is not disqualified pursuant to those sections of the federal act.

(d) Any alien who is otherwise eligible for Medi-Cal services, but who does not meet the requirements under subdivision (b) or (c), shall only be eligible for care and services that are necessary for the treatment of an emergency medical condition of the alien and for medically necessary pregnancy-related services. For purposes of this section, the term "emergency medical condition" means a medical condition manifesting itself by acute symptoms of sufficient severity, including severe pain, which in the absence of immediate medical attention could reasonably be expected to result in any of the following:

(1) Placing the patient's health in serious jeopardy.

(2) Serious impairment to bodily functions.

(3) Serious dysfunction to any bodily organ or part. It is the intent of this section to entitle eligible individuals to all inpatient and outpatient services that are necessary for the treatment of an emergency medical condition as certified by the attending physician or other appropriate provider and in the same manner as administered under Section 51056 of Title 22 of the California Code of Regulations. Covered services include continuation of medically necessary inpatient hospital services and followup care, as determined by the department, which is directly related to the emergency.

(e) Each county department shall require, as a condition of eligibility for Medi-Cal benefits, a declaration in writing by the individual (or, in the case of an individual who is a child, by the child's caretaker relative or legal guardian on his or her behalf), under penalty of perjury, stating whether or not the individual is a citizen or national of the United States or an alien. In order to be eligible for benefits under subdivision (b) or (c), an individual who declares that he or she is an alien must present alien registration

documentation or other proof of satisfactory immigration status from the Immigration and Naturalization Service. Aliens who meet all other program requirements but who lack documentation of alien registration or other proof of satisfactory immigration status from the Immigration and Naturalization Service shall be provided a reasonable opportunity to submit such evidence. Such reasonable opportunity shall be 30 calendar days or the time it actually takes the county to process the Medi-Cal application, whichever is longer. While such reasonable opportunity is being provided, the county department shall process the individual's application for medical assistance in a manner conforming to its normal processing procedures and timeframes.

(f) The county department shall grant only the Medi-Cal benefits set forth in subdivision (d) to any individual who, after 30 calendar days or the time it actually takes the county to process the Medi-Cal application, whichever is longer, has failed to submit documents constituting reasonable evidence indicating a satisfactory immigration status for Medi-Cal purposes, or who is reported by the Immigration and Naturalization Service to lack a satisfactory immigration status for Medi-Cal purposes. If an alien has been receiving Medi-Cal benefits based on eligibility established prior to the effective date of this section and such individual, upon redetermination of eligibility for benefits, fails to submit documents constituting reasonable evidence indicating a satisfactory immigration status for Medi-Cal purposes, the county department shall discontinue the Medi-Cal benefits, except for the care and services set forth in subdivision (d). The county department shall provide adequate notice to the individual of any adverse action and shall accord the individual an opportunity for a fair hearing if he or she requests one.

(g) To the extent permitted by federal law and regulations, an alien applying for services under subdivisions (b) and (c) shall be granted eligibility for the scope of services to which he or she would otherwise be entitled if, at the time the county department makes the determination about his or her eligibility, the alien meets either of the following:

(1) Has not had a reasonable opportunity to submit documents constituting reasonable evidence indicating satisfactory immigration status.

(2) Has provided documents constituting reasonable evidence indicating a satisfactory immigration status, but the county department has not received timely verification of the alien's immigration status from the Immigration and Naturalization Service.

The verification process shall protect the privacy of all participants. An alien's immigration status shall be subject to verification by the Immigration and Naturalization Service, to the extent required for receipt of federal financial participation in the Medi-Cal program.

(h) If an alien does not declare status as a lawful permanent resident or alien permanently residing under color of law, or as an alien legalized under Section 210, 210A, or 245A of the federal Immigration and Nationality Act (P.L. 82-414), Medi-Cal coverage under subdivision (d) shall be provided to the individual if he or she is otherwise eligible.

(i) If an alien subject to this section is not fluent in English, the county department shall provide an understandable explanation of the requirements of this section in a language in which the alien is fluent.

SEC. 4. Section 14083 of the Welfare and Institutions Code is amended to read:

14083. The factors to be considered by the negotiator in negotiating contracts under this article, or in drawing specifications for competitive bidding, include, but are not limited to, all of the following:

(a) Beneficiary access.

(b) Utilization controls.

(c) Ability to render quality services efficiently and economically.

(d) Demonstrated ability to provide or arrange needed specialized services.

(e) Protection against fraud and abuse.

(f) Any other factor which would reduce costs, promote access, or enhance the quality of care.

(g) The capacity to provide a given tertiary service, such as specialized children's services, on a regional basis.

(h) Recognition of the variations in severity of illness and complexity of care.

(i) Existing labor-management collective bargaining agreements.

(j) The situation of county hospitals and university medical centers contracting with counties for provision of health care to indigent persons entitled to care under Section 17000, which are burdened to a greater extent than private hospitals with bad debts, indirect costs, medical education programs, and capital needs.

(k) The special circumstances of hospitals serving a disproportionate number of Medi-Cal beneficiaries and patients who are not covered by other third-party payers.

(*l*) The costs of providing complex emergency services, including the costs of meeting and maintaining state and local requirements for trauma center designation.

SEC. 5. Section 16704 of the Welfare and Institutions Code is amended to read:

16704. Funds from the County Health Services Fund shall be allocated to the governing body of each county, the City of Berkeley, the City of Long Beach, the City of Pasadena, and each existing local health district annually in accordance with the following procedures:

(a) The allocation of the amount determined in subdivision (a) of Section 16702 and one-third of the amount in paragraphs (2), (3), and (4) of subdivision (c) of Section 16702 shall be made to each

governing body of each local jurisdiction upon submission of the plan and budget as required by Section 16700. These funds shall be expended for county health services and public health services for cities as defined in paragraph (5) of subdivision (b).

(b) The allocation of the amounts up to the maximum determined in subdivisions (b), (c), and (d) of Section 16702 shall be made upon application by the governing body of each local jurisdiction and upon signing of an agreement between the governing body and the State Director of Health Services. In the agreement, (1) all local jurisdictions shall agree to expend funds in an aggregate amount at least equal to the total amount designated in the plan and budget submitted pursuant to Section 16700; (2) counties shall agree to net county costs for county health services of county funds in the same amount as the funds requested under this subdivision pursuant to subdivision (b) of Section 16702; (3) counties shall agree to expend one dollar ($1) of county funds for every three dollars ($3) of state funds requested pursuant to subdivision (d) of Section 16702; (4) the City of Berkeley shall agree to expend three dollars ($3) of city funds for every one dollar ($1) of state funds requested pursuant to paragraph (2) of subdivision (c) of Section 16702; and (5) all local health districts shall agree to expend two dollars ($2) of district funds for every one dollar ($1) of state funds requested pursuant to paragraph (3) of subdivision (c) of Section 16702. Funds requested pursuant to subdivision (d) and paragraph (3) of subdivision (c) of Section 16702 shall be expended only for public health services. The City of Long Beach and the City of Pasadena shall agree to expend the allocations received pursuant to paragraph (4) of subdivision (c) of Section 16702 only for public health services, exclusive of animal control and paramedic services.

(c) (1) The allocation of funds appropriated pursuant to subdivisions (c) and (d) of Section 16703 shall be made upon application by the county board of supervisors. The application shall be in a form and in accordance with procedures and format established by the department. The board shall assure that it will expend such funds only for the health services specified in Sections 14132 and 14021 provided to persons certified as eligible for such services pursuant to Section 17000. Unless the county has entered into a contract with the department under Section 16709 which is effective either for an entire fiscal year, including the 1983–84 fiscal year, or is effective for the period commencing October 1, 1983, and ending on June 30, 1984, the board shall also assure that it will incur no less in net costs of county funds for county health services in any fiscal year than the amount required to obtain the maximum allocation under Section 16702. These assurances shall be incorporated in the agreement specified in subdivision (b). In no event shall such funds be expended for costs of services specified in county Short-Doyle plans which are in excess of the 125 percent limitation specified in Section 5705.1.

(2) A county may reduce the amount of net costs of county funds

for county health services required pursuant to paragraph (1) of subdivision (c) to the extent such reduction has been permitted pursuant to the provisions of Section 16705 or 16705.5, provided that, for fiscal year 1982–83 only, the provisions of Section 16705 shall not be operative, except for counties which received approval for reductions pursuant to this section in prior fiscal years.

(3) Any person whose income and resources meet the income and resource criteria for certification for services pursuant to Section 14005.7 other than for the aged, blind, or disabled, shall not be excluded from eligibility for services to the extent that state funds are provided. Such persons may be held financially liable for these services based upon the person's ability to pay. A county may not establish a payment requirement which would deny medically necessary services. This section shall not be construed to mandate that a county provide any specific level or type of health care service or to preclude a county from utilizing its own forms for the purpose of identifying persons eligible for county health care services. The Board of Control shall not honor any claims by a local agency for reimbursement of costs under this section. The provisions of this paragraph shall become inoperative if a court ruling is issued which decrees that the provisions of this paragraph mandate that additional state funds be provided and which requires that additional state reimbursement be made to counties for costs incurred under this paragraph. This paragraph shall be operative only until June 30, 1985, unless a later enacted statute extends or deletes that date.

(d) The agreement shall provide for reports of expenditures and information and shall constitute a contractual obligation. The State Director of Health Services shall not have the authority to disapprove the county health services plan or to require the additional expenditure of county, city, or district funds for health services beyond that required by this section and Section 16707.

(e) The local jurisdiction shall act in general accordance with the plan and budget submitted pursuant to Section 16700.

(f) Notwithstanding any other provision of this part, there shall be no increase in the amount of county funds required pursuant to paragraph (2) of subdivision (b) as a result of the implementation of paragraphs (4), (5), and (6) of subdivision (c) of Section 16702.

SEC. 6. Eligibility for the California Children's Services shall not be adversely affected by any provision of this act.

SEC. 7. Sections 2 and 3 of this act shall become operative the first day of the calendar month following the effective date of this act.

SEC. 8. The sum of thirty-seven thousand five hundred dollars ($37,500) is hereby appropriated from the General Fund, and one hundred twelve thousand five hundred dollars ($112,500) in federal matching funds is hereby appropriated from the Federal Trust Fund, to the State Department of Health Services for the 1987–88 fiscal year for purposes of implementing this act.

SEC. 9. The State Director of Health Services shall adopt regulations implementing this act, excluding Section 4, 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 Procedure Act, the adoption of the regulations shall be deemed to be 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, emergency regulations adopted by the State Department of Health Services in order to implement this act shall not be subject to the review and approval of the Office of Administrative Law. These regulations shall become effective immediately upon filing with the Secretary of State.

SEC. 10. It is the intent of the Legislature to protect counties providing health care services to aliens from incurring net losses of Medi-Cal revenue as a result of the initial implementation of this act relating to aliens' eligibility for Medi-Cal. To carry out this intent, the following shall apply:

(a) A county providing health care services to aliens may file with the State Department of Health Services an application, together with supporting documentation, showing the amount of Medi-Cal revenue the county received for the 1986–87 fiscal year for providing services to aliens who were not lawful permanent residents or otherwise permanently residing in the United States under color of law, ncluding aliens who have been legalized under Section 210, 210A, or 245A of the federal Immigration Reform and Control Act of 1986 (IRCA) (Public Law 99-603). This revenue shall be referred to as the county's proposed base year alien Medi-Cal revenue. The application shall be filed no later than 90 days following the effective date of this act. The State Department of Health Services shall verify the application and documentation submitted by the county and shall establish the county's final base year alien Medi-Cal revenue.

(b) A county whose final base year alien Medi-Cal revenue has been established by the State Department of Health Services may file with the state department a claim for an offset in any shortfall in the county's annual alien Medi-Cal revenue for the 1988–89 and 1989–90 fiscal years, as compared to the county's base year alien Medi-Cal revenue. A county's annual alien Medi-Cal revenue shall be the annual Medi-Cal revenue received by the county for the 1988–89 or 1989–90 fiscal years for providing services to aliens who are not lawful permanent residents or otherwise permanently residing in the United States under color of law, including aliens who have been legalized under Section 210, 210A, or 245A of IRCA. A county's claims for a revenue shortfall offset under this section shall be filed no later than October 31, 1989, for the 1988–89 fiscal year and October 31, 1990, for the 1989–90 fiscal year, and shall include documentation supporting the county's computation of its annual alien Medi-Cal revenue.

(c) The state department shall verify a county's claims under this section and, except as otherwise provided in this section, shall pay

the county an amount equal to the net revenue shortfall between the county's base year alien Medi-Cal revenue and the county's annual alien Medi-Cal revenue. If payments are required by this section, they shall be made from the General Fund and shall be appropriated for this purpose by the Legislature.

(d) The State Department of Health Services may proportionately reduce a county's payments under this section if the department determines that the county's net shortfall in its annual alien Medi-Cal revenue was due, in whole or in part, to a reduction in the level of health care services provided by the county, or due to a reduction in the number of aliens seeking health care through the Medi-Cal program at county facilities who are otherwise eligible for Medi-Cal, including those aliens who do not actually apply for Medi-Cal.

SEC. 11. 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 five hundred thousand dollars ($500,000), reimbursement shall be made from the State Mandates Claims Fund.

SEC. 12. 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 the state to implement fully the federal Immigration Reform and Control Act and the federal Omnibus Reconciliation Act of 1986 to allow the approximately 220,000 persons in this state who are impacted by those laws to obtain their medical care under Medi-Cal, it is necessary that this act take effect immediately.

# CHAPTER 1442

An act to amend Section 4600 of the Civil Code, relating to family law.

[Approved by Governor September 27, 1988. Filed with Secretary of State September 27, 1988 ]

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

SECTION 1. Section 4600 of the Civil Code is amended to read:

4600. (a) The Legislature finds and declares that it is the public policy of this state to assure minor children of frequent and continuing contact with both parents after the parents have separated or dissolved their marriage, and to encourage parents to share the rights and responsibilities of child rearing in order to effect this policy.

In any proceeding where there is at issue the custody of a minor child, the court may, during the pendency of the proceeding or at any time thereafter, make such order for the custody of the child during minority as may seem necessary or proper. If a child is of sufficient age and capacity to reason so as to form an intelligent preference as to custody, the court shall consider and give due weight to the wishes of the child in making an award of custody or modification thereof. In determining the person or persons to whom custody should be awarded under paragraph (2) or (3) of subdivision (b), the court shall consider and give due weight to the nomination of a guardian of the person of the child by a parent under Article 1 (commencing with Section 1500) of Chapter 1 of Part 2 of Division 4 of the Probate Code.

(b) Custody should be awarded in the following order of preference according to the best interests of the child pursuant to Section 4608:

(1) To both parents jointly pursuant to Section 4600.5 or to either parent. In making an order for custody to either parent, the court shall consider, among other factors, which parent is more likely to allow the child or children frequent and continuing contact with the noncustodial parent, and shall not prefer a parent as custodian because of that parent's sex.

The court, in its discretion, may require the parents to submit to the court a plan for the implementation of the custody order.

(2) If to neither parent, to the person or persons in whose home the child has been living in a wholesome and stable environment.

(3) To any other person or persons deemed by the court to be suitable and able to provide adequate and proper care and guidance for the child.

(c) Before the court makes any order awarding custody to a person or persons other than a parent, without the consent of the parents, it shall make a finding that an award of custody to a parent

would be detrimental to the child and the award to a nonparent is required to serve the best interests of the child. Allegations that parental custody would be detrimental to the child, other than a statement of that ultimate fact, shall not appear in the pleadings. The court may, in its discretion, exclude the public from the hearing on this issue.

(d) This section establishes neither a preference nor a presumption for or against joint legal custody, joint physical custody, or sole custody, but allows the court and the family the widest discretion to choose a parenting plan which is in the best interests of the child or children.

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## CHAPTER 1443

An act to amend Sections 4622 and 4626 of the Welfare and Institutions Code, relating to developmental disabilities.

[Approved by Governor September 27, 1988. Filed with Secretary of State September 28, 1988.]

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

SECTION 1. Section 4622 of the Welfare and Institutions Code, as amended by Chapter 159 of the Statutes of 1986, is amended to read:

4622. After July 1, 1978, the state shall contract only with agencies, the governing boards or the program policy committees of which conform to all of the following criteria:

(a) The governing board or the program policy committee shall be composed of individuals with demonstrated interest in, or knowledge of, developmental disabilities.

(b) The membership of the governing board or the program policy committee shall include persons with legal, management, public relations, and developmental disability program skills.

(c) The membership of the governing board or the program policy committee shall include representatives of the various categories of disability to be served by the regional center.

(d) The governing board or the program policy committee shall reflect the geographic and ethnic characteristics of the area to be served by the regional center.

(e) A minimum of one-third of the members of the governing board or the program policy committee shall be persons with developmental disabilities or their parents or legal guardians.

(f) Members of the governing board or the program policy committee shall not be permitted to serve longer than six consecutive years.

(g) The governing board shall appoint an advisory committee composed of a wide variety of persons representing the various

categories of providers from which the regional center purchases client services. The advisory committee shall provide advice, guidance, recommendations, and technical assistance to the regional center board in order to assist the regional center in carrying out its mandated functions. The advisory committee shall designate one of its members to serve as a member of the regional center board.

(h) No member of the board or the program policy committee who is an employee or member of the governing board of a provider from which the regional center purchases client services shall do any of the following:

(1) Serve as an officer of the board or program policy committee.

(2) Vote on any fiscal matter affecting the purchase of services from any regional center provider.

(3) Vote on any issue other than as described in paragraph (2), in which the member has a financial interest, as defined in Section 87103 of the Government Code, and determined by the regional center board or program policy committee. The member shall provide a list of his or her financial interests, as defined in Section 87103, to the regional center board or program policy committee.

Nothing in this section shall prevent the appointment to a regional center governing board or the program policy committee of a person who meets the criteria for more than one of the categories listed above.

SEC. 2. Section 4626 of the Welfare and Institutions Code, as amended by Chapter 159 of the Statutes of 1986, is amended to read:

4626. (a) In order to prevent potential conflicts of interest, no member of the governing board or member of the program policy committee of a regional center shall be any of the following:

(1) An employee of the State Department of Developmental Services or any state or local agency which provides services to a regional center client, if employed in a capacity which includes administrative or policymaking responsibility, or responsibility for the regulation of the regional center.

(2) An employee or a member of the state council or an area board.

(3) Except as otherwise provided in subdivision (h) of Section 4622, an employee or member of the governing board of any entity from which the regional center purchases client services.

(4) Any person who has a financial interest, as defined in Section 87103 of the Government Code, in regional center operations, except as a consumer of regional center services.

(b) Notwithstanding paragraph (1) of subdivision (a), members serving on the governing board or program policy committee of a regional center on January 1, 1982, may continue to serve on the board or committee until the expiration of their term as defined in subdivision (f) of Section 4622. Notwithstanding any other provision of this section, members serving on the governing board or program policy committee of a regional center on January 1, 1982, may continue to serve on the board or committee until the expiration of

their current term. Changes in the composition of the board or committee required by amendments to this section that are operative on January 1, 1982, shall apply only to subsequent vacancies on the board or committee.

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## CHAPTER 1444

An act to amend Section 14120 of the Welfare and Institutions Code, relating to Medi-Cal, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 27, 1988. Filed with Secretary of State September 28, 1988.]

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

SECTION 1. Section 14120 of the Welfare and Institutions Code is amended to read:

14120. (a) At the beginning of each fiscal year, for the current fiscal year, the director shall establish a monthly schedule of anticipated total payments and anticipated payments for categories of services, according to the categories established in the Governor's Budget. The schedule will be revised quarterly.

(b) The director shall report actual total payments and payments for categories of services, as set forth in subdivision (a), monthly to the Director of Finance and to the Joint Legislative Budget Committee.

(c) At any time during the fiscal year, if the director has reason to believe that the total cost of the program will exceed available funds, the director may first modify the method or amount of payment for services provided that no amount shall be reduced more than 10 percent and no modification will conflict with federal law. If such modification is not sufficient to bring the program within available funds, the director may postpone elective services in the schedule of benefits. Such postponement of elective services shall be accomplished by changing the standards for approval of requests for prior authorizations. Such changes shall be designed to insure that those recipients most in need of elective services receive them first within the funds available, but that no particular service is completely eliminated.

(d) At any time during the fiscal year, if the total amounts paid since the beginning of the fiscal year exceed by 10 percent the amounts scheduled, the director shall immediately institute the action set forth in subdivision (c).

(e) At any time during the fiscal year, if the total amounts paid for any category of service exceeds by 10 percent the amounts scheduled (other than services for which the method or amount of payment is prescribed by the United States Secretary of Health and Human

Services pursuant to Title XIX of the federal Social Security Act), the director shall modify the method or amount of payment for such category of service to assure that the total amount paid for such category of service in the fiscal year shall be less than 10 percent in excess of the total amount scheduled provided the total cost of the program to the State General Fund shall not exceed appropriated state general funds.

(f) Before any of the above actions are taken by the director, he or she shall consult with representatives of concerned provider groups.

(g) Notwithstanding subdivision (c) or (e), the director shall not reduce the amount of payment, under the circumstances described in subdivision (c) or (e), for the ingredient cost component of pharmaceutical services rendered by pharmacist providers in California.

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 improve pharmaceutical services to the indigent as soon as possible, it is necessary that this act take effect immediately.

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## CHAPTER 1445

An act to amend Section 8574.13 of the Government Code, relating to hazardous substances.

[Approved by Governor September 27, 1988. Filed with Secretary of State September 28, 1988 ]

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

SECTION 1. Section 8574.13 of the Government Code is amended to read:

8574.13. (a) Not later than one year after the effective date of this article, the Office of Emergency Services shall develop the curriculum to be used in classes which meet the program requirements and shall adopt standards and procedures for training instructors at the California Specialized Training Institute.

(b) The curriculum for the training and education program established pursuant to this article shall include all of the following aspects of hazardous substance incident response actions:

(1) First responder training.

(2) On-scene manager training.

(3) Hazardous substance incident response training for management personnel.

(4) Hazardous materials specialist training that equals or exceeds the standards of the National Fire Protection Association.

(5) Environmental monitoring.
(6) Hazardous substance release investigations.
(7) Hazardous substance incident response activities at ports.

(c) The Office of Emergency Services shall establish a curriculum development advisory committee, which shall consist of a representative from each of the following agencies or organizations:

(1) The Office of Emergency Services.
(2) The Office of the State Fire Marshal.
(3) The State Department of Health Services.
(4) The Department of Fish and Game.
(5) The State Water Resources Control Board.
(6) The Department of the California Highway Patrol.
(7) The California Police Chiefs' Association.
(8) The California Fire Chiefs' Association.
(9) The Commission on Police Officer Standards and Training.
(10) The California District Attorneys' Association.
(11) The Department of Forestry and Fire Protection.
(12) The Emergency Medical Services Authority.
(13) The Department of Transportation.
(14) The Environmental Protection Agency.
(15) The Chemical Industry Council of California.
(16) The California Manufacturers Association.
(17) The California Conference of Local Health Officers.
(18) The University of California.
(19) The California State Fireman's Association.
(20) The California State University.
(21) The California Professional Firefighters.
(22) The California Association of Highway Patrolmen.
(23) The California State Police Association.

(d) The curriculum development advisory committee shall advise the Office of Emergency Services on the development of course curricula and the standards and procedures specified in subdivision (a). In advising the Office of Emergency Services, the committee shall do the following:

(1) Assist, and cooperate with, representatives of the Board of Governors of the California Community Colleges in developing the course curricula.

(2) Ensure that the curriculum developed pursuant to this section is accredited by the State Board of Fire Services.

(3) Define equivalent training and experience considered as meeting the initial training requirements as specified in subdivision (a) that existing employees might have already received from actual experience or formal education undertaken, and which would qualify as meeting the requirements established pursuant to this article.

(e) The representative from the Office of Emergency Services shall serve as the chairperson of the curriculum development advisory committee.

(f) After the course curricula and standards are established

pursuant to subdivision (a), the curriculum development advisory committee shall meet at least once each year to review the program and advise the Office of Emergency Services on any required revisions.

(g) The Office of Emergency Services shall make the curriculum development advisory committee a subcommittee of the Curriculum Advisory Board of the California Specialized Training Institute.

(h) This article does not affect the authority of the State Fire Marshal granted pursuant to Section 13142.4 or 13159 of the Health and Safety Code.

(i) Upon completion of instructor training and certification pursuant to subdivision (e) of Section 8574.12 by any employee of the Department of the California Highway Patrol, the Commissioner of the Department of the California Highway Patrol may deem any training programs taught by that employee to be equivalent to any training program meeting the requirements established pursuant to this article.

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## CHAPTER 1446

An act to amend Section 66796.40 of, and to add Section 66781.5 to, the Government Code, relating to solid wastes.

[Approved by Governor September 27, 1988. Filed with Secretary of State September 28, 1988.]

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

SECTION 1. Section 66781.5 is added to the Government Code, to read:

66781.5. (a) If a revision of the plan prepared pursuant to this article includes a thermal powerplant using solid waste as fuel, that revision shall be submitted to the State Energy Resources Conservation and Development Commission prior to, or concurrently with, its submission to the board. The board shall not approve a revision until the State Energy Resources Conservation and Development Commission reviews and comments upon all of the following:

(1) Likely conformance with state energy policy adopted by the State Energy Resources Conservation and Development Commission pursuant to Section 25309 of the Public Resources Code.

(2) State Energy Resources Conservation and Development Commission jurisdiction over the thermal powerplant pursuant to Chapter 6 (commencing with Section 25500) of Division 15 of the Public Resources Code.

(3) Potential impacts and concerns associated with siting the thermal powerplant.

(b) The requirements of subdivision (a) apply either only to (1)

a thermal powerplant project using solid waste as fuel which is proposed to consist of one or more generating units which together will generate 50 or more megawatts of electricity, or (2) a thermal powerplant project using solid waste as fuel for which the proposed or eventual generating capacity is undefined.

(c) The intent of the review and comment requirements of subdivision (a) is to provide local agencies with advance notification of potential jurisdiction by the State Energy Resources Conservation and Development Commission over planned waste-to-energy facility construction. It is not the intent of subdivision (a) to affect the determination by local agencies and the board of the need for waste management facility capacity.

(d) The State Energy Resources Conservation and Development Commission shall comply with the review and comment requirements of subdivision (a) within 30 days of its receipt of a plan revision from a local agency. If the commission does not provide a local agency with its comments within 30 days, the board may approve the revision without any comment from the commission pursuant to subdivision (a).

SEC. 2. Section 66796.40 of the Government Code is amended to read:

66796.40. (a) An enforcement agency shall not issue, and the board shall not concur in the issuance of, a solid waste facilities permit to any stationary project designed to convert solid waste into energy or synthetic fuels until the enforcement agency makes all the following findings:

(1) The proposed project meets the requirements specified in paragraphs (1) and (2) of subdivision (a) of Section 66796.34.

(2) The proposed project is consistent with state solid waste management policy.

(3) The proposed project has a defined source of waste, including waste available from existing solid waste transfer and processing stations.

(4) The project is guaranteed, by contract or other commitments, more than sufficient quantities of waste to maintain the project's economic feasibility for the life of the bonded indebtedness of the project. In guaranteeing quantities of waste, those materials which are being recycled or which may reasonably be expected to be recycled shall not be included in these quantities.

(5) The project applicant has considered for the inclusion in its project, or for the inclusion in its contracts or commitments for municipal waste, reasonable and feasible methods to remove recyclable materials from the waste stream prior to incineration.

(6) If the proposed project is a thermal powerplant, the thermal powerplant has been specifically included in an adopted and approved revision of the plan prepared pursuant to Article 2 (commencing with Section 66780), and the county in which the project is located has complied with Section 66781.5.

(b) Facilities for the recovery of methane gas from disposal sites

are not subject to 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 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.

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## CHAPTER 1447

An act to amend Section 904.1 of the Code of Civil Procedure, to add Section 97.5 to the Labor Code, to amend Sections 2250, 13152 and 13200 of the Probate Code, and to amend Section 2 of Chapter 280 of the Statutes of 1988, relating to decedent's estates.

[Approved by Governor September 27, 1988. Filed with Secretary of State September 28, 1988.]

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

SECTION 1. Section 904.1 of the Code of Civil Procedure is amended to read:

904.1. An appeal may be taken from a superior court in the following cases:

(a) From a judgment, except (1) an interlocutory judgment, other than as provided in subdivisions (h) and (i), (2) a judgment of contempt which is made final and conclusive by Section 1222, (3) a judgment on appeal from a municipal court or a justice court or a small claims court, or (4) a judgment granting or denying a petition for issuance of a writ of mandamus or prohibition directed to a municipal court or a justice court or the judge or judges thereof which relates to a matter pending in the municipal or justice court. However, an appellate court may, in its discretion, review a judgment granting or denying a petition for issuance of a writ of mandamus or prohibition upon petition for an extraordinary writ.

(b) From an order made after a judgment made appealable by subdivision (a).

(c) From an order granting a motion to quash service of summons or granting a motion to stay or dismiss the action on the ground of inconvenient forum.

(d) From an order granting a new trial or denying a motion for judgment notwithstanding the verdict.

(e) From an order discharging or refusing to discharge an attachment or granting a right to attach order.

(f) From an order granting or dissolving an injunction, or refusing to grant or dissolve an injunction.

(g) From an order appointing a receiver.

(h) From an interlocutory judgment, order, or decree, hereafter made or entered in an action to redeem real or personal property

from a mortgage thereof, or a lien thereon, determining the right to redeem and directing an accounting.

(i) From an interlocutory judgment in an action for partition determining the rights and interests of the respective parties and directing partition to be made.

(j) From an order made appealable by the provisions of the Probate Code or the Family Law Act, Part 5 (commencing with Section 4000).

SEC. 2. Section 97.5 is added to the Labor Code, to read:

97.5. Preferred claims for work performed or personal services rendered are provided for in Sections 1204, 1205, 1206, 1207, and 1208 of the Code of Civil Procedure, and Part 9 (commencing with Section 11400) of Division 7 of the Probate Code.

SEC. 3. Section 2250 of the Probate Code is amended to read:

2250. (a) On or after the filing of a petition for appointment of a guardian or conservator, any person entitled to petition for appointment of the guardian or conservator may file a petition for appointment of:

(1) A temporary guardian of the person or estate or both.

(2) A temporary conservator of the person or estate or both.

(b) The petition shall state facts which establish good cause for appointment of the temporary guardian or temporary conservator. The court, upon such petition or other showing as it may require, may appoint a temporary guardian of the person or estate or both, or a temporary conservator of the person or estate or both, to serve pending the final determination of the court upon the petition for the appointment of the guardian or conservator.

(c) Unless the court for good cause otherwise orders, not less than five days before the appointment of the temporary guardian or temporary conservator, notice of the proposed appointment shall be personally delivered to the proposed ward if 14 years of age or older or to the proposed conservatee, and to the natural parent or parents if the proposed ward is a minor. The appointment of the temporary guardian or temporary conservator may be made with or without notice to other persons as the court may require.

(d) One petition may request the appointment of a guardian or conservator and also the appointment of a temporary guardian or conservator or such appointments may be requested in separate petitions.

(e) If the court suspends powers of the guardian or conservator under Section 2334 or 2654 or under any other provision of this division, the court may appoint a temporary guardian or conservator to exercise those powers until the powers are restored to the guardian or conservator or a new guardian or conservator is appointed.

(f) If for any reason a vacancy occurs in the office of guardian or conservator, the court, on a petition filed under subdivision (a) or on its own motion, may appoint a temporary guardian or conservator to exercise the powers of the guardian or conservator until a new

guardian or conservator is appointed.

SEC. 4. Section 13152 of the Probate Code is amended to read:

13152. (a) The petition shall be verified by each petitioner, shall contain a request that the court make an order under this chapter determining that the particular item of property described in the petition is property passing to the petitioner and that no administration of the decedent's estate is necessary, and shall state all of the following:

(1) The facts necessary to determine that the petition is filed in the proper county.

(2) The gross value of the decedent's real and personal property in California, excluding the property described in Section 13050, as shown by the inventory and appraisement attached to the petition, does not exceed sixty thousand dollars ($60,000).

(3) A description of the particular item of property in this state which the petitioner alleges is property of the decedent passing to the petitioner.

(4) The facts upon which the petitioner bases the allegation that the described real property is property passing to the petitioner.

(5) A statement that no proceeding is being or has been conducted in this state for administration of the decedent's estate.

(6) Whether estate proceedings for the decedent have been commenced in any other jurisdiction and, if so, where those proceedings are pending or were conducted.

(7) The names, addresses, relationships, and ages of the heirs and devisees of the decedent, the names and addresses of all persons named as executors of the will of the decedent, and, if the petitioner is the trustee of a trust that is a devisee under the will of the decedent, the names and addresses of all persons interested in the trust, as determined in cases of future interests pursuant to paragraph (1), (2), or (3) of subdivision (a) of Section 15804, so far as known to any petitioner.

(8) The name and address of each person serving as guardian or conservator of the estate of the decedent at the time of the decedent's death, so far as known to any petitioner.

(b) There shall be attached to the petition an inventory and appraisement in the form set forth in Section 600 of the decedent's real and personal property in this state, excluding the property described in Section 13050. The inventory and appraisement shall be made by a probate referee selected by the petitioner from those probate referees appointed by the Controller under Section 1305 to appraise property in the county where the real property is located. The appraisement shall be made as set forth in Chapter 9 (commencing with Section 600) of Division 3. The petitioner may appraise the assets which a personal representative could appraise under paragraph (1) of subdivision (a) of Section 605.

(c) If the petitioner bases his or her claim to the described particular item of property upon the will of the decedent, a copy of the will shall be attached to the petition.

SEC. 5. Section 13152 of the Probate Code is amended to read:

13152. (a) The petition shall be verified by each petitioner, shall contain a request that the court make an order under this chapter determining that the particular item of property described in the petition is property passing to the petitioner and that no administration of the decedent's estate is necessary, and shall state all of the following:

(1) The facts necessary to determine that the petition is filed in the proper county.

(2) The gross value of the decedent's real and personal property in California, excluding the property described in Section 13050, as shown by the inventory and appraisal attached to the petition, does not exceed sixty thousand dollars ($60,000).

(3) A description of the particular item of property in this state which the petitioner alleges is property of the decedent passing to the petitioner.

(4) The facts upon which the petitioner bases the allegation that the described real property is property passing to the petitioner.

(5) A statement that no proceeding is being or has been conducted in this state for administration of the decedent's estate.

(6) Whether estate proceedings for the decedent have been commenced in any other jurisdiction and, if so, where those proceedings are pending or were conducted.

(7) The names, addresses, relationships, and ages of the heirs and devisees of the decedent, the names and addresses of all persons named as executors of the will of the decedent, and, if the petitioner is the trustee of a trust that is a devisee under the will of the decedent, the names and addresses of all persons interested in the trust, as determined in cases of future interests pursuant to paragraph (1), (2), or (3) of subdivision (a) of Section 15804, so far as known to any petitioner.

(8) The name and address of each person serving as guardian or conservator of the estate of the decedent at the time of the decedent's death, so far as known to any petitioner.

(b) There shall be attached to the petition an inventory and appraisal in the form set forth in Section 8802 of the decedent's real and personal property in this state, excluding the property described in Section 13050. The appraisal shall be made by a probate referee selected by the petitioner from those probate referees appointed by the Controller under Section 400 to appraise property in the county where the real property is located. The appraisal shall be made as set forth in Part 3 (commencing with Section 8800) of Division 7. The petitioner may appraise the assets which a personal representative could appraise under Section 8901.

(c) If the petitioner bases his or her claim to the described particular item of property upon the will of the decedent, a copy of the will shall be attached to the petition.

SEC. 6. Section 13200 of the Probate Code is amended to read:

13200. (a) No sooner than six months from the death of a

decedent, a person or persons claiming as successor of the decedent to a particular item of property that is real property may file in the superior court in the county in which the decedent was domiciled at the time of death, or if the decedent was not domiciled in this state at the time of death, then in any county in which real property of the decedent is located, an affidavit in the form prescribed by the Judicial Council pursuant to Section 13209 stating all of the following:

(1) The name of the decedent.

(2) The date and place of the decedent's death.

(3) A legal description of the real property and the interest of the decedent therein.

(4) The name and address of each person serving as guardian or conservator of the estate of the decedent at the time of the decedent's death, so far as known to the affiant.

(5) "The gross value of all real property in the decedent's estate located in California, as shown by the inventory and appraisement attached to this affidavit, excluding the real property described in Section 13050 of the California Probate Code, does not exceed ten thousand dollars ($10,000)."

(6) "At least six months have elapsed since the death of the decedent as shown in a certified copy of decedent's death certificate attached to this affidavit."

(7) "No proceeding is now being or has been conducted in California for administration of the decedent's estate."

(8) "Funeral expenses, expenses of last illness, and all unsecured debts of the decedent have been paid."

(9) "The affiant is the successor of the decedent (as defined in Section 13006 of the Probate Code) and to the decedent's interest in the described property, and no other person has a superior right to the interest of the decedent in the described property."

(10) "The affiant declares under penalty of perjury under the law of the State of California that the foregoing is true and correct."

(b) For each person executing the affidavit, the affidavit shall contain a notary public's certificate of acknowledgment identifying the person.

(c) There shall be attached to the affidavit an inventory and appraisement of the decedent's real property in this state, excluding the real property described in Section 13050. The form, content, and manner of making the inventory and appraisement of the real property shall be as set forth in Chapter 9 (commencing with Section 600) of Division 3. The inventory and appraisement shall be made by a probate referee selected by the affiant from those probate referees appointed by the Controller under Section 1305 to appraise property in the county where the real property is located.

(d) If the person or persons executing the affidavit claim under the decedent's will, a copy of the will shall be attached to the affidavit.

(e) A certified copy of the decedent's death certificate shall be attached to the affidavit.

(f) The affiant shall personally serve or mail, postage prepaid, a copy of the affidavit and attachments to any person identified in paragraph (4) of subdivision (a).

SEC. 7. Section 13200 of the Probate Code is amended to read:

13200. (a) No sooner than six months from the death of a decedent, a person or persons claiming as successor of the decedent to a particular item of property that is real property may file in the superior court in the county in which the decedent was domiciled at the time of death, or if the decedent was not domiciled in this state at the time of death, then in any county in which real property of the decedent is located, an affidavit in the form prescribed by the Judicial Council pursuant to Section 13209 stating all of the following:

(1) The name of the decedent.

(2) The date and place of the decedent's death.

(3) A legal description of the real property and the interest of the decedent therein.

(4) The name and address of each person serving as guardian or conservator of the estate of the decedent at the time of the decedent's death, so far as known to the affiant.

(5) "The gross value of all real property in the decedent's estate located in California, as shown by the inventory and appraisal attached to this affidavit, excluding the real property described in Section 13050 of the California Probate Code, does not exceed ten thousand dollars ($10,000)."

(6) "At least six months have elapsed since the death of the decedent as shown in a certified copy of decedent's death certificate attached to this affidavit."

(7) "No proceeding is now being or has been conducted in California for administration of the decedent's estate."

(8) "Funeral expenses, expenses of last illness, and all unsecured debts of the decedent have been paid."

(9) "The affiant is the successor of the decedent (as defined in Section 13006 of the Probate Code) and to the decedent's interest in the described property, and no other person has a superior right to the interest of the decedent in the described property."

(10) "The affiant declares under penalty of perjury under the law of the State of California that the foregoing is true and correct."

(b) For each person executing the affidavit, the affidavit shall contain a notary public's certificate of acknowledgment identifying the person.

(c) There shall be attached to the affidavit an inventory and appraisal of the decedent's real property in this state, excluding the real property described in Section 13050. The form, content, and manner of making the inventory and appraisal of the real property shall be as set forth in Part 3 (commencing with Section 8800) of Division 7. The appraisal shall be made by a probate referee selected by the affiant from those probate referees appointed by the Controller under Section 400 to appraise property in the county where the real property is located.

(d) If the person or persons executing the affidavit claim under the decedent's will, a copy of the will shall be attached to the affidavit.

(e) A certified copy of the decedent's death certificate shall be attached to the affidavit.

(f) The affiant shall personally serve or mail, postage prepaid, a copy of the affidavit and attachments to any person identified in paragraph (4) of subdivision (a).

SEC. 8. Section 2 of Chapter 280 of the Statutes of 1988 is amended to read:

Sec. 2. The public administrator and the public administrator's attorney are entitled to receive the same compensation and allowance granted to a personal representative and the personal representative's attorney generally. It is the intent of the Legislature that the compensation received pursuant to Section 1142 of the Probate Code or this section by the public administrator and his or her attorneys not be less than the compensation and allowances in effect at the time of appointment of the public administrator notwithstanding the operative date of this act.

SEC. 9. Section 1 of this bill incorporates amendments to Section 904.1 of the Code of Civil Procedure proposed by both AB 2841 and AB 3897. It shall only become operative if both AB 2841 and AB 3897 are enacted and become effective on January 1, 1989, both of those bills amend Section 904.1 of the Code of Civil Procedure, and this bill is enacted after both of those bills.

SEC. 10. Section 2 of this act incorporates the amendments to Section 100.5 of the Labor Code proposed by AB 2841, and the repeal of Section 100.5 of the Labor Code, and the reenactment of that section as Section 97.5 of the Labor Code, proposed by SB 890. It shall become operative only if (1) both AB 2841 and SB 890 are enacted and become effective January 1, 1989, (2) AB 2841 amends Section 100.5 of the Labor Code, and SB 890 repeals Section 100.5 of the Labor Code and adds Section 97.5 to the Labor Code, and (3) this bill is enacted after SB 890, in which case Section 97.5 of the Labor Code, as added by SB 890, shall not become operative. In addition, if all three bills are enacted and this bill is enacted last, the repeal of Section 100.5 of the Labor Code proposed by SB 890 shall prevail over the amendment of that section proposed by AB 2841, regardless of the order of chaptering of SB 890 and AB 2841.

SEC. 11. Section 5 of this bill incorporates amendments to Section 13152 of the Probate Code proposed by both this bill and AB 2841. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1989, (2) each bill amends Section 13152 of the Probate Code, and (3) this bill is enacted after AB 2841, in which case Section 4 of this bill shall not become operative.

SEC. 12. Section 7 of this bill incorporates amendments to Section 13200 of the Probate Code proposed by both this bill and AB 2841. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1989, (2) each bill amends Section

13200 of the Probate Code, and (3) this bill is enacted after AB 2841, in which case Section 6 of this bill shall not become operative.

SEC. 13. Section 3 of this bill incorporates amendments to Section 2250 of the Probate Code proposed by both AB 2841 and AB 2545. It shall only become operative if both AB 2841 and AB 2545 are enacted and become effective on January 1, 1989, both of those bills amend Section 2250 of the Probate Code, and this bill is enacted after both of those bills.

SEC. 14. Section 8 of this act incorporates an amendment to Section 1142 of the Probate Code that was made by Chapter 280 of the Statutes of 1988. It shall become operative only if AB 2841 is enacted, becomes effective on January 1, 1989, and as enacted repeals Section 1142 of the Probate Code.

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## CHAPTER 1448

An act to amend Sections 156, 156.5, 3501, 3525, 3527, 3530, 3531, 3535, 4980.40, 6863, 6900, 6893.6, 7590.2, 19012.5, 19059.5, 19071, 19120, 19121, 19122, 19122.5, 19123.4, 19123.5, 19123.6, 19124, 19124.5, 19127, 19127.5, 19127.6, 19129, 19131, 19132, 19170, 19170.5, 19201, and 19221 of, to amend the heading of Article 6 (commencing with Section 19120) of Chapter 3 of Division 8 of, and to add Section 4050.1 to, the Business and Professions Code, to amend Section 13401 of the Corporations Code, and to amend Sections 11126 and 26509 of the Government Code, relating to consumer affairs, and making an appropriation therefor.

[Approved by Governor September 27, 1988. Filed with Secretary of State September 28, 1988.]

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

SECTION 1. Section 156 of the Business and Professions Code is amended to read:

156. (a) The director may, for the department and at the request and with the consent of a board within the department on whose behalf the contract is to be made, enter into contracts pursuant to Chapter 3 (commencing with Section 11250) of Part 1 of Division 3 of Title 2 of the Government Code or Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code for and on behalf of any board within the department.

(b) In accordance with subdivision (a), the director may, in his or her discretion, negotiate and execute contracts for examination purposes which include provisions which hold harmless a contractor where liability resulting from a contract between a board in the department and the contractor is traceable to the state or its officers, agents, or employees.

SEC. 1.5. Section 156.5 of the Business and Professions Code is

amended to read:

156.5. The director may negotiate and execute for the department and for its component agencies, rental agreements for short-term hiring of space and furnishings for examination or meeting purposes. The director may, in his or her discretion, negotiate and execute contracts for that space which include provisions which hold harmless the provider of the space where liability resulting from use of the space under the contract is traceable to the state or its officers, agents, or employees. Notwithstanding any other provision of law, the director may, in his or her discretion, advance payments as deposits to reserve and hold examination or meeting space. Any such agreement is subject to the approval of the legal office of the Department of General Services.

SEC. 1.6. Section 3501 of the Business and Professions Code is amended to read:

3501. As used in this chapter:

(a) "Board" means the Division of Allied Health Professions of the Board of Medical Quality Assurance of the State of California.

(b) "Approved program" means a program for the education of physician's assistants which has been formally approved by the committee.

(c) "Trainee" means a person who is currently enrolled in an approved program.

(d) "Physician's assistant" means a person who meets the requirements of this chapter and is licensed by the committee.

(e) "Committee" means the Physician's Assistant Examining Committee.

(f) "Regulations" means the rules and regulations as contained in Chapter 13 (commencing with Section 1300) and Chapter 13.7 (commencing with Section 1399.500) of Title 16 of the California Administrative Code.

(g) "Routine visual screening" means uninvasive nonpharmacological simple testing for visual acuity; for visual field defects; for color blindness; and depth perception.

SEC. 1.7. Section 3525 of the Business and Professions Code is amended to read:

3525. A suspended license is subject to expiration and shall be renewed as provided in this chapter. However, such renewal does not entitle such holder, to practice or otherwise violate the order or judgment by which the license was suspended.

A revoked license is subject to expiration as provided in this chapter. If the license is reinstated after expiration, the license holder, as a condition to reinstatement, shall pay a reinstatement fee in an amount equal to the renewal fee in effect on the last preceding regular renewal date before the date on which it is reinstated.

SEC. 1.8. Section 3527 of the Business and Professions Code is amended to read:

3527. (a) The committee may order the denial of an application for, or the issuance subject to terms and conditions of, or the

suspension or revocation of, or the imposition of probationary conditions upon a physician's assistant license after a hearing as required in Section 3528 for unprofessional conduct which includes, but is not limited to, a violation of this chapter, a violation of the State Medical Practice Act, or a violation of the regulations adopted by the committee or the board.

(b) The committee may order the denial of an application for, or the suspension or revocation of, or the imposition of probationary conditions upon, an approved program after a hearing as required in Section 3528 for a violation of this chapter or the regulations adopted pursuant thereto.

(c) The board may order the denial of an application for, or the issuance subject to terms and conditions of, or the suspension or revocation of, or the imposition of probationary conditions upon, an approval to supervise a physician's assistant, after a hearing as required in Section 3528, for unprofessional conduct, which includes, but is not limited to, a violation of this chapter, a violation of the Medical Practice Act, or a violation of the regulations adopted by the committee or the board.

(d) Notwithstanding subdivision (c), the Division of Medical Quality of the Board of Medical Quality Assurance, in conjunction with an action it has commenced against a physician and surgeon, may, in its own discretion and without the concurrence of the board, order the suspension or revocation of, or the imposition of probationary conditions upon, an approval to supervise a physician's assistant, after a hearing as required in Section 3528, for unprofessional conduct, which includes, but is not limited to, a violation of this chapter, a violation of the Medical Practice Act, or a violation of the regulations adopted by the committee or the board.

SEC. 1.9. Section 3530 of the Business and Professions Code is amended to read:

3530. One year from the date of a revocation of a license or approval under this chapter, application may be made to the committee or the board in the case of approval of an application to supervise physician's assistants for reinstatement, restoration or modification of probation. The committee shall have discretion to accept or reject an application for reinstatement, restoration or modification of probation and may require an examination for such reinstatement, restoration or modification of probation when it is deemed appropriate of a license or approval under this chapter.

SEC. 2. Section 3531 of the Business and Professions Code is amended to read:

3531. A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge of a felony or of any offense which is substantially related to the qualifications, functions, or duties of the business or profession to which the license was issued is deemed to be a conviction within the meaning of this chapter. The committee may order the license suspended or revoked, or shall 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 such person to withdraw his 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. 2.1. Section 3535 of the Business and Professions Code is amended to read:

3535. Notwithstanding any provision of law, physicians and surgeons licensed by the Board of Osteopathic Examiners may employ physician's assistants provided:

(a) Each physician's assistant so employed is a graduate of an approved program and is licensed by the Physician's Assistant Examining Committee.

(b) The scope of practice of the physician's assistant shall be the same as that which is approved by the Division of Allied Health Professions of the Board of Medical Quality Assurance for physicians and surgeons supervising physician's assistants in the same or a similar specialty.

(c) The supervising physician is approved by the Board of Osteopathic Examiners. The Board of Osteopathic Examiners may deny an application, or suspend or revoke or impose probationary conditions upon any osteopathic physician and surgeons approved to supervise any physician's assistant in any decision made after a hearing as provided in Section 3528.

(d) Any physician's assistant licensed by the committee shall be eligible for employment by any physician approved by the Board of Osteopathic Examiners; except that no physician shall supervise more than two physician's assistants. The Board of Osteopathic Examiners may restrict physicians to supervising specific types of physician's assistants including, but not limited to, restricting physicians from supervising physician's assistants outside of the physician's field of specialty.

(e) Each physician desiring to supervise a physician's assistant under this section shall file a separate application. The fees to be paid to the Board of Osteopathic Examiners for approval to supervise a physician's assistant are to be set as follows: An application fee not to exceed fifty dollars ($50) shall be charged to each physician applicant. An approval fee not to exceed one hundred dollars ($100) shall be charged to each physician upon approval of an application to supervise a physician's assistant. If the approval will expire less than one year after its issuance, the fee shall be 50 percent of the initial approval fee currently in effect. The Board of Osteopathic Examiners shall renew approval to supervise physician's assistants upon application for that renewal. A biennial renewal fee not to exceed one hundred fifty dollars ($150) shall be paid for the renewal of that approval. The delinquency fee is twenty-five dollars ($25). The duplicate license fee is ten dollars ($10). The fees collected by

the Board of Osteopathic Examiners pursuant to this subdivision shall be deposited in the Board of Osteopathic Examiners Contingent Fund.

(f) Any person who violates subdivision (a), (b), (c), or (d) of this section shall be guilty of a misdemeanor punishable by imprisonment in the county jail not exceeding six months, or by a fine not exceeding one thousand dollars ($1,000) or by both.

SEC. 2.2. Section 4050.1 is added to the Business and Professions Code, to read:

4050.1. (a) Any pharmacy located outside this state which ships, mails, or delivers, in any manner, controlled substances or dangerous drugs or devices into this state shall be considered a nonresident pharmacy, shall be registered with the board, and shall disclose to the board all of the following:

(1) The location, names, and titles of all principal corporate officers and all pharmacists who are dispensing controlled substances or dangerous drugs or devices to residents of this state. A report containing this information shall be made on an annual basis and within 30 days after any change of office, corporate officer, or pharmacist.

(2) That it complies with all lawful directions and requests for information from the regulatory or licensing agency of the state in which it is licensed as well as with all requests for information made by the board pursuant to this section. The nonresident pharmacy shall maintain, at all times, a valid unexpired license, permit, or registration to conduct the pharmacy in compliance with the laws of the state in which it is a resident. As a prerequisite to registering with the board, the nonresident pharmacy shall submit a copy of the most recent inspection report resulting from an inspection conducted by the regulatory or licensing agency of the state in which it is located.

(3) That it maintains its records of controlled substances or dangerous drugs or devices dispensed to patients in this state so that the records are readily retrievable from the records of other drugs dispensed.

(b) Any pharmacy subject to this section shall, during its regular hours of operation, but not less than six days per week, and for a minimum of 40 hours per week, provide a toll-free telephone service to facilitate communication between patients in this state and a pharmacist at the pharmacy who has access to the patient's records. This toll-free number shall be disclosed on a label affixed to each container of drugs dispensed to patients in this state.

(c) The registration fee shall be the fee specified in subdivision (a) of Section 4416.

(d) The registration requirements of this section shall apply only to a nonresident pharmacy which only ships, mails, or delivers controlled substances and dangerous drugs and devices into this state pursuant to a prescription.

(e) Nothing in this section shall be construed to authorize the dispensing of contact lenses by nonresident pharmacists.

SEC. 2.3. Section 4980.40 of the Business and Professions Code, is amended to read:

4980.40. To qualify for a license an applicant shall have all the following qualifications:

(a) Applicants applying for licensure on or after January 1, 1988, shall possess a doctor's or master's degree in marriage, family, and child counseling, marital and family therapy, psychology, clinical psychology, counseling psychology, counseling with an emphasis in marriage, family, and child counseling, or social work with an emphasis in clinical social work, obtained from a school, college, or university accredited by the Western Association of Schools and Colleges, the Northwest Association of Secondary and Higher Schools, or an essentially equivalent accrediting agency, as determined by the board, or approved by the Superintendent of Public Instruction, pursuant to subdivision (b) of Section 94310.2 of the Education Code. In order to qualify for licensure pursuant to this subdivision, any doctor's or master's degree program shall contain no less than 48 semester or 72 quarter units of instruction. The instruction shall include no less than 12 semester units or 18 quarter units of coursework in the areas of marriage, family, and child counseling and marital and family systems approaches to treatment.

The coursework shall include all of the following areas:

(1) The salient theories of a variety of psychotherapeutic orientations directly related to marriage, family, and child counseling, and marital and family systems approaches to treatment.

(2) Theories of marriage and family therapy and how they can be utilized in order to intervene therapeutically with couples, families, adults, children, and groups.

(3) Developmental issues and life events from infancy to old age and their effect upon individuals, couples, and family relationships. This may include coursework that focuses on specific family life events and the psychological, psychotherapeutic, and health implications that arise within couples and families, including, but not limited to, childbirth, child rearing, childhood, adolescence, adulthood, marriage, divorce, blended families, stepparenting, and geropsychology.

(4) A variety of approaches to the treatment of children.

The board may, by regulation, further define the content requirements of required courses specified in this subdivision.

(b) In addition to the 12 semester or 18 quarter units of coursework specified above, the doctor's or master's degree program shall contain not less than six semester or nine quarter units of supervised practicum in applied psychotherapeutic techniques, assessment, diagnosis, prognosis, and treatment of premarital, couple, family, and child relationships, including dysfunctions and healthy functioning and health promotion and illness prevention, in a supervised clinical placement that provides supervised fieldwork experience within the scope of practice of a marriage, family, and child counselor.

(1) Supervised practicum hours, as specified in this subdivision, shall be evaluated, accepted, and credited as hours for trainee experience by the board.

(2) Educational institutions and trainees are encouraged to design the practica to include marriage, family, and child counseling experience in low-income and multicultural mental health settings.

(3) The practicum hours shall be considered as part of the 48 semester or 72 quarter unit requirement.

(c) As an alternative to meeting the qualifications specified in subdivision (a), the board shall accept as equivalent degrees, those master's or doctor's degrees granted by educational institutions whose degree program is approved by the Commission on Accreditation for Marriage and Family Therapy Education.

(d) All applicants shall, in addition, complete the coursework or training specified in Section 4980.41.

(e) All applicants shall be at least 18 years of age.

(f) All applicants shall have at least two years' experience in interpersonal relationships, marriage, family, and child counseling and psychotherapy under the supervision of a licensed marriage, family, and child counselor, licensed clinical social worker, licensed psychologist, or a licensed physician certified in psychiatry by the American Board of Psychiatry and Neurology. For those supervisorial relationships in effect on or before December 31, 1988, and which remain in continuous effect thereafter, experience may be gained under the supervision of a licensed physician who has completed a residency in psychiatry.

(1) All experience shall be at all times under the supervision of the supervisor who shall, with the person being supervised, be responsible for ensuring that the extent, kind, and quality of counseling performed is consistent with the training and experience of the person being supervised, and who shall be responsible to the board for the compliance of all laws, rules, and regulations governing the practice of marriage, family, and child counseling.

(2) Supervision shall include at least one hour of direct supervision for each week of experience claimed.

(3) Any person supervising another pursuant to this subdivision shall have been licensed or certified for at least two years prior to acting as a supervisor and shall have a current license which is not under suspension or probation, except these requirements shall not affect any supervisorial relationship in existence on December 31, 1983.

(4) The supervisor shall consider, advise, and encourage his or her interns and trainees regarding the advisability of his or her undertaking individual or group counseling or psychotherapy as appropriate, and insofar as it is deemed appropriate and is desired by the applicant, the supervisor shall seek to assist the applicant in obtaining that counseling or psychotherapy at a reasonable cost.

(5) The board may prescribe by regulation any other qualifications for supervisors that it deems appropriate.

(g) The applicant shall pass a written examination and an oral examination conducted by the board or its designees.

(h) The applicant shall not have committed acts or crimes constituting grounds for denial of licensure under Section 480.

(i) Applicants applying for licensure on or before December 31, 1987, shall possess all of the qualifications specified in subdivisions (e) to (h), inclusive, and shall possess a doctor's or master's degree in marriage, family, and child counseling, social work, clinical psychology, counseling, counseling psychology, child development and family studies, or a degree determined by the board to be equivalent, obtained from a school, college, or university accredited by the Western Association of Schools and Colleges, the Northwest Association of Secondary and Higher Schools, or an essentially equivalent accrediting agency as determined by the board.

(j) Persons who commenced graduate study, as defined in Section 4980.40, on or before December 31, 1987, shall be governed by subdivisions (i) and (k) of this section only if they apply and qualify for internship registration or licensure examination within five years of their starting such graduate study or by December 31, 1987, whichever is later.

(k) For applicants applying for a license pursuant to subdivisions (i) and (j), the board may make a determination that an applicant's master's or doctor's degree is an equivalent degree if it finds that the degree was issued upon completion of a course of academic study primarily designed to train persons as a marriage, family, and child counselor. The course of study completed by the applicant shall contain not less than 30 semester or 45 quarter units of coursework as follows: (1) human biological, psychological, and social development, (2) human sexuality, (3) psychopathology, (4) cross-cultural mores and values, (5) theories of marriage, family, and child counseling, (6) professional ethics and law, (7) human communication, (8) research methodology, (9) theories and applications of psychological testing, and (10) not less than six semester or nine quarter units of supervised practicum in applied psychotherapeutic techniques, assessment, diagnosis, prognosis, and treatment of premarital, family, and child relationship dysfunctions. The applicant shall submit to the board satisfactory written verification by the chief academic officer of the accredited or approved school, or by an authorized designee, that the applicant has successfully completed courses, including the practicum required by the board. The verification shall include, but need not be limited to, descriptions of the completed courses. The board may request further written verification of course content and academic experience to determine that the applicant's training and experience is equivalent to the course of instruction required by this section.

SEC. 2.4. Section 6863 of the Business and Professions Code is amended to read:

6863. The director may establish and enforce rules and regulations as may be reasonable and necessary for the examination

and licensing of applicants, for the conduct of licensees and for the general enforcement of the various provisions of this chapter for the protection of the public, and may establish and enforce implementing regulations within the subject area of Title 1.6C (commencing with Section 1788) of Part 4 of Division 3 of the Civil Code for licensees and applicants. The chief shall distribute to each licensee and each applicant for a qualification certificate copies of this chapter and of those rules and regulations. The rules and regulations shall be adopted, amended, or repealed in accordance with the provisions of the Administrative Procedure Act.

Prior to proposing the adoption, amendment, or repeal of regulations pursuant to the provisions of the Administrative Procedure Act, the director shall submit a draft copy of any contemplated regulatory proposal to the Collection Agency Board for review, comment, and recommendations. The draft copy shall be submitted to the board at least 30 days prior to a regularly scheduled board meeting.

The willful violation of any rules and regulations established hereunder or the willful violation of this chapter or of Title 1.6C (commencing with Section 1788) of Part 4 of Division 3 of the Civil Code shall be sufficient ground for revocation of the license of a licensee, or other disciplinary action.

SEC. 2.5. Section 6893.6 of the Business and Professions Code is amended to read:

6893.6. The examination shall be of sufficient length and scope to test the applicant's knowledge as it applies to the daily operation of a collection agency on the following:

(a) Collection ethics and practices.

(b) Bookkeeping.

(c) Business law and laws governing claims assigned for collection.

(d) Administrative and managerial ability.

(e) The Collection Agency Act and its rules and regulations, Title 1.6C (commencing with Section 1788) of Part 4 of Division 3 of the Civil Code, and the Federal Fair Debt Collection Practices Act.

SEC. 2.6. Section 6900 of the Business and Professions Code is amended to read:

6900. Upon the filing of notice with the chief by any surety company of its withdrawal as the surety of any licensee the chief shall forthwith give notice to the licensee of the withdrawal, which notice shall be by registered or certified mail with request for return receipt and shall be addressed to the licensee at his or her main office as shown by the records of the chief. The license of any licensee shall be void 60 days after the chief sends written notice of the termination of the bond of the surety company as provided in Section 6900.1 and notice that the licensee is required to file a new bond unless, prior to the expiration of the 60 days from the chief's written notice, a new bond has been filed with the chief.

SEC. 3. Section 7590.2 of the Business and Professions Code, is

amended to read:

7590.2. An "alarm company operator" means any person who, for any consideration whatsoever, engages in business or accepts employment to install, maintain, alter, sell on premises, monitor, or service alarm systems or who responds to alarm systems except for any alarm agent. "Alarm company operator," however, does not include a telephone answering service which is retained by a licensed alarm company operator to monitor alarm systems for the licensed alarm company operator, or a business which merely sells from a fixed location or manufactures alarm systems unless the business services, installs, maintains, alters, sells on premises, monitors, or responds to alarm systems at the protected premises.

A person licensed as an alarm company operator may not conduct any investigation or investigations except those that are incidental to personal injury, or 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.

SEC. 6. Section 19012.5 of the Business and Professions Code is amended to read:

19012.5. "Sanitizer" means a person who sanitizes articles of bedding or filling materials.

SEC. 7. Section 19059.5 of the Business and Professions Code is amended to read:

19059.5. Every sanitizer shall hold a sanitizer's license.

SEC. 8. Section 19071 of the Business and Professions Code is amended to read:

19071. Secondhand bedding, or secondhand filling materials to be used or that could be used in upholstered furniture or bedding received from outside of this state shall comply with all the sanitization provisions of this chapter before it is accepted, sold or delivered, either directly or indirectly by any person.

SEC. 9. The heading of Article 6 (commencing with Section 19120) of Chapter 3 of Division 8 of the Business and Professions Code is amended to read:

Article 6. Sanitization

SEC. 10. Section 19120 of the Business and Professions Code is amended to read:

19120. The enforcement of all sanitization regulations pertaining to any article subject to this chapter is vested in the bureau. The bureau shall consult with the State Department of Health Services on any changes to the sanitization requirements.

SEC. 11. Section 19121 of the Business and Professions Code is amended to read:

19121. Filthy or soiled articles of new or used bedding cannot be sold, offered or exposed for sale unless the fabric covering them is either properly cleaned or replaced by a new covering and then subjected to sanitization as provided for in this chapter.

SEC. 12. Section 19122 of the Business and Professions Code is amended to read:

19122. A person shall not engage in the business of sanitizing any article of bedding or filling material, provided for in this chapter, without first having his or her sanitization equipment tested and approved by the bureau.

SEC. 13. Section 19122.5 of the Business and Professions Code is amended to read:

19122.5. Periodic tests and inspections shall be made by an authorized representative of the bureau, to determine whether or not the equipment and procedures used, comply with the requirements of the sanitization regulations.

SEC. 14. Section 19123.4 of the Business and Professions Code is amended to read:

19123.4. Newly manufactured articles of bedding which contain any secondhand filling material shall be sanitized before they are offered or exposed for sale, except feather and down-filled articles. Feathers and down must be sanitized loose.

SEC. 15. Section 19123.5 of the Business and Professions Code is amended to read:

19123.5. Every article of bedding and all filling material, repaired or renovated for resale or repaired or renovated for an owner but subsequently offered for sale shall be sanitized before being offered or exposed for sale.

SEC. 16. Section 19123.6 of the Business and Professions Code is amended to read:

19123.6. Every article of bedding to which any secondhand material has been added in the process of repairing, shall be sanitized in accordance with the provisions of the sanitization regulations.

SEC. 17. Section 19124 of the Business and Professions Code is amended to read:

19124. Every person who receives for sanitization any upholstered furniture or bedding filling material shall sanitize all such articles and material in accordance with the sanitization regulations.

SEC. 18. Section 19124.5 of the Business and Professions Code is amended to read:

19124.5. Every person who sanitizes any bedding or filling material shall affix a sanitization label to the article or material in the manner prescribed by the bureau.

SEC. 19. Section 19127 of the Business and Professions Code is amended to read:

19127. The form, size and color of sanitization labels, and the material of which they are made shall be approved by the chief and as provided in the Label Regulations.

SEC. 20. Section 19127.5 of the Business and Professions Code is amended to read:

19127.5. Sanitization labels shall be sold only to sanitizers licensed under this chapter. Illegal possession of any sanitization label is a

violation of this chapter. Void or mutilated labels shall be returned to the bureau.

SEC. 21. Section 19127.6 of the Business and Professions Code is amended to read:

19127.6. The sanitizer shall keep a record of all data and show the disposition of every label as required in the sanitization regulations. The records shall be accessible at all reasonable times to the chief and the inspectors.

SEC. 22. Section 19129 of the Business and Professions Code is amended to read:

19129. Articles of secondhand bedding and any secondhand article that can be used for sleeping purposes shall be sanitized under the provisions of this chapter before being sold.

SEC. 23. Section 19131 of the Business and Professions Code is amended to read:

19131. Every article of bedding from any private or public hospital, jail or other institution, or which has been used by any person, suffering from an infectious or contagious disease, shall be sanitized before it is repaired or renovated.

SEC. 24. Section 19132 of the Business and Professions Code is amended to read:

19132. New or sanitized articles of bedding or materials shall at all times be kept separate from any secondhand articles or materials that are unsanitized.

SEC. 25. Section 19170 of the Business and Professions Code is amended to read:

19170. (a) The fee imposed for the issuance and for the biennial renewal of each license granted under this chapter shall be set by the chief, with the approval of the director, at a sum not more nor less than that shown in the following table:

| | Maximum fee | Minimum fee |
|---|---|---|
| Furniture manufacturer's license | $360 | $120 |
| Wholesale furniture dealer's license | 360 | 120 |
| Bedding manufacturer's license | 360 | 120 |
| Wholesale bedding dealer's license | 360 | 120 |
| Supply dealer's license | 360 | 120 |
| Custom upholsterer's license | 240 | 80 |
| Bedding renovator's license | 240 | 80 |
| Sanitizer's license | 240 | 80 |
| Retail furniture dealer's license | 80 | 20 |
| Retail bedding dealer's license | 80 | 20 |

(b) A person who has paid the required fee and who is duly licensed as a furniture manufacturer, a custom upholsterer, a bedding manufacturer or a bedding renovator under this chapter shall not be required to pay, in addition, the fee prescribed herein for a sanitizer's license.

(c) Individuals who, in their own homes and without the employment of any other person, make, sell, advertise, or contract to make pillows, quilts, quilted pads, or comforters are exempt from the fee requirements imposed by subdivision (a). However, such individuals must comply with all other provisions of this chapter.

SEC. 26. Section 19170.5 of the Business and Professions Code is amended to read:

19170.5. Licenses issued under this chapter expire two years from the date of issuance. To renew his or her license, a licensee shall, on or before the date on which it would otherwise expire, apply for renewal on a form prescribed by the chief, and pay the fee prescribed by Section 19170. If a licensee fails to renew his or her license before its expiration, a delinquency fee of 20 percent, but not more than fifty dollars ($50), notwithstanding the provisions of Section 163.5, shall be added to the renewal fee. If the renewal fee and delinquency fee are not paid within 90 days after expiration of a license, the licensee shall be assessed an additional penalty fee of 5 percent of the renewal fee for each additional month or fraction thereof that the license is delinquent. A license which is not renewed within one year of its expiration shall be canceled and shall not thereafter be renewed, restored, reinstated or reissued, but the holder of a license may apply for and obtain a new license if all of the following within are satisfied:

(a) No fact, circumstance, or condition exists which would justify denial of licensure under Section 480.

(b) He or she pays all of the fees which would be required of any person then applying for that license for the first time.

(c) He or she pays all delinquent and penalty fees which accrued under the former license.

SEC. 27. Section 19201 of the Business and Professions Code is amended to read:

19201. The chief or any inspector may determine the fitness of any secondhand or damaged article of bedding or filling material, for sanitization and sale.

SEC. 28. Section 19221 of the Business and Professions Code is amended to read:

19221. The unit for a separate and distinct offense in violation of this chapter is each and every article of improperly labeled, or not labeled, upholstered furniture or bedding or filling material made, repaired, recovered, renovated, sanitized, sold, exposed or offered for sale, delivered, consigned, rented, or possessed with intent to sell contrary to the provisions of this chapter.

SEC. 28.5. Section 13401 of the Corporations Code is amended to read:

13401. As used in this part:

(a) "Professional services" means any type of professional services which may be lawfully rendered only pursuant to a license, certification, or registration authorized by the Business and Professions Code or the Chiropractic Act.

(b) "Professional corporation" means a corporation organized under the General Corporation Law which is engaged in rendering professional services in a single profession, except as otherwise authorized in Section 13401.5, pursuant to a certificate of registration issued by the governmental agency regulating the profession as herein provided and which in its practice or business designates itself as a professional or other corporation as may be required by statute. However, any professional corporation rendering professional services by persons duly licensed by the Board of Medical Quality Assurance or any examining committee under the jurisdiction of the board, the State Board of Pharmacy, the Board of Examiners in Veterinary Medicine, the State Board of Architectural Examiners, or the Board of Registered Nursing shall not be required to obtain a certificate of registration in order to render those professional services.

(c) "Licensed person" means any natural person who is duly licensed under the provisions of the Business and Professions Code or the Chiropractic Act to render the same professional services as are or will be rendered by the professional corporation of which he or she is or intends to become, an officer, director, shareholder, or employee.

(d) "Disqualified person" means a licensed person who for any reason becomes legally disqualified (temporarily or permanently) to render the professional services which the particular professional corporation of which he or she is an officer, director, shareholder, or employee is or was rendering.

SEC. 29. Section 11126 of the Government Code is amended to read:

11126. (a) Nothing in this article shall be construed to prevent a state body from holding closed sessions during a regular or special meeting to consider the appointment, employment, or dismissal of a public employee or to hear complaints or charges brought against that employee by another person or employee unless the employee requests a public hearing. As a condition to holding a closed session on the complaints or charges to consider disciplinary action or to consider dismissal, the employee shall be given written notice of his or her right to have a public hearing, rather than a closed session, which notice shall be delivered to the employee personally or by mail at least 24 hours before the time for holding a regular or special meeting. If notice is not given, any disciplinary or other action taken against any employee at the closed session shall be null and void. The state body also may exclude from any public or closed session, during the examination of a witness, any or all other witnesses in the matter being investigated by the state body. Following the public hearing or closed session, the body may deliberate on the decision to be reached in a closed session.

For the purposes of this section, "employee" shall not include any person who is elected to, or appointed to a public office by, any state body. However, officers of the California State University who

receive compensation for their services, other than per diem and ordinary and necessary expenses, shall, when engaged in that capacity, be considered employees.

(b) Nothing in this article shall be construed to prevent state bodies which administer the licensing of persons engaging in businesses or professions from holding closed sessions to prepare, approve, grade, or administer examinations.

(c) Nothing in this article shall be construed to prevent an advisory body of a state body which administers the licensing of persons engaged in businesses or professions from conducting a closed session to discuss matters which the advisory body has found would constitute an unwarranted invasion of the privacy of an individual licensee or applicant if discussed in an open meeting, provided the advisory body does not include a quorum of the members of the state body it advises. Those matters may include review of an applicant's qualifications for licensure and an inquiry specifically related to the state body's enforcement program concerning an individual licensee or applicant where the inquiry occurs prior to the filing of a civil, criminal, or administrative disciplinary action against the licensee or applicant by the state body.

(d) Nothing in this article shall be construed to prohibit a state body from holding a closed session to deliberate on a decision to be reached based upon evidence introduced in a proceeding required to be conducted pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 or similar provisions of law.

(e) Nothing in this article shall be construed to prevent any state body from holding a closed session to consider matters affecting the national security.

(f) Nothing in this article shall be construed to grant a right to enter any correctional institution or the grounds of a correctional institution where that right is not otherwise granted by law, nor shall anything in this article be construed to prevent a state body from holding a closed session when considering and acting upon the determination of a term, parole, or release of any individual or other disposition of an individual case, or if public disclosure of the subjects under discussion or consideration is expressly prohibited by statute.

(g) Nothing in this article shall be construed to prevent any closed session to consider the conferring of honorary degrees, or gifts, donations, and bequests which the donor or proposed donor has requested in writing to be kept confidential.

(h) Nothing in this article shall be construed to prevent the Alcoholic Beverage Control Appeals Board from holding a closed session for the purpose of holding a deliberative conference as provided in Section 11125.

(i) Nothing in this article shall be construed to prevent a state body from holding closed sessions with its negotiator prior to the purchase, sale, exchange, or lease of real property by or for the state body to give instructions to its negotiator regarding the price and terms of payment for the purchase, sale, exchange, or lease.

However, prior to the closed session, the state body shall hold an open and public session in which it identifies the real property or real properties which the negotiations may concern and the person or persons with whom its negotiator may negotiate.

For purposes of this subdivision, the negotiator may be a member of the state body.

For purposes of this subdivision, "lease" includes renewal or renegotiation of a lease.

Nothing in this subdivision shall preclude a state body from holding a closed session for discussions regarding eminent domain proceedings pursuant to subdivision (q).

(j) Nothing in this article shall be construed to prevent the California Postsecondary Education Commission from holding closed sessions to consider matters pertaining to the appointment or termination of the Director of the California Postsecondary Education Commission.

(k) Nothing in this article shall be construed to prevent the Franchise Tax Board from holding closed sessions for the purpose of discussion of confidential tax returns or data the public disclosure of which is prohibited by law, or from considering matters pertaining to the appointment or removal of the executive officer of the Franchise Tax Board.

(*l*) Nothing in this article shall be construed to prevent the Board of Corrections from holding closed sessions when considering reports of crime conditions under Section 6027 of the Penal Code.

(m) Nothing in this article shall be construed to prevent the State Air Resources Board from holding closed sessions when considering the proprietary specifications and performance data of manufacturers.

(n) Nothing in this article shall be construed to prevent a state body which invests retirement, pension, or endowment funds from holding closed sessions when considering investment decisions. For purposes of consideration of shareholder voting on corporate stocks held by the state body, closed sessions for the purposes of voting may be held only with respect to election of corporate directors, election of independent auditors, and other financial issues which could have a material effect on the net income of the corporation. For the purpose of real property investment decisions which may be considered in a closed session pursuant to this subdivision, a state body shall also be exempt from the provision of subdivision (i) relating to the identification of real properties prior to the closed session.

(o) Nothing in this article shall be construed to prevent a state body, or such boards, commissions, administrative officers, or other representatives as may properly be designated by law or by a state body, from holding closed sessions with its representatives in discharging its responsibilities under Chapter 10 (commencing with Section 3500) of Division 4 of Title 1 as the sessions relate to salaries, salary schedules, or compensation paid in the form of fringe benefits.

For the purposes enumerated in the preceding sentence, a state body may also meet with a state conciliator who has intervened in the proceedings.

(p) Notwithstanding any other provision of law, any meeting of the Public Utilities Commission at which the rates of entities under the commission's jurisdiction are changed shall be open and public.

Nothing in this article shall be construed to prevent the Public Utilities Commission from holding closed sessions to deliberate on the institution of proceedings, or disciplinary actions against regulated utilities.

(q) Nothing in this article shall be construed to prevent a state body, based on the advice of its legal counsel, from holding a closed session to confer with, or receive advice from, its legal counsel regarding pending litigation when discussion in open session concerning those matters would prejudice the position of the state body in the litigation.

For purposes of this article, all expressions of the lawyer-client privilege other than those provided in this subdivision are hereby abrogated. This subdivision is the exclusive expression of the lawyer-client privilege for purposes of conducting closed-session meetings pursuant to this article. For purposes of this subdivision, litigation shall be considered pending when any of the following circumstances exist:

(1) An adjudicatory proceeding before a court, an administrative body exercising its adjudicatory authority, a hearing officer, or an arbitrator, to which the state body is a party, has been initiated formally.

(2) (A) A point has been reached where, in the opinion of the state body on the advice of its legal counsel, based on existing facts and circumstances, there is a significant exposure to litigation against the state body; or

(B) Based on existing facts and circumstances, the state body is meeting only to decide whether a closed session is authorized pursuant to subparagraph (A).

(3) Based on existing facts and circumstances, the state body has decided to initiate or is deciding whether to initiate litigation.

The legal counsel of the state body shall prepare and submit to it a memorandum stating the specific reasons and legal authority for the closed session. If the closed session is pursuant to paragraph (1), the memorandum shall include the title of the litigation. If the closed session is pursuant to paragraph (2) or (3), the memorandum shall include the existing facts and circumstances on which it is based. The legal counsel shall submit the memorandum to the state body prior to the closed session, if feasible, and in any case no later than one week after the closed session. The memorandum shall be exempt from disclosure pursuant to Section 6254.1.

For purposes of this subdivision, "litigation" includes any adjudicatory proceeding, including eminent domain, before a court, administrative body exercising its adjudicatory authority, hearing

officer, or arbitrator.

Disclosure of a memorandum required under this subdivision shall not be deemed as a waiver of the lawyer-client privilege, as provided for under Article 3 (commencing with Section 950) of Chapter 4 of Division 8 of the Evidence Code.

(r) Nothing in this article shall be construed to prevent the examining committee established by the State Board of Forestry, pursuant to Section 763 of the Public Resources Code, from conducting a closed session to consider disciplinary action against an individual professional forester prior to the filing of an accusation against the forester pursuant to Section 11503.

(s) Nothing in this article shall be construed to prevent an administrative committee established by the State Board of Accountancy pursuant to Section 5020 or 5020.3 of the Business and Professions Code from conducting a closed session to consider disciplinary action against an individual accountant prior to the filing of an accusation against the accountant pursuant to Section 11503. Nothing in this article shall be construed to prevent an examining committee established by the Board of Accountancy pursuant to Section 5023 of the Business and Professions Code from conducting a closed hearing to interview an individual applicant or accountant regarding the applicant's qualifications.

(t) Nothing in this article shall be construed to prevent a state body, as defined in Section 11121.2, from conducting a closed session to consider any matter which properly could be considered in closed session by the state body whose authority it exercises.

(u) Nothing in this article shall be construed to prevent a state body, as defined in Section 11121.7, from conducting a closed session to consider any matter which properly could be considered in a closed session by the body defined as a state body pursuant to Section 11121, 11121.2, or 11121.5.

(v) Nothing in this article shall be construed to prevent a state body, as defined in Section 11121.8, from conducting a closed session to consider any matter which properly could be considered in a closed session by the state body it advises.

(w) Nothing in this article shall be construed to prevent the State Board of Equalization from holding closed sessions for either of the following:

(1) When considering matters pertaining to the appointment or removal of the executive secretary of the State Board of Equalization.

(2) For the purpose of hearing confidential taxpayer appeals or data, the public disclosure of which is prohibited by law.

(x) Nothing in this article shall be construed to prevent the California Earthquake Prediction Evaluation Council, or other body appointed to advise the Director of the Office of Emergency Services or the Governor pursuant to Section 8590 concerning matters relating to volcanic or earthquake predictions, from holding closed sessions when considering the evaluation of possible predictions.

(y) This article shall not prevent the Teachers' Retirement Board from holding closed sessions when considering matters pertaining to the appointment or removal of the chief executive officer of the State Teachers' Retirement System.

SEC. 30. Section 26509 of the Government Code is amended to read:

26509. (a) Notwithstanding any other provision of law, including any provision making such records confidential, and including the provisions of 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 such a person made by such an 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 such complaint or investigation, such material shall remain confidential.

(c) Where the release of such material would jeopardize an investigation or other duties of a consumer-oriented state agency, such an agency shall have discretion to delay the release of such 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 such regulation is for the protection of consumers who deal with such professionals or businesses. It includes, but is not limited to, all of the following:

(1) The Board of Dental Examiners of California.

(2) The Board of Medical Quality Assurance of the State 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 Barber Examiners.

(9) The State Board of Registration for Professional Engineers.

(10) The Contractors' State License Board.

(11) The State Board of Cosmetology.

(12) The State Board of Funeral Directors and Embalmers.

(13) The Structural Pest Control Board.

(14) The Bureau of Home Furnishings and Thermal Insulation.

(15) The Board of Registered Nursing.

(16) The State Board of Fabric Care.

(17) The Board of Chiropractic Examiners.

(18) The Board of Behavioral Science Examiners.

(19) The State Athletic Commission.

(20) The Cemetery Board.

(21) The State Board of Guide Dogs for the Blind.
(22) The Bureau of Collection and Investigative Services.
(23) The Certified Shorthand Reporters Board.
(24) The Board of Vocational Nurse and Psychiatric Technician Examiners of the State of California.
(25) The California State Board of Landscape Architects.
(26) The Bureau of Repair Services.
(27) The Bureau of Employment Agencies.
(28) The Board of Osteopathic Examiners.
(29) The Division of Investigation.
(30) The Bureau of Automotive Repair.
(31) The State Board of Registration for Geologists and Geophysicists.
(32) The State Board of Examiners of Nursing Home Administrators.
(33) The Department of Alcoholic Beverage Control.
(34) The Department of Insurance.
(35) The Public Utilities Commission.
(36) The State Department of Health Services.
(37) The New Motor Vehicle Board.

SEC. 31. Section 2.2 of this act shall become operative only if Senate Bill 2213 of the 1987–88 Regular Session is enacted and becomes operative on January 1, 1989.

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## CHAPTER 1449

An act to amend Sections 5681 and 5691 of the Welfare and Institutions Code, relating to mental health.

[Approved by Governor September 27, 1988 Filed with Secretary of State September 28, 1988 ]

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

SECTION 1. Section 5681 of the Welfare and Institutions Code is amended to read:

5681. (a) It is the intent of the Legislature that funds shall be made available to counties to assure the delivery of long-range services and community support assistance to homeless mentally disabled persons and those at risk of becoming homeless.

It is further the intent of the Legislature that all services of the community support system are to be offered to these persons on a voluntary basis, that the active participation of the clients being provided services is encouraged at all times, and programs are designed to be accessible to the clients intended to be served.

It is further the intent of the Legislature that specific outreach and service priority be given under this chapter to homeless mentally disabled persons not served by any local or state programs as of the

effective date of this section.

(b) It is the intent of the Legislature that on an annual basis five hundred thousand dollars ($500,000), or 17 percent, whichever is less, of the total federal funds available to the State of California pursuant to Section 611 of the Stewart B. McKinney Homeless Assistance Act, Public Law 100-77 (42 U.S.C. Sec. 290aa) shall be used to fund services pursuant to Chapter 2.7 (commencing with Section 5690) for homeless mentally disabled persons and those at risk of becoming homeless who have been identified pursuant to this chapter.

SEC. 2. Section 5691 of the Welfare and Institutions Code is amended to read:

5691. (a) Counties may implement the community vocational treatment system described in this chapter with existing county allocations, funds available from the Department of Rehabilitation and other state agencies, or by utilizing any supplemental Short-Doyle allocation that may be appropriate.

(b) It is the intent of the Legislature that on an annual basis five hundred thousand dollars ($500,000), or 17 percent, whichever is less, of the total federal funds available to the State of California pursuant to Section 611 of the Stewart B. McKinney Homeless Assistance Act, Public Law 100-77 (42 U.S.C. Sec. 290aa) shall be used to fund services pursuant to this chapter for homeless mentally disabled persons and those at risk of becoming homeless who have been identified pursuant to Chapter 2.6 (commencing with Section 5680).

Counties may not use these funds to provide services, including, but not limited to, vocational services, which could be funded by the Department of Rehabilitation.

SEC. 3. Sections 1 and 2 of this act shall become operative on July 1, 1989.

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## CHAPTER 1450

An act to add Chapter 21.5 (commencing with Section 9998) to Division 3 of the Business and Professions Code, relating to foreign labor contractors.

[Approved by Governor September 27, 1988. Filed with Secretary of State September 28, 1988.]

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

SECTION 1. Chapter 21.5 (commencing with Section 9998) is added to Division 3 of the Business and Professions Code, to read:

### CHAPTER 21.5. FOREIGN LABOR CONTRACTORS

9998. This chapter shall apply only to "nonagricultural workers" as defined by Section 1101 (a) (15) (H) (ii) (b) of Title 8 of the federal

Immigration and Nationality Act. It shall not apply to any person duly licensed as a "farm labor contractor" as that term is defined in Section 1682 of the Labor Code nor shall it apply to any person exempt from the licensing requirement in Section 1682.5 of the Labor Code or to any employer employing agricultural workers as defined by Section 1101(a)(15)(H)(ii)(a) of Title 8 of the federal Immigration and Nationality Act.

9998.1. The following definitions are applicable to this chapter:

(a) "Person" includes any natural person, company, firm, partnership, or joint venture, association, corporation, or sole proprietorship.

(b) "Compensation" means all forms of remuneration or consideration for the provision of employment services to foreign workers by a foreign labor contractor.

(c) "Employment services" includes, but is not limited to, procuring employment, marketing labor, or otherwise arranging the employment or transportation, housing, and other living accommodations for foreign workers either on behalf of those workers or on behalf of another party.

(d) "Foreign worker" means any person seeking employment who is not a United States citizen but who is authorized by the federal government to work in the United States, including a person who engages in temporary nonagricultural labor pursuant to Section 1101(a)(15)(H)(ii)(b) of Title 8 of the federal Immigration and Nationality Act.

(e) "Foreign labor contractor" means any person who for compensation agrees to assist in securing or who actually secures for or provides employment services to foreign workers.

9998.2. (a) Every contract for the provision of employment services to foreign workers shall be written in the primary language of the foreign worker and shall include all material terms including, but not limited to, any and all compensation or consideration to be provided to the foreign worker in exchange for that worker's labor or services, any wages, housing, transportation, other living accommodations, and other benefits which are to be provided.

9998.3. No foreign labor contractor shall make, publish, or circulate or cause to be made, published, or circulated, to any person any false, fraudulent, or misleading representation or information concerning the terms or conditions of employment at any place or places of employment.

9998.4. No foreign labor contractor shall recruit for employment or cause any minor who is a foreign worker to be employed.

9998.5. Any foreign labor contractor who recruits or solicits without a bona fide job order and who induces a foreign worker to be transported to a proposed jobsite and who does not then provide employment for the foreign worker shall pay wages to the foreign worker at the agreed rate of pay for the job to which the foreign worker was being transported and for the elapsed time from the point of recruitment to the jobsite to the point the worker returns

to the place of original departure, and for any transportation costs incurred by the foreign worker in connection with the pursuit of the labor contractor's services.

9998.6. No person shall take any action against a foreign worker in retaliation for the foreign worker's exercise of any right under this chapter.

9998.7. No foreign labor contractor shall make promises or otherwise induce a foreign worker to travel or accept promises of employment by promising or providing assurances to the foreign worker that citizenship or permanent residency status in the United States shall be secured or pursued if the worker accepts the offer of services of the foreign labor contractor.

9998.8. (a) Any person who violates this chapter or who causes or induces another to violate this chapter is guilty of a misdemeanor punishable by a fine of not more than one thousand dollars ($1,000), or imprisonment in the county jail for not more than six months, or both.

(b) Any person aggrieved by a violation of this chapter may bring an action for injunctive relief or damages, or both. If the person aggrieved prevails on the action, this person shall recover damages, costs, and reasonable attorney's fees, but in no case shall recovery be less than five hundred dollars ($500).

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.

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## CHAPTER 1451

An act to amend Section 18802.3 of, and to add Sections 18802.10 and 25401e to, the Revenue and Taxation Code, relating to taxation.

[Approved by Governor September 27, 1988. Filed with Secretary of State September 28, 1988.]

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

SECTION 1. It is the intent of the Legislature that this act require agents who are responsible for closing California real property transactions and are required to file information returns with the Secretary of the Treasury, to file identical copies of the federal returns with the Franchise Tax Board in formats (including multi-state reports) and at intervals which are acceptable to the Internal Revenue Service, with no modifications to the federal returns being required.

SEC. 2. Section 18802.3 of the Revenue and Taxation Code is

amended to read:

18802.3. (a) All owners and transferors of an interest in real property or a mobilehome shall file a return upon written request by the Franchise Tax Board which includes a social security number or other identification number prescribed by the Franchise Tax Board, identification of the property interest, and any other pertinent information about the interest requested by the Franchise Tax Board.

(b) Subdivision (a) shall not apply to any of the following:

(1) Property granted a homeowner's property tax exemption.

(2) Property which is not assessed by a California county assessor.

(c) Owners and transferors failing to file a return required by subdivision (a) on or before the due date of the return shall be subject to the penalty provided by Section 18681.1, unless the failure is due to reasonable cause and not due to willful neglect.

(d) Owners failing to file a return required by subdivision (a) within 60 days of the due date of the return shall be subject to the sanctions provided by Section 17299.9 disallowing certain expenses related to the property for which a return is required, unless it is shown that the failure is due to reasonable cause and not due to willful neglect.

(e) The Franchise Tax Board shall mail to each owner and transferor required to file a return pursuant to subdivision (a) a notice at least 60 days prior to the due date of the return. The notice shall be in a form and shall include any information which the Franchise Tax Board prescribes and shall advise owners and transferors of all of the following:

(1) The requirement to provide the Franchise Tax Board with a social security number or other identification number prescribed by the Franchise Tax Board.

(2) When the statement is due.

(3) A general description of the tax consequences of not providing the requested information.

(f) The social security number or other identification number furnished pursuant to this section shall be used exclusively for tax administration purposes. It is the intent of the Legislature in enacting this section to utilize the social security number or other identification number for the sole purpose of establishing the identification of individuals or entities affected by state tax laws.

SEC. 3. Section 18802.10 is added to the Revenue and Taxation Code, to read:

18802.10. (a) (1) If the transaction involves real property in California, any person required to file a return with the Secretary of the Treasury under Section 6045 (e) of the Internal Revenue Code shall send a copy of that return to the Franchise Tax Board at the time prescribed for filing the return with the Secretary of the Treasury.

(2) For transactions involving California real property which close during the calendar year 1988 but are reported to the Secretary

of the Treasury on a return filed after January 1, 1989, the person required to file the return shall file a copy with the Franchise Tax Board at the time prescribed for filing with the Secretary of the Treasury.

(b) The penalties provided under Section 18681.1 shall apply for failure to comply with subdivision (a).

(c) No later than January 1, 1994, the Franchise Tax Board shall submit a report to the Legislature including a cost benefit analysis, which evaluates the effectiveness of programs established by the Franchise Tax Board in implementing this section.

SEC. 4. Section 25401e is added to the Revenue and Taxation Code, to read:

25401e. For purposes of this part, the provisions of Section 18802.3 (relating to the reporting of real estate transactions in California) shall apply.

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## CHAPTER 1452

An act to amend Sections 21211 and 35100 of, and to add Sections 2400.5, 34501.10, 34506.4, and 35100.1 to, the Vehicle Code, relating to transportation, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 27, 1988. Filed with Secretary of State September 28, 1988.]

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

SECTION 1. Section 2400.5 is added to the Vehicle Code, to read:

2400.5. The commissioner shall enforce all laws regulating the operation of vehicles and the use of any portion of the San Tomas and the Montague Expressways in the County of Santa Clara, if requested by a city or the county with respect to the portion of the highway within that city or county and if a contract is entered into between the state and the city or the county or any combination thereof. The contract shall require to be paid to the commissioner an amount at least equal to the support provided by fines and forfeitures in the 1987–88 fiscal year.

Notwithstanding Section 1463 of the Penal Code, all fines and forfeitures arising out of a conviction or forfeiture of bail for a violation of any law regulating the operation of vehicles and the use of freeways, which violation occurred on any portion of the San Tomas and the Montague Expressways in the County of Santa Clara, shall be expended by the county or any city or local agency located therein to contract for law enforcement on those expressways.

SEC. 2. Section 21211 of the Vehicle Code is amended to read:

21211. (a) No person shall stop, stand, sit, or loiter upon any bikeway, as defined in subdivision (a) of Section 2373 of the Streets

and Highways Code, or any other public or private bicycle path or trail, if the stopping, standing, sitting, or loitering impedes or blocks the normal and reasonable movement of any bicyclist.

(b) No person shall place or park any bicycle, vehicle, or any other object upon any bikeway or bicycle path or trail, as specified in subdivision (a), which impedes or blocks the normal and reasonable movement of any bicyclist unless the placement or parking is necessary for safe operation or is otherwise in compliance with the law.

(c) This section does not apply to drivers or owners of utility or public utility vehicles as provided in Section 22512.

(d) This section does not apply to owners or drivers of vehicles who make brief stops while engaged in the delivery of newspapers to customers along the person's route.

SEC. 3. Section 34501.10 is added to the Vehicle Code, to read:

34501.10. The employer of any person required to keep log books, records of physical examination, and other driver records as may be required by the Department of the California Highway Patrol, the Department of Motor Vehicles, or the State Department of Health Services, shall register with the Department of the California Highway Patrol the address where the log books and other records are available for inspection.

SEC. 4. Section 34506.4 is added to the Vehicle Code, to read:

34506.4. Any member of the California Highway Patrol may remove from the highway and have placed in a storage facility, any vehicle described in subdivision (a) of Section 22406 which is in an unsafe condition. All towing and storage fees for a vehicle removed under this section shall be paid by the owner.

SEC. 5. Section 35100 of the Vehicle Code is amended to read:

35100. (a) The total outside width of any vehicle or its load shall not exceed 102 inches, except as otherwise provided in this chapter.

(b) Notwithstanding any other provision of law, safety devices which the Secretary of Transportation determines to be necessary for the safe and efficient operation of motor vehicles shall not be included in the calculation of width as specified in subdivision (a).

(c) Any city or county may, by ordinance, prohibit a combination of vehicles of a total width in excess of 96 inches upon highways under its jurisdiction. The ordinance shall not be effective until appropriate signs are erected indicating the streets affected.

SEC. 6. Section 35100.1 is added to the Vehicle Code, to read:

35100.1. For purposes of subdivision (a) of Section 35100, the following apply:

(a) The metric equivalent of 102 inches, 2.6 meters, meets the requirement of Section 35100.

(b) The width measurement of any vehicle with side walls shall be made from the outside wall of the two opposite sides of the vehicle.

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.

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 help resolve serious law enforcement problems regarding the operation of vehicles, the removal and storage of vehicles, the movement of bicycles, and the effective utilization of exclusive and preferential lanes for high-occupancy vehicles, in a timely manner, it is necessary that this act take effect immediately.

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## CHAPTER 1453

An act to amend Sections 13352, 13352.5, and 23161 of the Vehicle Code, relating to driving offenses.

[Approved by Governor September 27, 1988. Filed with Secretary of State September 28, 1988 ]

*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 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. 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, or if the offense occurred in a vehicle requiring a driver with a class 1 or class 2 driver's license or with a certificate specified in Section 12804.1. However, where (A) the driving privilege is required to be suspended by this paragraph due to the violation having occurred in vehicles requiring a class 1 or class 2 driver's license, and (B) the court grants probation and imposes the condition specified in subdivision (b) of Section 23161, the department shall issue the person a class 3 driver's license restricted in the same manner and

subject to the same conditions as specified in subdivision (e) of Section 13352.5. 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.

(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 as defined in Section 16430.

(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 as defined in Section 16430.

(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 as defined in Section 16430.

(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 as defined in Section 16430 and gives proof satisfactory to the department of successful completion of a one-year program or a 30-month program approved pursuant to Chapter 9 (commencing with Section 11837) of Part 2 of Division 10.5 of the Health and Safety Code. The court shall advise the person at the time of sentencing that completion of a one-year program or a 30-month program is required in order to become eligible for a California driver's license. 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 a one-year program or a 30-month program approved pursuant to Chapter 9 (commencing with Section 11837) 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 as defined in Section 16430 and gives proof satisfactory to the department of successful completion of a 30-month program approved pursuant to

Chapter 9 (commencing with Section 11837) of Part 2 of Division 10.5 of the Health and Safety Code. The court shall advise the person at the time of sentencing that completion of a 30-month program is required in order to become eligible for a California driver's license. 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 a 30-month program approved pursuant to Chapter 9 (commencing with Section 11837) 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 as defined in Section 16430 and gives proof satisfactory to the department of successful completion of a one-year program or a 30-month program approved pursuant to Chapter 9 (commencing with Section 11837) of Part 2 of Division 10.5 of the Health and Safety Code. The court shall advise the person at the time of sentencing that completion of a one-year program or a 30-month program is required in order to become eligible for a California driver's license. 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 a one-year program or a 30-month program approved pursuant to Chapter 9 (commencing with Section 11837) 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 as defined in Section 16430.

(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 the Dominion of 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 such 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 such a 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 as defined in Section 16430 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. 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. 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, or if the offense occurred in a vehicle requiring a driver with a class 1 or class 2 driver's license or with a certificate specified in Section 12804.1. However, where (A) the driving privilege is required to be suspended by this paragraph due to the violation having occurred in vehicles requiring a class 1 or class 2 driver's license, and (B) the court grants probation and imposes the condition specified in subdivision (b) of Section 23161, the department shall issue the person a class 3 driver's license restricted in the same manner and subject to the same conditions as specified in subdivision (e) of Section 13352.5. 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.

(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 as defined in Section 16430.

(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 as defined in Section 16430.

(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 as defined in Section 16430.

(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 as defined in Section 16430 and gives proof satisfactory to the department of successful completion of a one-year program or a 30-month program approved pursuant to Chapter 9 (commencing with Section 11837) of Part 2 of Division 10.5 of the Health and Safety Code. The court shall advise the person at the time of sentencing that completion of a one-year program or a 30-month program is required in order to become eligible for a California driver's license. 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 a one-year program or a 30-month program approved pursuant to Chapter 9 (commencing with Section 11837) 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 as defined in Section 16430 and gives proof satisfactory to the department of successful completion of a 30-month program approved pursuant to Chapter 9 (commencing with Section 11837) of Part 2 of Division 10.5 of the Health and Safety Code. The court shall advise the person at the time of sentencing that completion of a 30-month program is required in order to become eligible for a California driver's license. 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 a 30-month program approved pursuant to

Chapter 9 (commencing with Section 11837) 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 as defined in Section 16430 and gives proof satisfactory to the department of successful completion of a one-year program or a 30-month program approved pursuant to Chapter 9 (commencing with Section 11837) of Part 2 of Division 10.5 of the Health and Safety Code. The court shall advise the person at the time of sentencing that completion of a one-year program or a 30-month program is required in order to become eligible for a California driver's license. 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 a one-year program or a 30-month program approved pursuant to Chapter 9 (commencing with Section 11837) 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 as defined in Section 16430.

(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 the Dominion of 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 such 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 such a 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 as defined in Section 16430 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. 3. Section 13352 of the Vehicle Code is amended to read:

13352. (a) The department shall immediately suspend or revoke 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. 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, or if the offense occurred in a vehicle requiring a driver with a class 1 or class 2 driver's license or with a certificate specified in Section 12804.1. However, where (A) the driving privilege is required to be suspended by this paragraph due to the violation having occurred in vehicles requiring a class 1 or class 2 driver's license, and (B) the court grants probation and imposes the condition specified in subdivision (b) of Section 23161, the department shall issue the person a class 3 driver's license restricted in the same manner and subject to the same conditions as specified in subdivision (e) of Section 13352.5. 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.

(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 as defined in Section 16430.

(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 as defined in Section 16430.

(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 as defined in Section 16430.

(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 as defined in Section 16430 and gives proof satisfactory to the department of successful completion, subsequent to the most recent underlying conviction, of a one-year program or a 30-month program approved pursuant to Chapter 9 (commencing with Section 11837) of Part 2 of Division 10.5 of the Health and Safety Code. The court shall advise the person at the time of sentencing that completion of a one-year program or a 30-month program is required in order to become eligible for a California driver's license. 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 a one-year program or a 30-month program approved pursuant to Chapter 9 (commencing with Section 11837) 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 as defined in Section 16430 and gives proof satisfactory to the department of successful completion, subsequent to the most recent underlying conviction, of a 30-month program approved pursuant to Chapter 9 (commencing with Section 11837) of Part 2 of Division 10.5 of the Health and Safety Code. The court shall advise the person at the time of sentencing that completion of a 30-month program is required in order to become eligible for a California driver's license. 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 a 30-month program approved pursuant to Chapter 9 (commencing with Section 11837) 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 as defined in Section 16430 and gives proof satisfactory to the department of successful completion, subsequent to the most recent underlying conviction, of a one-year program or a 30-month program approved pursuant to Chapter 9 (commencing with Section 11837) of Part 2 of Division 10.5 of the Health and Safety Code. The court shall advise the person at the time of sentencing that completion of a one-year program or a 30-month program is required in order to become eligible for a California driver's license. 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 a one-year program or a 30-month program approved pursuant to Chapter 9 (commencing with Section 11837) 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 as defined in Section 16430.

(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 the Dominion of 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 such 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 such a 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 as defined in Section 16430 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. 4. 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. 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, or if the offense occurred in a vehicle requiring a driver with a class 1 or class 2 driver's license or with a certificate specified in Section 12804.1. However, where (A) the driving privilege is required to be suspended by this paragraph due to the violation having occurred in vehicles requiring a class 1 or class 2 driver's license, and (B) the court grants probation and imposes the condition specified in subdivision (b) of Section 23161, the department shall issue the person a class 3 driver's license restricted in the same manner and subject to the same conditions as specified in subdivision (e) of Section 13352.5. 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.

(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 as defined in Section 16430.

(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 as defined in Section 16430.

(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 as defined in Section 16430.

(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 as defined in Section 16430 and gives proof satisfactory to the department of successful completion, subsequent to the most recent underlying conviction, of a one-year program or a 30-month program approved pursuant to Chapter 9 (commencing with Section 11837) of Part 2 of Division 10.5 of the Health and Safety Code. The court shall advise the person at the time of sentencing that completion of a one-year program or a 30-month program is required in order to become eligible for a California driver's license. 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 a one-year program or a 30-month program approved pursuant to Chapter 9 (commencing with Section 11837) 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 as defined in Section 16430 and gives proof satisfactory to the department of successful completion, subsequent to the most recent underlying conviction, of a 30-month program approved pursuant to Chapter 9 (commencing with Section 11837) of Part 2 of Division 10.5 of the Health and Safety Code. The court shall advise the person at the time of sentencing that completion of a 30-month program is required in order to become eligible for a California driver's license. 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 a 30-month program approved pursuant to Chapter 9 (commencing with Section 11837) 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 as defined in Section 16430 and gives proof satisfactory to the department of

successful completion, subsequent to the most recent underlying conviction, of a one-year program or a 30-month program approved pursuant to Chapter 9 (commencing with Section 11837) of Part 2 of Division 10.5 of the Health and Safety Code. The court shall advise the person at the time of sentencing that completion of a one-year program or a 30-month program is required in order to become eligible for a California driver's license. 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 a one-year program or a 30-month program approved pursuant to Chapter 9 (commencing with Section 11837) 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 as defined in Section 16430.

(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 the Dominion of 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 such 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 such a 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 as defined in Section 16430 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. 5. Section 13352.5 of the Vehicle Code is amended to read:

13352.5. (a) Unless ordered to do so by the court upon a finding that the terms and conditions of probation were violated, the department shall not suspend, pursuant to paragraph (3) of subdivision (a) of Section 13352, but shall restrict the privilege of any person to operate a motor vehicle upon a conviction or finding that the person violated Section 23152, but only if the court has certified to the department that the court has granted probation to the person on conditions which include the conditions specified in subdivision (b) of Section 23166, the court has restricted the privilege to operate a motor vehicle as provided in that subdivision, and the person gives proof of ability to respond in damages as defined in Section 16430 to the department.

(b) Unless ordered to do so by the court upon a finding that the terms and conditions of probation were violated, the department shall not revoke, pursuant to paragraph (4) of subdivision (a) of Section 13352, but shall suspend for one year and, thereafter, restrict for two additional years, the privilege of any person to operate a motor vehicle upon a conviction or finding that the person violated Section 23153, but only if the court has certified to the department that the court has granted probation to the person on conditions which include the conditions specified in subdivision (b) of Section 23186, the court has ordered the department to suspend the privilege to operate a motor vehicle as provided in that subdivision, and the person gives proof of ability to respond in damages as defined in Section 16430 to the department.

(c) Subdivisions (a) and (b) do not apply to a person who has been referred or rereferred into a program approved pursuant to Chapter 9 (commencing with Section 11837) of Part 2 of Division 10.5 of the Health and Safety Code within four years after the person ceases his or her prior participation in such a program. The four-year period shall commence either on the date the person successfully completes the program or on the date on which the person's driving privilege was suspended or revoked by the department for failure to comply with the program's rules and regulations, whichever is later. With respect to any person convicted of a violation of Section 23152 or 23153 subsequent to the commencement of a four-year period, that person's eligibility to participate in the program again for purposes of this section shall be determined on the basis of the date on which the person is alleged to have committed that offense.

(d) The restriction of the driving privilege under subdivision (a) shall become effective 30 days from the date on which the person consented to participate in the program specified in subdivision (a), excluding any time of imprisonment ordered by the court, but only if the person presents evidence satisfactory to the department that he or she is participating in the program specified in subdivision (b) of Section 23166, gives proof of ability to respond in damages as

defined in Section 16430, and pays fees to the department of fifteen dollars ($15) upon application for the restricted license and twenty dollars ($20) upon completion of the treatment program or upon application for an unrestricted license, whichever is sooner. If the person fails to apply for a restricted license, fails to give proof of ability to respond in damages as defined in Section 16430, or if the person fails to show evidence of participation within 30 days, excluding the time of imprisonment ordered by the court, the department shall suspend the driving privilege of the person for the time prescribed in paragraph (3) of subdivision (a) of Section 13352.

(e) The restriction of the driving privilege under subdivision (b) shall become effective 30 days from the end of the period of suspension, but only if the person presents evidence satisfactory to the department that he or she is participating in the program specified in subdivision (b) of Section 23186, gives proof of ability to respond in damages as defined in Section 16430, and pays fees to the department of fifteen dollars ($15) upon application for the restricted license and twenty dollars ($20) upon completion of the treatment program or upon application for an unrestricted license, whichever is sooner. If the person fails to apply for a restricted license, fails to give proof of ability to respond in damages as defined in Section 16430, or if the person fails to show evidence of participation within 30 days from the end of the period of suspension, excluding any time of imprisonment ordered by the court to be served after the end of the period of suspension, the department shall revoke the driving privilege of the person for the time prescribed in paragraph (4) of subdivision (a) of Section 13352.

(f) The driving privilege restricted under subdivision (a) or (b) shall be limited to the hours for driving to and from the place of employment and during the course of employment and driving to and from activities required in an alcohol treatment program specified in subdivision (b) of Section 23166 or subdivision (b) of Section 23186. The department may set forth the times and days of restricted operation established by the court either on a special restricted license or upon the usual license form. Whenever the driving privilege is restricted under subdivision (a) or (b), proof of ability to respond in damages as defined in Section 16430 shall be maintained for three years. If the person maintains proof of ability to respond in damages as defined in Section 16430, the restriction shall continue in full force and effect until the person presents evidence satisfactory to the department that the person has completed the alcohol treatment program. Except as provided in Section 23168, in no event shall the length of the restriction for a person subject to subdivision (a) be less than the total time of restriction specified in subdivision (b) of Section 23166. In no event shall the total time of suspension and restriction for a person subject to subdivision (b) be less than the applicable period of revocation under paragraph (4) of subdivision (a) of Section 13352.

(g) Except as provided in this subdivision, the department shall

suspend or revoke the driving privilege for the time prescribed in paragraph (3) or (4) of subdivision (a) of Section 13352, 60 days from the date that the department notifies the person and the court of the intended action pursuant to subdivision (a) of Section 11837.1 of the Health and Safety Code, or the date ending the additional time ordered by the court under this subdivision, whichever is later. If the person presents evidence satisfactory to the department that the court of jurisdiction has consented to the person's reinstatement in the program and gives proof of ability to respond in damages as defined in Section 16430, the department shall continue in effect the restriction granted under subdivision (c), unless the person has previously been reinstated in the program on two or more occasions, in which case the department shall suspend or revoke the driving privilege for the time prescribed in paragraph (3) or (4) of subdivision (a) of Section 13352. The evidence shall be presented within 45 days of the notice from the department of the intended action or such additional time, not to exceed an additional 45 days, for the determination as is required, ordered, and transmitted to the department by the court, which additional time is not caused by any action or failure to act by the person.

(h) All abstracts of record showing a conviction that are forwarded to the department pursuant to Section 1803 shall state whether the court has granted probation to the person on conditions which include the conditions specified in subdivision (b) of Section 23166 or subdivision (b) of Section 23186 and state the date on which the person consented to participate in the program.

(i) The department, in cooperation with the State Department of Alcohol and Drug Programs, shall adopt such regulations as it deems necessary to implement this section.

(j) This section does not apply to persons whose offense occurred in a vehicle requiring a driver with a class 1 or class 2 driver's license or with a certificate specified in Section 12804.1.

SEC. 6. Section 23161 of the Vehicle Code is amended to read:

23161. (a) Except as provided in subdivision (f), if the court grants probation to any person punished under Section 23160, in addition to the provisions of Section 23206 and any other terms and conditions imposed by the court, the court shall impose as a condition of probation that the person be subject to one of the following:

(1) Be confined in the county jail for at least 48 hours but not more than six months and pay a fine of at least three hundred ninety dollars ($390) but not more than one thousand dollars ($1,000). The court may order the Department of Motor Vehicles to suspend the privilege to operate a motor vehicle pursuant to paragraph (1) of subdivision (a) of Section 13352 when this condition of probation is imposed.

(2) Pay a fine of at least three hundred ninety dollars ($390) but not more than one thousand dollars ($1,000) and, if the person gives proof of ability to respond in damages as defined in Section 16430 to the Department of Motor Vehicles, have the privilege to operate a

motor vehicle restricted for 90 days to necessary travel to and from that person's place of employment and to and from the program described in subdivision (b) and, if driving a motor vehicle is necessary to perform the duties of the person's employment, restricted to driving in that person's scope of employment. Whenever the driving privilege is restricted under this section, proof of ability to respond in damages as defined in Section 16430 shall be maintained for three years.

(b) In any county where the board of supervisors has approved such a program or programs, the court shall also impose as a condition of probation that the driver shall participate in, and successfully complete, an alcohol or drug education program, or both of these programs, in the driver's county of residence or employment, as designated by the court.

(c) Each county which has approved an alcohol or drug education program or programs shall make provision for persons who cannot afford the program fee, in order to enable those persons to participate. The county may require that the program report the failure of a person referred to the program to enroll in the program to the referring court.

(d) In order to assure effectiveness of the alcohol or drug education program, the county shall provide, as appropriate, services to ethnic minorities, women, youth, or any other group that has particular needs related to the program.

(e) (1) Any person required to successfully complete an alcohol or drug education program as a condition of probation shall enroll in the program and, except when enrollment is required in a program that is required to report failures to enroll to the court, shall furnish proof of the enrollment to the court within the period of time and in the manner specified by the court. The person shall also participate in and successfully complete the program and, except when the person is required to enroll in a program that is required to report unsuccessful program completion to the court, shall furnish proof of successful completion within the period of time and in the manner specified by the court. The court shall revoke the person's probation pursuant to Section 23207, except for good cause shown, for the failure to comply with this paragraph.

(2) An alcohol or drug education program shall report to the court within the period of time and in the manner specified by the court any person who fails to successfully complete the program.

(3) The court, in establishing the reporting requirements in this subdivision, shall consult with the county alcohol program administrator.

(f) Notwithstanding subdivision (a), if the offense occurred in a vehicle requiring a driver with a class 1 or class 2 driver's license or with a certificate issued pursuant to Section 12804.1, the court shall upon conviction order the department to suspend the driver's privilege pursuant to paragraph (1) of subdivision (a) of Section 13352.

SEC. 7. (a) Section 2 of this bill incorporates amendments to Section 13352 of the Vehicle Code proposed by both this bill and SB 1902. It shall only become operative if (1) both bills are enacted and become effective January 1, 1989, (2) each bill amends Section 13352 of the Vehicle Code, and (3) SB 2233 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after SB 1902, 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 13352 of the Vehicle Code proposed by both this bill and SB 2233. It shall only become operative if (1) both bills are enacted and become effective January 1, 1989, (2) each bill amends Section 13352 of the Vehicle Code, (3) SB 1902 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after SB 2233 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 13352 of the Vehicle Code proposed by this bill, SB 1902, and SB 2233. It shall only become operative if (1) all three bills are enacted and become effective January 1, 1989, (2) all three bills amend Section 13352 of the Vehicle Code, and (3) this bill is enacted after SB 1902 and SB 2233, in which case Sections 1, 2, and 3 of this bill shall not become operative.

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## CHAPTER 1454

An act to amend Sections 256, 257, and 258 of the Welfare and Institutions Code, relating to minors.

[Approved by Governor September 27, 1988. Filed with Secretary of State September 28, 1988 ]

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

SECTION 1. Section 256 of the Welfare and Institutions Code is amended to read:

256. Subject to the orders of the juvenile court, a traffic hearing officer may hear and dispose of (1) any case in which a minor under the age of 18 years as of the date of the alleged offense is charged with any violation of the Vehicle Code not declared to be a felony, (2) a violation of subdivision (m) of Section 602 of the Penal Code, (3) a violation of the Fish and Game Code not declared to be a felony, (4) a violation of any of the equipment and registration provisions of the Harbors and Navigation Code, (5) a violation of any provision of an ordinance of a city, county, or local agency relating to traffic offenses, (6) a violation of Section 126 or 27176 of the Streets and Highways Code, (7) a violation of any provision of an ordinance of a city, county, or local agency relating to evasion of fares on a public transportation system, as defined by Section 99211 of the Public

Utilities Code, (8) a violation of Section 640 or 640a of the Penal Code, or (9) a violation of the rules and regulations established pursuant to Sections 5003 and 5008 of the Public Resources Code.

SEC. 2. Section 257 of the Welfare and Institutions Code is amended to read:

257. With the consent of the minor, a hearing before a traffic hearing officer, or a hearing before a referee or a judge of the juvenile court, where the minor is charged with a traffic offense, may be conducted upon an exact legible copy of a written notice given pursuant to Article 2 (commencing with Section 40500) of Chapter 2 of Division 17 or Section 41103 of the Vehicle Code, or an exact legible copy of a written notice given pursuant to Chapter 5C (commencing with Section 853.6) of Title 3 of Part 2 of the Penal Code when the offense charged is a violation of the Fish and Game Code not declared to be a felony, a violation of subdivision (m) of Section 602 of the Penal Code, a violation of a provision of an ordinance of a city, county, or local agency relating to fare evasion on a public transportation system, as defined by Section 99211 of the Public Utilities Code, a violation of Section 640 or 640a of the Penal Code, or a violation of the rules and regulations established pursuant to Sections 5003 and 5008 of the Public Resources Code, in lieu of a petition as provided in Article 16 (commencing with Section 650).

SEC. 3. Section 258 of the Welfare and Institutions Code is amended to read:

258. (a) Upon a hearing conducted in accordance with Section 257, upon an admission by the minor of the commission of a violation charged, or upon a finding that the minor did in fact commit the violation, the judge, referee, or traffic hearing officer may do any of the following:

(1) Reprimand the minor and take no further action.

(2) Request the probation officer to commence a proceeding as provided in Article 16 (commencing with Section 650).

(3) Make any or all of the following orders:

(A) That the driving privileges of the minor be suspended or restricted as provided in the Vehicle Code or, notwithstanding Section 13203 of the Vehicle Code or any other provision of law, when the Vehicle Code does not provide for the suspension or restriction of driving privileges, that, in addition to any other order, the driving privileges of the minor be suspended or restricted for a period of not to exceed 30 days.

(B) That the minor attend traffic school over a period not to exceed 60 days.

(C) That the minor pay to the general fund of the county for each offense a sum, as specified in Article 1 (commencing with Section 42000) of Chapter 1 of Division 18 of the Vehicle Code, excluding Section 42000, but not to exceed two hundred fifty dollars ($250), and to the Assessment Fund an assessment in the amount provided in Section 1464 of the Penal Code. Any judge, referee, or traffic hearing officer may waive an assessment if the amount the minor is ordered

to pay to the general fund of the county is less than ten dollars ($10). A fine imposed on a minor pursuant to this section shall not exceed the maximum fine that could be imposed on an adult for the same offense.

(D) That the probation officer undertake a program of supervision of the minor for a period not to exceed six months.

(E) That the minor produce satisfactory evidence that the vehicle or its equipment has been made to conform with the requirements of the Vehicle Code pursuant to Section 40150 of the Vehicle Code.

(F) That the minor work in a city or special district park or recreational facility, county or regional park, or a state park for not to exceed 25 hours over a period not to exceed 30 days, during times other than his hours of school attendance or employment. When the order to work is made by a referee or a traffic hearing officer, it shall be approved by a judge of the juvenile court.

(b) The judge, referee, or traffic hearing officer shall retain jurisdiction of the case until all orders made under this section have been fully complied with.

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## CHAPTER 1455

An act to amend Sections 456, 4903, and 15105 of the Fish and Game Code, to amend Section 7 of Chapter 1065 of the Statutes of 1987, and to repeal Section 3 of Chapter 1411 of the Statutes of 1984, relating to fish and game.

[Approved by Governor September 27, 1988 Filed with Secretary of State September 28, 1988.]

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

SECTION 1. Section 456 of the Fish and Game Code is amended to read:

456. (a) The department shall biennially report to the Legislature and to the Fish and Game Commission on the progress that is being made toward the restoration and maintenance of California's deer herds. The first report shall be submitted on or before October 1, 1989. The report shall include program activities regarding deer habitat, particularly addressing problems dealing with identification and preservation of critical deer habitat areas; the amount of revenue derived from the sale of deer tags during the two previous fiscal years; a list of expenditures during the two previous fiscal years and proposed expenditures during the current fiscal year; and a report of general benefits accrued to the deer resources as a result of the program.

(b) The department shall not recommend to the commission any deer management program or any modification of the commission's deer hunting regulations submitted pursuant to Section 460 unless

the recommendations are consistent with adopted deer herd management plans.

SEC. 2. Section 4903 of the Fish and Game Code is amended to read:

4903. Revenue from the fees authorized by this chapter shall be deposited in the Fish and Game Preservation Fund and shall be expended solely for purposes of the bighorn sheep program. Notwithstanding Sections 711 and 13004, this revenue, upon appropriation by the Legislature, shall be available for expenditure by the department solely for programs and projects to benefit bighorn sheep and for the direct costs incurred in carrying out the department's bighorn sheep activities. These funds shall be used to augment, and not to replace, moneys appropriated from existing funds available to the department for the preservation, restoration, utilization, and management of bighorn sheep. The department shall maintain internal accountability necessary to ensure that all restrictions on the expenditure of these funds are met.

SEC. 3. Section 15105 of the Fish and Game Code is amended to read:

15105. (a) Notwithstanding Section 13001 or 13002, all moneys collected by the department pursuant to this division shall be deposited in the Fish and Game Preservation Fund and shall be expended solely on the department's aquaculture program pursuant to this division.

(b) Notwithstanding Section 13004, these moneys are available for appropriation by the Legislature in the annual Budget Act for purposes of this division.

(c) The department shall maintain internal accountability necessary to ensure that all restrictions on the expenditure of these funds are met.

SEC. 4. Section 3 of Chapter 1411 of the Statutes of 1984 is repealed.

SEC. 5. Section 7 of Chapter 1065 of the Statutes of 1987 is amended to read:

Sec. 7. In addition to the personnel positions authorized in the Budget Act of 1987, the department shall use moneys in the Fish and Game Preservation Fund which are collected for the aquaculture program pursuant to Section 15105 of the Fish and Game Code, upon appropriation of funds therefor, to provide one additional personnel year for the purposes of providing an aquaculture coordinator to assist in the implementation of Division 12 (commencing with Section 15000) of that code.

# CHAPTER 1456

An act to add Title 12 (commencing with Section 14200) to Part 4 of, and to repeal Sections 11114, 11114.1, 11114.2, and 11114.3 of, the Penal Code, relating to missing persons.

[Approved by Governor September 27, 1988. Filed with Secretary of State September 28, 1988.]

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

SECTION 1. Section 11114 of the Penal Code is repealed.

SEC. 2. Section 11114.1 of the Penal Code is repealed.

SEC. 3. Section 11114.2 of the Penal Code is repealed.

SEC. 4. Section 11114.3 of the Penal Code is repealed.

SEC. 5. Title 12 (commencing with Section 14200) is added to Part 4 of the Penal Code, to read:

## TITLE 12. VIOLENT CRIME INFORMATION CENTER

14200. The Attorney General shall establish and maintain the Violent Crime Information Center to assist in the identification and the apprehension of persons responsible for specific violent crimes and for the disappearance and exploitation of persons, particularly children and dependent adults. The center shall establish and maintain programs which include, but are not limited to, all of the following: developing violent offender profiles; assisting local law enforcement agencies and county district attorneys by providing investigative information on persons responsible for specific violent crimes and missing person cases; providing physical description information and photographs, if available, of missing persons to county district attorneys, nonprofit missing persons organizations, and schools; and providing statistics on missing dependent adults and on missing children, including, as may be applicable, family abductions, nonfamily abductions, voluntary missing, and lost children or lost dependent adults.

This section shall become operative on July 1, 1989.

14201. (a) The Attorney General shall establish within the center and shall maintain an online, automated computer system designed to effect an immediate law enforcement response to reports of missing persons. The Attorney General shall design the computer system, using any existing system, including the California Law Enforcement Telecommunications System, to include an active file of information concerning persons reported to it as missing and who have not been reported as found. The computer system shall also include a confidential historic data base. The Attorney General shall develop a system of cataloging missing person reports according to a variety of characteristics in order to facilitate locating particular categories of reports as needed.

(b) The Attorney General's active files described in subdivision (a) shall be made available to law enforcement agencies. The Attorney General shall provide to these agencies the name and personal description data of the missing person including, but not limited to, the person's date of birth, color of eyes and hair, sex, height, weight, and race, the time and date he or she was reported missing, the reporting agency, and any other data pertinent to the purpose of locating missing persons. However, the Attorney General shall not release the information if the reporting agency requests the Attorney General in writing not to release the information because it would impair a criminal investigation.

(c) The Attorney General shall distribute a missing children and dependent adults bulletin on a quarterly basis to local law enforcement agencies, district attorneys, and public schools. The Attorney General shall also make this information accessible to other parties involved in efforts to locate missing children and dependent adults and to those other persons as the Attorney General deems appropriate.

This section shall become operative on July 1, 1989.

14202. (a) The Attorney General shall establish and maintain within the center an investigative support unit and an automated violent crime method of operation system to facilitate the identification and apprehension of persons responsible for murder, kidnap, including parental abduction, false imprisonment, or sexual assault. This unit shall be responsible for identifying perpetrators of violent felonies collected from the center and analyzing and comparing data on missing persons in order to determine possible leads which could assist local law enforcement agencies. This unit shall only release information about active investigations by police and sheriffs' departments to local law enforcement agencies.

(b) The Attorney General shall make available to the investigative support unit files organized by category of offender or victim and shall seek information from other files as needed by the unit. This set of files may include, among others, the following:

(1) Missing or unidentified, deceased persons dental files filed pursuant to this title or Section 10254 of the Health and Safety Code.

(2) Child abuse reports filed pursuant to Section 11169.

(3) Sex offender registration files maintained pursuant to Section 290.

(4) State summary criminal history information maintained pursuant to Section 11105.

(5) Information obtained pursuant to the parent locator service maintained pursuant to Section 11478.5 of the Welfare and Institutions Code.

(6) Information funished to the Department of Justice pursuant to Section 11107.

(7) Other Attorney General's office files as requested by the investigative support unit.

This section shall become operative on July 1, 1989.

14203. (a) The online missing persons registry shall accept and generate complete information on a missing person.

(b) The information on a missing person shall be retrievable by any of the following:

(1) The person's name.

(2) The person's date of birth.

(3) The person's social security number.

(4) Whether a dental chart has been received, coded, and entered into the National Crime Information Center Missing Person System by the Attorney General.

(5) The person's physical description, including hair and eye color and body marks.

(6) The person's known associates.

(7) The person's last known location.

(8) The name or assumed name of the abductor, if applicable, other pertinent information relating to the abductor or the assumed abductor, or both.

(9) Any other information, as deemed appropriate by the Attorney General.

(c) The Attorney General, in consultation with local law enforcement agencies and other user groups, shall develop the form in which information shall be entered into the system.

(d) The Attorney General shall establish and maintain within the center a separate, confidential historic data base relating to missing children and dependent adults. The historic data base may be used only by the center for statistical and research purposes. The historic data base shall be set up to categorize cases relating to missing children and dependent adults by type. These types shall include the following: runaways, voluntary missing, lost, abduction involving movement of the victim in the commission of the crime or sexual exploitation of the victim, nonfamily abduction, family abduction, and any other categories as determined by the Attorney General. In addition, the data shall include the number of missing children and missing dependent adults in this state and the category of each case.

(e) The center may supply information about specific cases from the historic data base to a local police department, sheriff's department, or district attorney, only in connection with an investigation by the police department, sheriff's department, or district attorney of a missing person case or a sex crime as defined in subdivision (e) of Section 11105.3.

This section shall become operative on July 1, 1989.

14204. The Attorney General shall provide training on the services provided by the center to line personnel, supervisors, and investigators in the following fields: law enforcement, district attorneys' offices, California Youth Authority, the Department of Corrections, including the Parole and Community Services Unit, probation departments, court mediation services, and the judiciary. The Commission on Peace Officer Standards and Training shall provide for the presentation of training to peace officers which will

enable them to more efficiently handle, on the local level, the tracing of missing persons and victims of violent crimes.

This section shall become operative on July 1, 1989.

14205. (a) All local police and sheriffs' departments shall accept any report, including any telephonic report, of a missing person, including runaways, without delay and shall give priority to the handling of these reports over the handling of reports relating to crimes involving property. In cases where the person making a report of a missing person or runaway, contacts, including by telephone, the California Highway Patrol, the California Highway Patrol may take the report, and shall immediately advise the person making the report of the name and telephone number of the police or sheriff's department having jurisdiction of the residence address of the missing person and of the name and telephone number of the police or sheriff's department having jurisdiction of the place where the person was last seen. In cases of reports involving missing persons, including, but not limited to, runaways, the local police or sheriff's department shall immediately take the report and make an assessment of reasonable steps to be taken to locate the person. If the missing person is under 12 years of age, or there is evidence that the person is at risk, the department shall broadcast a "Be On the Look-Out" bulletin, without delay, within its jurisdiction.

(b) If the person reported missing is under 12 years of age, or if there is evidence that the person is at risk, the local police, sheriff's department, or the California Highway Patrol shall submit the report to the Attorney General's office within four hours after accepting the report. After the California Law Enforcement Telecommunications System online missing person registry becomes operational, the reports shall be submitted, within four hours after accepting the report, to the Attorney General's office through the use of the California Telecommunications System.

(c) In cases where the report is taken by a department, other than that of the city or county of residence of the missing person or runaway, the department, or division of the California Highway Patrol taking the report shall, without delay, and, in the case of children under 12 years of age or where there was evidence that the missing person was at risk, within no more than 24 hours, notify, and forward a copy of the report to the police or sheriff's department or departments having jurisdiction of the residence address of the missing person or runaway and of the place where the person was last seen. The report shall also be submitted by the department or division of the California Highway Patrol which took the report to the center.

14206. (a) (1) When any person makes a report of a missing person to a police department, sheriff's department, district attorney's office, California Highway Patrol, or other law enforcement agency, the report shall be given in person or by mail in a format acceptable to the Attorney General. That form shall include a statement authorizing the release of the dental or skeletal

X-rays, or both, of the person reported missing and authorizing the release of a recent photograph of a person reported missing who is under 18 years of age. Included with the form shall be instructions which state that if the person reported missing is still missing 30 days after the report is made, the release form signed by a member of the family or next of kin of the missing person shall be taken by the family member or next of kin to the dentist, physician and surgeon, or medical facility in order to obtain the release of the dental or skeletal X-rays, or both, of that person or may be taken by a peace officer, if others fail to take action, to secure those X-rays. Notwithstanding any other provision of law, dental or skeletal X-rays, or both, shall be released by the dentist, physician and surgeon, or medical facility to the person presenting the request and shall be submitted within 10 days by that person to the police or sheriff's department or other law enforcement agency having jurisdiction over the investigation. When the person reported missing has not been found within 30 days and no family or next of kin exists or can be located, the law enforcement agency may execute a written declaration, stating that an active investigation seeking the location of the missing person is being conducted, and that the dental or skeletal X-rays, or both, are necessary for the exclusive purpose of furthering the investigation. Notwithstanding any other provision of law, the written declaration, signed by a peace officer, is sufficient authority for the dentist, physician and surgeon, or medical facility to release the missing person's dental or skeletal X-rays, or both.

(2) The form provided under this subdivision shall also state that if the person reported missing is under 18 years of age, the completed form shall be taken to the dentist, physician and surgeon, or medical facility immediately when the law enforcement agency determines that the disappearance involves evidence that the person is at risk or when the law enforcement agency determines that the person missing is under 12 years of age and has been missing at least 14 days. The form shall further provide that the dental or skeletal X-rays, or both, and a recent photograph of the missing child shall be submitted immediately to the law enforcement agency. Whenever authorized under this subdivision to execute a written declaration to obtain the release of dental or skeletal X-rays, or both, is provided, the investigating law enforcement agency may obtain those X-rays when a person reported missing is under 18 years of age and the law enforcement agency determines that the disappearance involves evidence that the person is at risk. In each case, the law enforcement agency shall confer immediately with the coroner or medical examiners and shall submit its report including the dental or skeletal X-rays, or both, within 24 hours thereafter to the Attorney General. The Attorney General's office shall code and enter the dental or skeletal X-rays, or both, into the center.

(b) When a person reported missing has not been found within 45 days, the sheriff, chief of police, or other law enforcement agency conducting the investigation for the missing person shall confer with

the coroner or medical examiner prior to the preparation of a missing person report. The coroner or medical examiner shall cooperate with the law enforcement agency. After conferring with the coroner or medical examiner, the sheriff, chief of police, or other law enforcement agency initiating and conducting the investigation for the missing person shall submit a missing person report and the dental or skeletal X-rays, or both, and photograph received pursuant to subdivision (a) to the Attorney General's office in a format acceptable to the Attorney General.

Nothing in this section prohibits a parent or guardian of a child, reported to a law enforcement agency as missing, from voluntarily submitting fingerprints, and other documents, to the law enforcement agency accepting the report for inclusion in the report which is submitted to the Attorney General.

14207. (a) When a person reported missing has been found, the sheriff, chief of police, coroner or medical examiner, or the law enforcement agency locating the missing person shall immediately report that information to the Attorney General's office.

(b) When a child under 12 years of age or a missing person, where there was evidence that the person was at risk, is found, the report indicating that the person is found shall be made not later than 24 hours after the person is found. A report shall also be made to the law enforcement agency that made the initial missing person report. The Attorney General's office shall then notify the National Crime Information Center that the missing person has been found.

(c) In the event that a missing person is found alive or dead in less than 24 hours and the local police or sheriff's department has reason to believe that the person had been abducted, the department shall submit a report to the center in a format established by the Attorney General. In the event that a missing person has been found before he or she has been reported missing to the center, the information related to the incident shall be submitted to the center.

14208. (a) The Department of Justice shall operate a statewide, toll-free telephone hotline 24 hours per day, seven days per week to receive information regarding missing children and dependent adults and relay this information to the appropriate law enforcement authorities.

(b) The Department of Justice shall select up to six children per month from the missing children registry maintained pursuant to former Section 11114 or pursuant to the system maintained pursuant to Sections 14201 and 14202 and shall produce posters with photographs and information regarding these children, including the missing children hotline telephone number and reward information. The department shall make these posters available to parties as prescribed and as the department deems appropriate.

14209. (a) The Department of Justice shall provide appropriate local reporting agencies with a list of persons still listed as missing who are under 18 years of age, with an appropriate waiver form in order to assist the reporting agency in obtaining a photograph of

each of the missing children.

(b) Local reporting agencies shall attempt to obtain the most recent photograph available for persons still listed as missing and forward those photographs to the Department of Justice.

(c) The department shall include these photographs, as they become available, in the quarterly bulletins pursuant to subdivision (c) of Section 14201.

(d) State and local elected officials, agencies, departments, boards, and commissions may enclose in their mailings information regarding missing children or dependent adults obtainable from the Department of Justice or any organization that is recognized as a nonprofit, tax-exempt organization under state or federal law and that has an ongoing missing children program. Elected officials, agency secretaries, and directors of departments, boards, and commissions are urged to develop policies to enclose missing children or dependent adults information in mailings when it will not increase postage costs, and is otherwise deemed appropriate.

14210. (a) The Legislature finds and declares that it is the duty of all law enforcement agencies to immediately assist any person who is attempting to make a report of a missing person or runaway.

(b) The Department of the California Highway Patrol shall continue to implement the written policy, required to be developed and adopted pursuant to former Section 11114.3, for the coordination of each of its divisions with the police and sheriffs' departments located within each division in taking, transmitting, and investigating reports of missing persons, including runaways.

(c) The Department of the California Highway Patrol shall report to the Legislature on or before June 30, 1989, regarding the experience under, and the effects of, subdivision (b).

14213. (a) As used in this title, "missing person" includes, but is not limited to, a child who has been taken, detained, concealed, enticed away, or retained by a parent in violation of Chapter 4 (commencing with Section 277) of Title 9 of Part 1. It also includes any child who is missing voluntarily or involuntarily, or under circumstances not conforming to his or her ordinary habits or behavior and who may be in need of assistance.

(b) As used in this title, "evidence that the person is at risk" includes, but is not limited to, evidence or indications of any of the following:

(1) The person missing is the victim of a crime or foul play.

(2) The person missing is in need of medical attention.

(3) The person missing has no pattern of running away or disappearing.

(4) The person missing may be the victim of parental abduction.

(5) The person missing is mentally impaired.

(c) As used in this title, "child" is any person under the age of 18.

(d) As used in this title, "center" means the Violent Crime Information Center.

(e) As used in this title, "dependent adult" is any person

described in subdivision (e) of Section 368.

(f) As used in this title, "dental or medical records or X-rays," include all those records or X-rays which are in the possession of a dentist, physician and surgeon, or medical facility.

SEC. 6. It is the intent of the Legislature that the requirements of this act, as they relate to activities of the Department of Justice, should be mandatory only to the extent funds are appropriated for its purpose and that funding for this act shall be included in the annual Budget Act.

SEC. 7. 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 five hundred thousand dollars ($500,000), reimbursement shall be made from the State Mandates Claims Fund.

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## CHAPTER 1457

An act relating to energy resources.

[Approved by Governor September 27, 1988. Filed with Secretary of State September 28, 1988.]

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

SECTION 1. (a) The Legislature hereby finds and declares that establishing a high-voltage electricity transmission system capable of facilitating bulk power transactions for both firm and nonfirm energy demand, accommodating the development of alternative power supplies within the state, ensuring access to regions outside the state having surplus power available, and reliably and efficiently supplying existing and projected load growth, are vital to the future economic and social well-being of California.

(b) The Legislature further finds and declares that the construction of new high-voltage transmission lines within new rights-of-way may impose financial hardships and adverse environmental impacts on the state and its residents, so that it is in the interests of the state, through existing licensing processes, to accomplish all of the following:

(1) Encourage the use of existing rights-of-way by upgrading existing transmission facilities where technically and economically justifiable.

(2) When construction of new transmission lines is required, encourage expansion of existing rights-of-way, when technically and economically feasible.

(3) Provide for the creation of new rights-of-way when justified by environmental, technical, or economic reasons as determined by the appropriate licensing agency.

(4) Where there is a need to construct additional transmission capacity, seek agreement among all interested utilities on the efficient use of that capacity.

SEC. 2. The State Energy Resources Conservation and Development Commission, in consultation with the Public Utilities Commission, shall prepare and submit a report to the Legislature, on or before November 30, 1990, setting forth the locations of existing and projected electrical transmission rights-of-way used and maintained by electric utilities, including, but not limited to, rights-of-way used for interstate transmission and those used for intrastate transmission for the next 5, 12, and 20 years. The report shall be adopted at a public hearing. The purpose of the report is to facilitate effective long-term transmission line corridor planning. The findings and recommendations in the report shall be considered by the State Energy Resources Conservation and Development Commission in the development and adoption of the electricity report prepared pursuant to Section 25308 of the Public Resources Code. The report shall include, but not be limited to, all of the following:

(1) A study of whether the state should create transmission rights-of-way, with particular regard to a trans-Sierra corridor and additional rights-of-way for other new bulk and area transmission lines, excluding any consideration of distribution lines, and whether the state should operate or control these rights-of-way, if established.

(2) An analysis of the costs and the benefits of creating new transmission rights-of-way for electric utilities and for the state and counties. This analysis shall include, but not be limited to, land management issues, environmental impacts, and the projected assessment of the effectiveness and costs of state ownership and operation as compared to private ownership and operation.

(3) Recommendations for those policy options which would create transmission rights-of-way in a cost-effective and efficient manner and which would minimize harmful environmental and operational impacts.

(4) Recommendations for the effective planning and development of rights-of-way for transmission lines, excluding any consideration of distribution lines.

(5) An addendum affording an opportunity for the expression of dissenting views.

(b) The report shall also include, but not be limited to, all of the following:

(1) Base case projections, which shall include an outline of the reporting approach and key assumptions, including demand forecasts, fuel prices, and ratepayer impacts.

(2) Alternative scenarios, which shall include consideration of out-of-region energy assessments, out-of-state energy assessments,

new utility development, construction of additional resources in this state, and a consideration of energy transactions involving new transmission lines proposed for construction.

(3) Strategic engineering issues, including consideration of the need or desirability of sharing of transmission lines and facilities by privately owned and publicly owned electric utilities, flexibility, future transmission capacity, reliability and soundness of design, and routing of a proposed transmission line with respect to current and future land uses.

(4) Electric utility transmission plans, including consideration of any relevant reports prepared by an electric utility pursuant to General Order No. 131 of the Public Utilities Commission projected over a 10-year period, and information submitted by utilities pursuant to Sections 25300 and 25301 of the Public Resources Code.

(5) New technological breakthroughs which may make the transmission of electricity more efficient and reduce the need for new rights-of-way for transmission lines.

(6) An assessment of the extent to which existing transmission capacity will serve as a reliable alternative to new transmission lines without a requirement by the public agency having jurisdiction over the existing lines that access to those existing lines be provided under reasonable terms and conditions to public utilities requiring transmission services.

(c) In preparing the report required by this section, the State Energy Resources Conservation and Development Commission shall consult with, and seek advice from, the following agencies and organizations and from any additional parties which the commission deems necessary:

(1) The California Farm Bureau and other land use organizations.
(2) The County Supervisors Association of California.
(3) The California Municipal Utilities Association.
(4) Public utilities.
(5) The Sierra Club and other environmental groups.
(6) The United States Forest Service.
(7) The United States Bureau of Land Management.
(8) The Department of Fish and Game.
(9) The Department of Forestry and Fire Protection.
(10) Affected counties.
(11) The Western Interstate Energy Board.
(12) The Western Systems Coordinating Council.
(13) The Western Systems Power Pool.

(d) The State Energy Resources Conservation and Development Commission shall furnish a copy of the final draft report to every agency and organization listed in subdivision (c) and to any other interested party for written comment at least 30 days prior to adoption of the final report. The State Energy Resources Conservation and Development Commission shall afford the Public Utilities Commission an opportunity to have its comments published in the final report. The State Energy Resources Conservation and

Development Commission may permit additional comments to be included or summarized. The State Energy Resources Conservation and Development Commission shall hold a public hearing prior to adoption of the final report.

(e) The report required by this section shall exclude any consideration of state acquisition of existing rights-of-way.

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## CHAPTER 1458

An act to amend the heading of Chapter 2.5 (commencing with Section 17300) of Division 6 of, to amend Sections 17302, 17310, 17311, 17314.1, 17323, 17330, 17332, 17333, 17339, and 17348 of, to add Sections 17304, 17305, 17313.1, 17314.2, 17314.3, 17321.1, 17321.2, 17324, and 17409.1 to, to repeal and add Sections 17314, 17320, 17321, 17322, and 17340 of, and to repeal Sections 17331 and 17338 of, the Financial Code, relating to escrow, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 27, 1988 Filed with Secretary of State September 28, 1988.]

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

SECTION 1. The heading of Chapter 2.5 (commencing with Section 17300) of Division 6 of the Financial Code is amended to read:

### CHAPTER 2.5. ESCROW AGENTS' FIDELITY CORPORATION

SEC. 1.5. Section 17302 of the Financial Code is amended to read:

17302. "Trust obligation" means:

(a) All money and property deposited with a member in an escrow or joint control transaction.

(b) All money and property deposited with a member to be held in trust pursuant to a federal or state statute or requirements of a governmental agency.

(c) Checks which have not been paid by the drawee's bank drawn by the escrow agent on its trust or escrow account.

SEC. 2. Section 17304 is added to the Financial Code, to read:

17304. "Loss," within the meaning of this chapter, means the loss of trust obligations held by a member as a result of the fraudulent or dishonest abstraction, misappropriation, or embezzlement of trust obligations by an officer, director, trustee, stockholder, manager, or employee of a member.

SEC. 2.5. Section 17305 is added to the Financial Code, to read:

17305. "Monthly Average Escrow Liability," within the meaning of this chapter, means the average escrow liability for the preceding 12-month period as reported in the most recent report made by the

member to the commissioner pursuant to Section 17348.

SEC. 3. Section 17310 of the Financial Code is amended to read:

17310. (a) It shall be the purpose of Fidelity Corporation to indemnify a member against loss, subject to the limitations set forth in this chapter.

(b) Fidelity Corporation shall not be liable for any consequential damages sustained by a member, or by any other person, nor for any punitive damages whatsoever.

(c) The indemnification shall be provided by any of the following:

(1) A fund established by Fidelity Corporation pursuant to Section 17320.

(2) A fidelity bond or insurance policy to be approved by the commissioner.

(3) A combination of paragraphs (1) and (2).

SEC. 4. Section 17311 of the Financial Code is amended to read:

17311. (a) Persons licensed pursuant to this division 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 Escrow Agents' Fidelity Corporation.

(b) The State of California, the Department of Corporations, or any officer, agent, or employee of either shall not be liable in any way for the conduct of Fidelity Corporation, its directors, officers, agents, employees, or members.

SEC. 5. Section 17313.1 is added to the Financial Code, to read:

17313.1. The fiscal year of Fidelity Corporation shall commence on July 1 of each year.

SEC. 6. Section 17314 of the Financial Code is repealed.

SEC. 7. Section 17314 is added to the Financial Code, to read:

17314. (a) Fidelity Corporation shall pay a member for loss of trust obligations subject to the limitations set forth in this chapter. Fidelity Corporation shall pay or deny the claim within 90 days of receipt of the proof of loss filed by a member, or a member's successor in interest.

(b) Coverage shall be provided to members in accordance with the following schedule:

| MONTHLY AVERAGE ESCROW LIABILITY PER LOCATION | COVERAGE |
|---|---|
| $ 0–$ 1,000,000 | $1,000,000 |
| over $1,000,000–$ 3,000,000 | $2,000,000 |
| over $3,000,000–$ 5,000,000 | $3,000,000 |
| over $5,000,000–$ 7,500,000 | $4,000,000 |
| over $7,500,000–$10,000,000 | $5,000,000 |

The minimum coverage for each licensed location shall be one million dollars ($1,000,000).

(c) A member shall maintain minimum coverage in accordance with the schedule in subdivision (b) and shall monitor its escrow

liability monthly. An increase in escrow liability above the monthly average escrow liability coverage as provided for in subdivision (b) shall be reported immediately to Fidelity Corporation. Upon receipt of this report, Fidelity Corporation shall provide immediately, and shall bill and collect immediately pursuant to Section 17231, an amount necessary to provide for the increased monthly average escrow coverage.

(d) Any member with a licensed location or locations with a monthly average escrow liability greater than ten million dollars ($10,000,000) shall obtain a bond from a corporate surety which is an admitted insurer in the State of California insuring the balance of trust funds not covered by Fidelity Corporation, in a ratio of one dollar of coverage for every three dollars of trust obligations not covered by Fidelity Corporation. The Fidelity Corporation shall have the authority to obtain the excess coverage bond. The cost of the bond shall be shared pro rata by those members included in the coverage.

(e) If a member establishes, to the satisfaction of the commissioner, that a bond is not available or is impracticable under subdivision (d), then, at the member's election, either:

(1) The member shall place average trust obligations in excess of ten million dollars ($10,000,000) in a restricted escrow trust account. Each transfer or release of the funds to be made by specific resolution of the member's board of directors and the signature of a neutral third party and written approval of Fidelity Corporation; or

(2) The licensed location of the member with average trust balances in excess of ten million dollars ($10,000,000) shall be subject to examinations to be conducted at a frequency as deemed appropriate and necessary by the commissioner or Fidelity Corporation, but not less frequently than once a year.

(f) Any member subject to subdivision (e) shall within 10 business days after the effective date of this section notify Fidelity Corporation of its election. A member who subsequently becomes subject to subdivision (e) shall within a like period of time notify Fidelity Corporation of its election. Fidelity Corporation shall also be notified of any change of election in a like period of time. Fidelity Corporation shall notify the commissioner within 10 business days of receipt of any notice under this subdivision of the elections made. All notices under this subdivision shall be in writing.

SEC. 8. Section 17314.1 of the Financial Code is amended to read:

17314.1. Notwithstanding any other provision of this article, Fidelity Corporation shall not be obligated to pay any claim made by a member unless the claim would, except for the dollar amount thereof, be a valid claim under the bond as prescribed by Section 17203.1. The protection to members provided by Fidelity Corporation and by the fidelity bond or insurance policy, if any, shall therefore be deemed to be coextensive except as to the dollar amounts as set forth in Section 17314. All defenses available to the insurer under the fidelity bond or insurance policy, if any, on any

claim shall also be a defense to Fidelity Corporation on any claim brought against the corporation. No person other than a member, or the member's successor in interest, who shall be the commissioner, a conservator, receiver, or trustee as designated by a court of competent jurisdiction, is entitled to assert a claim against Fidelity Corporation for losses covered under this article.

SEC. 9. Section 17314.2 is added to the Financial Code, to read:

17314.2. Claims filed prior to the effective date of this chapter shall be governed by the provisions in effect when the loss occurred.

SEC. 10. Section 17314.3 is added to the Financial Code, to read:

17314.3. (a) A deductible shall apply to each loss suffered by a member in the amount of five thousand dollars ($5,000), plus 5 percent of the amount by which the loss exceeds five thousand dollars ($5,000). If a member with more than one licensed location suffers a covered loss at more than one location, the deductible shall apply to each location separately in proportion to the amount of the loss suffered at each such licensed location.

(b) Fidelity Corporation shall pay the full amount of any member's loss to the member or the member's successor in interest. The member shall be obligated to pay to Fidelity Corporation the amount of the member's deductible after payment in full of the loss by Fidelity Corporation.

(c) In the event a license is surrendered, suspended, or revoked prior to payment in full by the member of all or any portion of the deductible, the member shall nevertheless be liable to Fidelity Corporation for the amount of the deductible. If the license of the member is surrendered, suspended, or revoked prior to payment in full of the deductible, Fidelity Corporation shall have priority over all other claimants, except the State of California and any conservator or receiver of the member's estate, against the assets of the licensee, including the bond required under Section 17202.

(d) Nothing in this section shall be construed to give any person or entity not (1) a member of Fidelity Corporation or (2) a successor in interest of a member any right of action or any right to make a claim directly against Fidelity Corporation, its officers, directors, agents, or employees.

(e) If a member fails to pay the deductible within the time set forth in the bylaws of Fidelity Corporation, Fidelity Corporation may bring an action at law or in equity against the member to recover the amount of the deductible.

SEC. 11. Section 17320 of the Financial Code is repealed.

SEC. 12. Section 17320 is added to the Financial Code, to read:

17320. Fidelity Corporation shall establish and maintain the following funds for payment of claims and for payment of costs of administration: the membership fund, the operations fund, and the fidelity fund.

(a) Membership Fund. An applicant or a licensee shall, at the time an application is filed for a license, pay to Fidelity Corporation a membership fee of three thousand dollars ($3,000) for each location

for which a license is applied. If the application is denied, withdrawn, or abandoned, Fidelity Corporation may retain two hundred dollars ($200) from the membership fee to cover costs of administration.

The membership fund shall be reserved for payment of claims which exceed the fidelity fund balance and for payment of extraordinary operational costs.

Any member who, on the effective date of this section, has an account balance which exceeds the three thousand dollars ($3,000) membership fee times the number of its licensed locations shall be credited in a special reserve account for the excess amount. This balance shall be credited against future assessments. Any member whose account balance is less than three thousand dollars ($3,000) times the number of its licensed locations shall, on or before December 1, 1988, pay to Fidelity Corporation an amount sufficient to allow the member's account to be maintained at three thousand dollars ($3,000) times the number of licensed locations. Fidelity Corporation shall provide each member with an accounting of the amounts being reserved for the members' membership account and amounts being held as a special reserve.

The membership fee, less any unpaid assessments and related costs, shall be refunded to the member in accordance with Fidelity Corporation's bylaws not less than 30 months and no more than 36 months after the effective date of surrender of a license.

(b) Operations Fund. Fidelity 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 and premiums paid for excess coverage bonding. The amount of the assessment shall be 150 percent of the budgetary projection. In succeeding years, the assessment shall be adjusted by adding the prior year's deficit or deducting unused surplus from the prior year.

(c) Fidelity Fund. Fidelity Corporation shall establish a fidelity fund for the payment of claims and for the payment of the premium for the fidelity bond or insurance policy, if any. All claims shall be paid from the fidelity fund, provided that, to the extent that the fidelity fund balance is not sufficient to pay claims, the claim shall be paid from the membership fund by charging each member's membership account a pro rata share of the excess.

(d) All interest earned on the membership fund and the operations fund shall be credited to the fidelity fund.

SEC. 13. Section 17321 of the Financial Code is repealed.

SEC. 14. Section 17321 is added to the Financial Code, to read:

17321. Fidelity Corporation shall bill and collect from each member an annual premium which in the aggregate shall consist of assessments for the operations fund and the fidelity fund.

(a) Operations Fund. The annual assessment for the operations fund shall be assessed no later than October 1 of each year for the current fiscal year in accordance with subdivision (b) of Section 17320. The assessment shall include:

(1) All costs and expenses of administration as budgeted by the board of directors for the next fiscal year.

(2) Any expenses actually incurred in the preceding fiscal year which exceeded the budgeted costs of expenses and administration except for expenses recovered pursuant to subdivision (a) of Section 17321.1.

Each member's assessment shall be determined pro rata based upon the ratio of each member's licensed locations to the total licensed locations of all members as of the preceding July 31.

(b) Fidelity Fund. The annual assessment for the fidelity fund shall be assessed no later than May 1. The assessment shall be calculated as follows:

(1) If the membership fund and fidelity fund in the aggregate equal an amount less than five million dollars ($5,000,000), then the assessment shall be the greater of: (A) one million dollars ($1,000,000); or (B) the sum of (i) the greater of an amount necessary to bring the membership fund and fidelity fund in the aggregate up to five million dollars ($5,000,000) or the total of all claims paid during the preceding fiscal year (except to the extent of any special assessment made pursuant to subdivision (b) of Section 17321.1) plus (ii) the greater of four hundred thousand dollars ($400,000) or 0.045 percent of the total average trust obligations of all members as reflected in the most recent report required by Section 17348.

(2) If the membership fund and fidelity fund in the aggregate equal an amount that is at least five million dollars ($5,000,000) but less than 1 percent of the total average trust obligations for all members as reflected in the most recent report required by Section 17348 or the fidelity fund equals an amount less than five million dollars ($5,000,000), then the assessment shall be: (A) an amount equal to the total of all claims paid during the preceding fiscal year (except to the extent of any special assessment made pursuant to subdivision (b) of Section 17321.1); and (B) an amount which is the greater of four hundred thousand dollars ($400,000) or 0.045 percent of the total average trust obligations of all members as reflected in the most recent report required by Section 17348.

(3) If the membership fund and fidelity fund in the aggregate equal 1 percent of the total average trust obligations of all members as reflected in the most recent report required by Section 17348 and the fidelity fund equals at least five million dollars ($5,000,000), then the assessment shall be an amount equal to the actuarial projection of losses for the forthcoming fiscal year.

Each member's fidelity fund assessment for paragraphs (1), (2), and (3) shall be the amount derived by multiplying the amount to be assessed by the ratio that each member's risk factors bear to the total of all members' risk factors.

A member's risk factors shall be computed in accordance with the following formula, except that the total factors of a member shall be reduced by one for each licensed branch location:

| Coverage per Licensed Location | Factors |
|---|---|
| $1,000,000 | 3 |
| $2,000,000 | 5 |
| $3,000,000 | 7 |
| $4,000,000 | 8 |
| $5,000,000 | 9 |

(c) Notwithstanding subdivision (b), the assessment for the fidelity fund for the fiscal year beginning July 1, 1989, shall be made immediately upon 90-day notice of cancellation of the fidelity bond or insurance policy permitted by paragraph (2) of subdivision (c) of Section 17310, but in no event later than 60 days prior to the date of cancellation.

SEC. 15. Section 17321.1 is added to the Financial Code, to read:

17321.1. Fidelity Corporation shall levy a special assessment against its members whenever:

(a) Deemed necessary by the board of directors in the event of any extraordinary expenses which would seriously deplete the resources of the operations fund; or

(b) A proof of loss has been submitted by a member which, if paid during that fiscal year, would reduce the membership fund by 10 percent or more.

SEC. 16. Section 17321.2 is added to the Financial Code, to read:

17321.2. Fidelity Corporation shall be entitled to collect late fees as specified in Fidelity Corporation's bylaws for any late payment of assessments under Section 17320, 17321, or 17321.1.

SEC. 17. Section 17322 of the Financial Code is repealed.

SEC. 18. Section 17322 is added to the Financial Code, to read:

17322. Fidelity Corporation shall report to the commissioner each levy of assessment within 10 business days after the levy.

SEC. 19. Section 17323 of the Financial Code is amended to read:

17323. (a) In the event any member fails to pay an assessment when due, Fidelity Corporation shall by written demand addressed to the member request the payment of the assessment within 30 days of the demand letter. If the member fails to pay an assessment, the commissioner may issue an order pursuant to subdivision (b).

(b) If a member fails to pay the assessment, or any applicable late fee, the commissioner may by order summarily suspend the license issued to the company. If after the order is made, a request for a hearing is filed in writing 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 license is suspended, a company shall not conduct business pursuant to this division, except as may be permitted by order of the commissioner. However, the suspension of a license shall not affect the powers of the commissioner as provided in this division.

(c) Fidelity Corporation may bring an action at law or in equity against the member to recover any assessment or fees.

(d) Fidelity Corporation may be awarded costs and reasonable attorney's fees if it prevails in any action against a member, or against a third party, except the commissioner, to enforce a claim against the bond or other security posted by the member pursuant to Section 17202.

SEC. 20. Section 17324 is added to the Financial Code, to read:

17324. Any reduction in the membership fund caused by payment of an extraordinary expense pursuant to subdivision (a) of Section 17320 or payment of claims pursuant to subdivision (c) of Section 17320 shall be replenished by the operations fund or the fidelity fund, as appropriate. The next assessment for the operations fund or the fidelity fund, as appropriate, shall include an amount necessary for that replenishment.

SEC. 21. Section 17330 of the Financial Code is amended to read:

17330. Any member or successor in interest who suffers a loss may file a claim with Fidelity Corporation for the amount of the loss.

SEC. 22. Section 17331 of the Financial Code is repealed.

SEC. 23. Section 17332 of the Financial Code is amended to read:

17332. When either Fidelity Corporation or the insurer providing the fidelity bond or insurance policy, if any, under Section 17310, or both, pay an obligation on behalf of a member, Fidelity Corporation and the insurer shall be subrogated to the rights, claims, and remedies of the member up to the amount paid by Fidelity Corporation and the insurer on behalf of the member. In any subrogation action filed by Fidelity Corporation, the provider of the fidelity bond or insurance policy if payment was made thereunder, or both, Fidelity Corporation shall have the first right to the proceeds of any judgment or settlement obtained against the subrogees, up to the amount actually paid on the claim by Fidelity Corporation, plus reasonable costs and attorney's fees if awarded as part of any judgment. Amounts recouped by Fidelity Corporation through subrogation, minus all costs, attorney's fees, and other administrative expenses incurred in obtaining that recovery, shall be credited to the fidelity fund.

SEC. 24. Section 17333 of the Financial Code is amended to read:

17333. The commissioner may forthwith take possession of the property and business of Fidelity Corporation and retain possession until Fidelity Corporation satisfies the commissioner that it will operate in conformity with this chapter whenever it appears to the commissioner that Fidelity Corporation has done any of the following:

(a) Violated its articles of incorporation or any law of this state.

(b) Invested its funds in violation of Section 17337.

(c) Not levied assessments as required by Sections 17320, 17321 and 17321.1.

(d) Has not brought and diligently prosecuted an action to enforce payment as required by Section 17323.

(e) Violated any section of this chapter.

(f) Neglected or refused to submit its books, papers, and affairs to the inspection of the commissioner.

During the time the commissioner has possession the commissioner shall perform the duties and carry out the obligations of Fidelity Corporation.

SEC. 25. Section 17338 of the Financial Code is repealed.

SEC. 26. Section 17339 of the Financial Code is amended to read:

17339. Prior to incurring any extraordinary or nonrecurring expense, Fidelity Corporation shall first obtain the written consent of the commissioner.

SEC. 27. Section 17340 of the Financial Code is repealed.

SEC. 28. Section 17340 is added to the Financial Code, to read:

17340. In the event the board of directors of Fidelity Corporation deem it necessary and prudent to raise additional moneys for payment of claims or expenses of administration, it may, with the commissioner's written consent, borrow money against its assets, including future assessments.

SEC. 29. Section 17348 of the Financial Code is amended to read:

17348. In order to permit Fidelity Corporation to fulfill its obligation under this chapter, the commissioner shall furnish a list of all persons licensed under this division as of December 31 of each year and a copy of an escrow liability schedule filed with the commissioner. Each member on or before February 15 shall furnish to the commissioner a schedule of its escrow liability for each of its licensed locations as of the last day of each month for the preceding 12 months which ended December 31. The schedule shall be in the form and contain such information as the commissioner may require.

SEC. 30. Section 17409.1 is added to the Financial Code, to read:

17409.1. Each person subject to this chapter shall maintain separate escrow trust accounts for each licensed location. Transfers between accounts are prohibited except by the actual writing of a check from one escrow to the other, and by depositing the check for the account of, and the writing of a receipt for the escrow to which the funds are being transferred. Each transfer shall be properly supported and documented in escrow files by inclusion of escrow instructions executed by the principals authorizing the transfer.

SEC. 31. 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 Escrow Agents' Fidelity Corporation was incorporated in 1983 and currently has more than 700 members operating at 900 locations. The purpose of Fidelity Corporation is to indemnify licensed escrow agents for the loss of trust obligations due to fraud or dishonesty by an escrow officer.

Recent increases in costs related to maintaining the fidelity bond coverage necessitate the immediate implementation of flexible and more cost-effective alternatives to provide fidelity bond coverage to

licensed escrow agents.

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## CHAPTER 1459

An act to add Section 1810.7 to the Vehicle Code, relating to the Department of Motor Vehicles.

[Approved by Governor September 27, 1988. Filed with Secretary of State September 28, 1988.]

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

SECTION 1. Section 1810.7 is added to the Vehicle Code, to read:

1810.7. (a) Except as provided in Sections 1806.5, 1808.2, 1808.4, 1808.5, and 1808.7, the department may, by special permit, authorize any person to access the department's electronic data base, as provided for in this section, for the purpose of obtaining vehicle registration information for commercial use.

(b) The department may limit the number of permits issued under this section, and may restrict, or establish priority for, access to its files as the department deems necessary to avoid disruption of its normal operations, or as the department deems is in the best interest of the public.

(c) The department may establish minimum volume levels, audit and security standards, and technological requirements, or any terms and conditions it deems necessary for the permits.

(d) As a condition of issuing a permit pursuant to this section, the department shall require each direct-access permittee to file a performance bond or other financial security acceptable to the department, in an amount the department deems appropriate.

(e) The department shall charge fees for direct-access service permits, and shall charge fees pursuant to Section 1811 for any information copied from the files.

(f) The department shall ensure that information provided pursuant to this section includes only the public portions of records.

(g) The director shall, on and after January 1, 1990, report annually to the Legislature on the implementation of this section. The report shall include the number and location of direct-access permittees, the volume and nature of direct-access inquiries, procedures the department has taken to ensure the security of its files, and the costs and revenues associated with the project.

(h) This section shall become operative on July 1, 1989.

SEC. 2. The Director of Motor Vehicles shall continue until July 1, 1989, the existing automated vehicle lienholder verification pilot program that is authorized by Item 2740-001-044 of the Budget Act of 1986 (Chapter 186, Statutes 1986).

## CHAPTER 1460

An act to add Section 22816.8 to the Government Code, relating to state employees.

[Approved by Governor September 27, 1988. Filed with Secretary of State September 28, 1988.]

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

SECTION 1. Section 22816.8 is added to the Government Code, to read:

22816.8. Any person who is an inactive member of the Legislators' Retirement System pursuant to Section 9355.2 and who has at least eight years of service credit may, upon assuming payment of all employee and employer contributions and an additional 2 percent thereof for the administrative cost incurred by the board in administering this section, enroll in the health benefits plan provided to members of the Legislators' Retirement System and, upon retirement shall thereafter be deemed an annuitant for purposes of this part, notwithstanding Sections 22754 and 22810.

Any person who, on January 1, 1989, is eligible to elect to enroll pursuant to this section shall exercise that election on or before April 30, 1989, and any person who after January 1, 1989, is for the first time eligible to elect to enroll pursuant to this section shall exercise that election within 120 days after separation from employment.

No person who enrolls pursuant to this section and subsequently terminates that enrollment may reenroll pursuant to this section.

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## CHAPTER 1461

An act to amend Sections 1240, 33050, 33052, 33112, 35015, 39645.5, 41020, 41320.1, 41852, 42100, 42290, 42301.1, 42634, 44680.08, 44951, 45028, 52012, 52182, 52185, 52321, 52335.25, 52462, 52501.5, 52852, and 54724 of, to add Sections 1626, 33011, 33052.3, and 41023 to, and to repeal Section 1620 of, the Education Code, relating to education.

[Approved by Governor September 27, 1988 Filed with Secretary of State September 28, 1988.]

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

SECTION 1. Section 1240 of the Education Code, as amended by Chapter 315 of the Statutes of 1988, is amended to read:

1240. The superintendent of schools of each county shall:

(a) Superintend the schools of his or her county.

(b) Visit and examine each school in his or her county at reasonable intervals to observe their operation and to learn of their

problems. He or she may annually present a report of the state of the schools in his or her county, and of his or her office, including, but not limited to, his or her observations while visiting the schools, to the board of education and the board of supervisors of his or her county.

(c) Distribute all laws, reports, circulars, instructions, and blanks that he or she may receive for the use of the school officers.

(d) Keep in his or her office the reports of the Superintendent of Public Instruction, and the Board of Governors of the California Community Colleges.

(e) Keep a record of his or her official acts, and of all the proceedings of the county board of education, including a record of the standing, in each study, of all applicants for certificates who have been examined, which shall be open to the inspection of any applicant or his or her authorized agent.

(f) Enforce the course of study.

(g) Enforce the use of state textbooks and of high school textbooks regularly adopted by the proper authority.

(h) Preserve carefully all reports of school officers and teachers.

(i) Deliver to his or her successor, at the close of his or her official term, all records, books, documents, and papers belonging to the office, taking a receipt for them, which shall be filed with the State Department of Education.

(j) Submit two reports during the fiscal year to the county board of education. The first report shall cover the financial and budgetary status of the county office of education for the period ending no earlier than October 31 nor later than December 31. The second report shall cover the period ending March 31. Both reports shall be reviewed by the county board of education and approved by the county superintendent no later than 45 days after the close of the period being reported. As part of each report, the superintendent shall certify in writing whether or not the county office of education is able to meet its financial obligations for the remainder of the fiscal year. The certifications shall be classified as positive, qualified, or negative, as prescribed by the Superintendent of Public Instruction, for the purposes of determining subsequent state agency actions pursuant to Section 1241.1. Copies of each report in which the superintendent is unable to certify unqualifiedly that these financial obligations will be met shall be sent to the Controller and the Superintendent of Public Instruction at the time it is submitted to the county board of education, together with a completed transmittal form provided by the Controller.

Each report shall specify outstanding obligations of the county office of education and significant budgetary and financial conditions known to exist at the time of certification by the superintendent. Each report shall be based upon the financial and budgetary reports normally submitted by county superintendents of schools as required by Section 1245 and other statutory provisions.

All reports and certifications required pursuant to this subdivision

shall be in a format or on forms prescribed by the Superintendent of Public Instruction. This subdivision does not preclude the submission of additional budgetary or financial reports by the superintendent to the county board of education or the Superintendent of Public Instruction.

(k) When so requested, act as agent for the purchase of supplies for the city and high school districts of his or her county.

(*l*) For purposes of Section 44421.5, report to the Commission on Teacher Credentialing the identity of any certificated person who knowingly and willfully reports false fiscal expenditure data relative to the conduct of any educational program. This requirement applies only if, in the course of his or her normal duties, the county superintendent of schools discovers information that gives him or her reasonable cause to believe that false fiscal expenditure data relative to the conduct of any educational program has been reported.

SEC. 2. Section 1620 of the Education Code is repealed.

SEC. 3. Section 1626 is added to the Education Code, to read:

1626. On or before the 20th day of September of each year the county superintendent of schools shall prepare and file with the Superintendent of Public Instruction an annual statement of all receipts and expenditures of the county office of education. The statement shall be in a format or on forms prescribed by the Superintendent of Public Instruction.

SEC. 4. Section 33011 is added to the Education Code, to read:

33011. Whenever by any law the board is authorized to appoint members to a board, commission, or other statutorily created body, the board may also appoint a nonvoting student member to that body. The student member shall receive actual and necessary expenses from the body to which he or she is appointed and shall be afforded an opportunity to express his or her preference on all matters voted upon by that body. The term of office of all student members appointed pursuant to this section shall be one year beginning on August 1. A person may serve only one term as a student member. The board shall determine the process for selecting student members appointed pursuant to this section by amendment to its bylaws.

SEC. 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) 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) The provisions specified pursuant to Section 52033.

(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, which 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. 6. Section 33052 of the Education Code is amended to read:

33052. (a) If formal action by the State Board of Education on a waiver request is not taken by the second regular meeting of the board following receipt of a complete and documented waiver request by the State Department of Education, the waiver shall be deemed approved for one year, commencing the first day of the following month.

(b) Notwithstanding subdivision (a), no provision of Article 5 (commencing with Section 39390) of Chapter 3 of Part 23 shall be waived except by formal action of the State Board of Education.

SEC. 7. Section 33052.3 is added to the Education Code, to read:

33052.3. For the purposes of improving the financial management and reporting practices of school districts and county offices of education, and developing and testing those practices prior to implementation, the Superintendent of Public Instruction may waive for up to three consecutive fiscal years the requirements of current law and the regulations that are in conflict with the proposed improvements. A waiver shall only be available to school districts and county offices of education that volunteer to develop and test the proposed improved financial management and reporting practices.

SEC. 8. Section 33112 of the Education Code is amended to read:

33112. The Superintendent of Public Instruction shall:

(a) Superintend the schools of this state.

(b) Prepare, have printed, and furnish to teachers and to all officers charged with the administration of the laws relating to the public schools the blank forms and books necessary to the discharge of their duties, including blank teachers' certificates to be used by county and city and county boards of education.

(c) Authenticate with his or her official seal all drafts or orders drawn by him or her, and all papers and writings issued from his or her office.

(d) Have bound, at the state bindery, all valuable school reports, journals, and documents in his or her office, or received by him or her.

(e) Deliver over, at the expiration of his or her term of office, on demand, to his or her successor, all property, books, documents, maps, records, reports, and other papers belonging to his or her office, or which may have been received by him or her for the use of his or her office.

(f) Designate and appoint, or terminate the designation and appointment of, any officer or employee of the department to have the powers and liabilities of a deputy, including designation pursuant to Section 7.9 of the Government Code, which appointment and termination of appointment shall be effective when filed in writing in the office of the Secretary of State.

SEC. 9. Section 35015 of the Education Code is amended to read:

35015. As prescribed in subdivision (g) of Section 35035, the governing board of each school district shall certify, within 45 days after the close of the period being reported, in writing whether or not the school district is able to meet its financial obligations for the

remainder of the fiscal year. These certifications shall be based upon the board's assessment of the district's probable cash within the county treasury and the district's probable unrestricted fund balances that will be available for meeting their obligations. The certifications shall be classified as positive, qualified, or negative certifications, as prescribed by the Superintendent of Public Instruction for the purposes of determining subsequent state agency actions pursuant to Section 35105.1. These certifications shall be based upon the financial and budgetary reports required by subdivision (g) of Section 35035 but may include additional financial information known by the governing board to exist at the time of each certification. A copy of each certification shall be filed with the county superintendent of schools. Copies of any certification in which the governing board is unable to certify unqualifiedly that these financial obligations will be met shall be sent to the Controller and the Superintendent of Public Instruction at the time of the certification, together with a completed transmittal form provided by the Controller. County superintendents shall comment within 75 days of the close of the reporting period on all school district certifications that are classified as qualified or negative pursuant to this section and send those comments to the Superintendent of Public Instruction and the Controller.

All reports and certifications required by this section shall be in a format or on forms prescribed by the Superintendent of Public Instruction.

SEC. 10. Section 39645.5 of the Education Code is amended to read:

39645.5. In addition to utilizing the procedures specified in Article 14 (commencing with Section 39520) of Chapter 3, any school district or any county board of education may, by direct sale or otherwise, sell to a purchaser any electronic data-processing equipment, other major items of equipment, or any relocatable building owned by, or to be owned by, the school district or county board, if the purchaser agrees to lease the equipment or building back to the school district or county for use by the school district or county following the sale.

The approval by the governing board of the school district or of the county superintendent of schools of the sale and leaseback shall be given only if the governing board of the school district or the county superintendent of schools finds, by resolution, that the equipment is data-processing equipment, another major item of equipment, or a relocatable building within the meaning of this section and that the sale and leaseback is the most economical means for providing the electronic data-processing equipment, other major items of equipment, or relocatable building to the school district or county. For purposes of determining the area of existing adequate school construction under the Leroy F. Greene State School Building Lease-Purchase Law of 1976, any portable relocatable classroom acquired under this section and used for classroom purposes shall be

considered owned by the district.

SEC. 11. Section 41020 of the Education Code is amended to read:

41020. It is the intent of the Legislature to encourage sound fiscal management practices among school districts for the most efficient and effective use of public funds for the education of children in California by strengthening fiscal accountability at the district, county, and state levels.

Not later than the first day of May of each fiscal year each county superintendent of schools shall provide for an audit of all funds under his or her jurisdiction and control and the governing board of each district shall either provide for an audit of the books and accounts of the district, including an audit of school district income and expenditures by source of funds, or make arrangements with the county superintendent of schools having jurisdiction over the district to provide for the auditing. In the event the governing board of a school district has not provided for an audit of the books and accounts of the district by April 1st, the county superintendent of schools having jurisdiction over the district shall provide for the audit.

Each audit shall include all funds of the district including the student body and cafeteria funds and accounts and any other funds under the control or jurisdiction of the district; funds of regional occupational centers and programs maintained by the county superintendent of schools, a school district, or pursuant to a joint powers agreement. Each audit shall also include an audit of attendance procedures.

The cost of the audits provided for by the county superintendent of schools shall be paid from the county school service fund and the county superintendent of schools shall transfer the pro rata share of the cost chargeable to each district from district funds.

The cost of the audit provided for by a governing board shall be paid from district funds. The audit of the funds under the jurisdiction and control of the county superintendent of schools shall be paid from the county school service fund.

The audits shall be made by a certified public accountant or a public accountant, licensed by the State Board of Accountancy.

The auditor's report shall include (1) a statement that the audit was conducted pursuant to standards and procedures developed in accordance with Chapter 3 (commencing with Section 14500) of Part 9 of Division 1 of Title 1 and (2) a summary of audit exceptions and management improvement recommendations.

Not later than December 15th, a report of each audit for the preceding fiscal year shall be filed with the county superintendent of schools of the county in which the district is located, the Department of Education, and the Controller. The Superintendent of Public Instruction shall make any adjustments necessary in future apportionments of all state funds, to correct any audit exceptions revealed by such audit reports.

Each county superintendent of schools shall be responsible for the correction of any audit exceptions revealed by audit reports issued

pursuant to this section which do not affect state funds and are not corrected by the Superintendent of Public Instruction when the audit exceptions affect any revenue and expenditures under his control or the control of any school district within his jurisdiction. The county superintendent of schools shall adjust the future local property tax requirements to correct audit exceptions relating to school district tax rates and tax revenues.

If a governing board or county superintendent of schools fails or is unable to make satisfactory arrangements for audit pursuant to this section, the Controller shall make arrangements for the audit and the cost of the audit shall be paid from school district funds or the county school service fund, as the case may be.

Audits of regional occupational centers and programs are subject to the provisions of this section.

Nothing in this section shall be considered as authorizing examination into or report on the curriculum used or provided for in any school district.

SEC. 12. Section 41023 is added to the Education Code, to read:

41023. (a) Any agency organized pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 of the Government Code, the parties of which consist solely of school districts and county offices of education, shall be subject to the same restrictions as are applicable to school districts and county offices of education, under that chapter, including the preparation of budget and financial statements required by Article 1 (commencing with Section 42100) and this article; the certifications required by Article 2 (commencing with Section 35010) of Chapter 1 of Part 21; the accounting and auditing requirements prescribed by Article 1 (commencing with Section 42100) and this article; and the expenditure and appropriation controls prescribed by Chapter 9 (commencing with Section 42600) of Part 24. This section shall not apply to joint powers agreements that are for the performance of the powers described in Section 39603.

(b) Each agency described in subdivision (a) shall annually report to their participating school districts and county superintendents of schools on forms prescribed by the Superintendent of Public Instruction.

SEC. 13. Section 41320.1 of the Education Code is amended to read:

41320.1. Acceptance by the school district of the apportionments made pursuant to Section 41320 shall constitute agreement by the district to all of the following conditions:

(a) The Superintendent of Public Instruction shall appoint a trustee who shall have recognized expertise in management and finance, and who shall be bonded. The expenses incurred by the trustee and the costs of the bonding shall be borne by the district. The superintendent shall establish the terms and conditions of the employment, including the remuneration of the trustee. The trustee shall serve at the pleasure of, and report directly to, the

superintendent until the loan called for by this section is repaid.

Notwithstanding any other provision of law, all reports submitted to the trustee shall be public records.

(b) The trustee appointed by the superintendent shall monitor and review the operation of the district. During the period of his or her service, the trustee may stay or rescind any action of the local district governing board that, in the judgment of the trustee, may affect the financial condition of the district. The trustee shall approve or reject all reports and other materials required from the district as a condition of receiving the apportionment. The superintendent, upon the recommendation of the trustee, may reduce any apportionment to the district in an amount up to two hundred dollars ($200) per day for each late or unacceptable report or other material required under Part 24 (commencing with Section 41000) of the Education Code, and shall report to the Legislature any failure of the district to comply with the requirements of this section.

(c) At the request of the Superintendent of Public Instruction, the Controller shall transfer to the State Department of Education, from any apportionment to which the district would otherwise have been entitled pursuant to Section 42238, the amount as is necessary to pay the expenses incurred by the trustee, the costs of the trustee's bonding, and any associated costs incurred by the county superintendent of schools.

(d) For the fiscal year in which the apportionments are disbursed and each year thereafter, the Controller, or his or her designee, shall cause an audit to be conducted of the books and accounts of the district, in lieu of the audit required by Section 41020. At the Controller's discretion, the audit may be conducted by the Controller, his or her designee, or an auditor selected by the district and approved by the Controller. The costs of these audits shall be borne by the district. These audits shall be required until the Controller determines, in consultation with the Superintendent of Public Instruction, that the district is financially solvent, but in no event earlier than one year following the implementation of the plan or later than the time the apportionment made is repaid, including interest.

(e) For the purposes of liability insurance for a negligent act or omission when acting within the scope of his or her appointment, the trustee appointed pursuant to this section shall be deemed to be an employee of the local educational agency to which he or she is assigned. This subdivision shall apply only to liability insurance contracts entered into on or after January 1, 1989.

SEC. 14. Section 41852 of the Education Code is amended to read:

41852. (a) Any school district or county superintendent of schools that receives a transportation apportionment in the 1984–85 fiscal year, or any fiscal year thereafter, shall establish a restricted home-to-school transportation account within its general fund. The district or county superintendent shall deposit in the restricted home-to-school transportation account all transportation

apportionments received pursuant to this article in any fiscal year and any other funds at the option of the district or county superintendent. Any funds remaining in the restricted home-to-school transportation account at the end of the fiscal year may remain in the restricted home-to-school transportation account for expenditure in subsequent fiscal years or may be transferred to the pupil transportation equipment fund.

(b) Any school district or county superintendent of schools may establish a pupil transportation equipment fund. The fund shall receive all state and local funds designated for acquisition, rehabilitation, or replacement of pupil transportation equipment. Funds deposited in the pupil transportation equipment fund shall be used exclusively for acquisition, rehabilitation and replacement of pupil transportation equipment, except as provided in Section 41853.

SEC. 15. Section 42100 of the Education Code is amended to read:

42100. On or before the 20th day of September of each year the governing board of each school district shall prepare an annual statement of all receipts and expenditures of the district for the preceding fiscal year and shall file the statement with the county superintendent of schools. On or before the 20th day of October, the county superintendent of schools shall verify the mathematical accuracy of the statement and shall transmit a copy to the Superintendent of Public Instruction.

SEC. 16. Section 42290 of the Education Code is amended to read:

42290. (a) Any school district or county office of education with an average daily attendance of less than 2,501 in any fiscal year may, in that fiscal year, apply to the State Department of Education for an apportionment for transportation equipment, as specified in Section 42291.

(b) The State Department of Education may adopt regulations regarding district or county office applications pursuant to this section.

SEC. 17. Section 42301.1 of the Education Code is amended to read:

42301.1. In allocating any funds for schoolbus replacement or reconditioning, the State Department of Education shall allocate funds for vehicles used in special education in not less than the proportion as the percentage of vehicles used compares to total schoolbuses in the state. The State Department of Education may adopt regulations to implement this section in an equitable manner.

School districts or county offices of education providing transportation services through a cooperative, consortium, or joint powers agreement, shall be eligible to participate by application from the member district.

The Division of State Special Schools of the State Department of Education shall have the same status as a school district for the purposes of this section.

SEC. 18. Section 42634 of the Education Code is amended to read:

42634. Each order drawn against the funds of a school district

shall be numbered and shall state: (a) the particular fund or funds of the district against which it is drawn, (b) the amount of the payment to be made from each fund, and (c) the rate of salary and the period of service of any employee of the district for whom an order is issued for payment of salary or wages.

If drawn for any purpose other than the payment of salaries or wages of school district employees, the order shall be accompanied by an itemized bill showing the separate items and the price of each. Notwithstanding that requirement, if the county superintendent of schools determines that including an itemized bill with the order is impractical under the system of payment utilized, the itemized bill showing the separate items and the price of each shall instead be retained by the school district and shall be available for audit as directed by the county auditor.

SEC. 19. Section 44680.08 of the Education Code is amended to read:

44680.08. The State Board of Education, in conjunction with the Superintendent of Public Instruction, may adopt rules and regulations necessary to implement this article.

SEC. 19.5. Section 44951 of the Education Code is amended to read:

44951. Unless a certificated employee holding a position requiring an administrative or supervisory credential is sent written notice deposited in the United States registered mail with postage prepaid and addressed to his or her last known address by March 15 that he or she may be released from his or her position for the following school year or unless the signature of the employee is obtained by March 15 on the written notice that he or she may be released from his or her position for the following year, he or she shall be continued in the position. The provisions of this section do not apply to a certificated employee who holds a written contract with an expiration date beyond the current school year, or to a certificated employee holding a position that is funded for less than a school year, or to a certificated employee assigned to an acting position whose continuing right to hold this position depends on being selected from an eligible list established for the position, or to the termination of employment pursuant to Section 44955. A school principal shall be notified by March 1 if the governing board determines on an individual basis that he or she may be released for the following school year.

SEC. 19.7. Section 45028 of the Education Code is amended to read:

45028. (a) Effective July 1, 1970, each person employed by a district in a position requiring certification qualifications, except a person employed in a position requiring administrative or supervisory credentials, shall be classified on the salary schedule on the basis of uniform allowance for years of training and years of experience. Employees shall not be placed in different classifications on the schedule, nor paid different salaries, solely on the basis of the

respective grade levels in which such employees serve.

In no case shall the governing board of a school district draw orders for the salary of any teacher in violation of this section, nor shall any superintendent draw any requisition for the salary of any teacher in violation thereof.

This section shall not apply to teachers of special day and evening classes in elementary schools, teachers of special classes for elementary pupils, teachers of special day and evening high school classes and substitute teachers.

(b) It is not a violation of the uniformity requirement of this section for a district, with the agreement of the exclusive representative of certificated employees, if any, to grant any employee hired after a locally specified date differential credit for prior years of experience or prior units of credit for purposes of initial placement on the district's salary schedule.

This subdivision is declaratory of existing law.

SEC. 20. Section 52012 of the Education Code is amended to read:

52012. A schoolsite council shall be established at each school that participates in the school improvement program authorized by this chapter. The council shall be composed of the principal and representatives of: teachers selected by teachers at the school; other school personnel selected by other school personnel at the school; parents of pupils attending the school selected by such parents; and, *in secondary schools, pupils selected by pupils attending the school.*

At the elementary level the council shall be constituted to ensure parity between (a) the principal, classroom teachers and other school personnel; and (b) parents or other community members selected by parents. In schools with fewer than three teachers, this requirement may be met by establishing a council that is composed of equal numbers of school staff and parents or other community members selected by parents.

At the secondary level the council shall be constituted to ensure parity between (a) the principal, classroom teachers and other school personnel and (b) equal numbers of parents or other community members selected by parents, and pupils.

At both the elementary and secondary levels, classroom teachers shall comprise the majority of persons represented under subdivision (a) of this section.

Existing schoolwide advisory groups or school support groups may be utilized as the schoolsite council if those groups conform to this section.

School districts that maintain kindergarten or any of grades 1 to 8, inclusive, and that maintain schools with fewer than 100 pupils each, and that share a common attendance area may establish a single schoolsite council for the common attendance area.

The term and method of selection and replacement of council members shall be specified in the school improvement plan developed pursuant to Section 52014.

The Superintendent of Public Instruction shall provide several

examples of selection and replacement procedures that may be considered by schoolsite councils.

SEC. 21. Section 52182 of the Education Code is amended to read:

52182. (a) The State Department of Education shall establish minimum standards and criteria for the State Bilingual Teacher Training Assistance Program, and shall conduct appropriate training programs, or provide for training services by allocation to existing state staff development resource centers, county offices of education, public or private four-year institutions of postsecondary education, bilingual programs consortia, or cooperatives formed among two or more of these groups.

(b) Allocations for training programs conducted under this article shall be primarily directed toward school districts with high concentrations of pupils of limited-English-proficiency and teachers on waiver under Section 52178.

(c) In awarding allocations pursuant to subdivision (a), the department shall adopt evaluative criteria demonstrating the agency's ability to provide appropriate training services. The adopted criteria shall include, but need not be limited to, all of the following:

(1) Demonstrated commitment to bilingual education and bilingual teacher training.

(2) Demonstrated capability to fully prepare candidates for bilingual certificates of competence in accordance with the criteria for assessment in language, methodology, and culture.

(3) The availability of bilingual education staff with demonstrated experience and knowledge of bilingual education training programs.

(4) Demonstrated management and supportive services necessary to efficiently and effectively meet the intent of this article.

(5) District matching funds or in-kind matching resources in support of teachers participating in training programs under this article.

(d) Agencies maintaining programs for the training of bilingual teachers on waiver shall have their programs approved for a period not to exceed three consecutive years, contingent upon all of the following:

(1) The availability of funds.

(2) The submission of acceptable plans and modifications thereof.

(3) An annual evaluation that demonstrates that participants have made significant progress toward passing competency requirements leading to bilingual teachers certification. Upon the successful completion of a three-year cycle, centers shall be eligible to reapply for continued funding.

SEC. 22. Section 52185 of the Education Code is amended to read:

52185. Agencies funded under Section 52182 to provide training services shall report annually to the Superintendent of Public Instruction the information required under Section 52184.

SEC. 23. Section 52321 of the Education Code is amended to read:

52321. (a) A regional occupational center or program

established and maintained by school districts or joint powers agencies pursuant to Section 52301 shall receive in annual operating funds from each of the participating school districts an amount per unit of average daily attendance equal to the revenue limit received by those districts for each unit of average daily attendance generated in the regional occupational center or program.

A regional occupational center or program established and maintained by a county superintendent of schools pursuant to Section 52301 shall receive funding pursuant to Section 2550. A county superintendent of schools shall report average daily attendance to the Superintendent of Public Instruction for that funding.

(b) Any regional occupational center or program is authorized to (1) budget and accumulate an amount necessary to meet the cash flow needs of the regional occupational center or program known as a general reserve, and (2) budget and accumulate amounts known as the designated fund balance and as the unappropriated fund balance; or, for regional occupational centers or programs established and maintained by school districts or joint powers agencies, to budget an amount necessary to meet long-term program needs of the regional occupational center or program known as capital outlay expenditures or equipment replacement. At the end of any given school year, subject to the exception provided in paragraph (2) of subdivision (c), the net ending balance may be distributed to any of the reserved accounts, provided that the combined total transferred does not exceed 15 percent of the previous year's expenditures.

(1) The general reserve, the designated fund balance, the unappropriated fund balance, and the capital outlay expenditures or equipment replacement reserved account shall be available for appropriation only after approval by a majority vote of the governing body of the regional occupational center or program.

(2) Funds of regional occupational centers or programs established and maintained by school districts or joint powers agencies shall be distributed to the capital outlay expenditures or equipment replacement reserve account only upon adoption by the governing board of a resolution specifying the general use to which each appropriation from the account would be put.

(c) (1) With the exception of the 1988–89 fiscal year, at the end of any given school year the combined net ending balances of the general reserve, the designated fund balance, and the unappropriated fund balance in excess of 15 percent of the previous fiscal year's expenditures shall be returned to the districts participating in the regional occupational center or program in proportion to the district's contribution to the regional occupational center or program. The county superintendent of schools shall reduce the revenue limit of the districts by an amount equal to the excess reserves which are required to be returned to the districts. Net ending balances in excess of 15 percent, except those funds

specifically set aside by the board and restricted to capital outlay expenditures or equipment replacement, in county-operated regional occupational centers or programs shall reduce the revenue limit of the county superintendent program by an amount equal to the excess reserves in that program. For the 1988–89 fiscal year only, the 1987–88 fiscal year net ending balance for the regional occupational center or program shall be carried forward to the 1988–89 fiscal year with no limit applied if the ending balance in excess of 15 percent of the amount expended in the prior year was the result of accrual policies of the California School Accounting Manual. This exception shall not apply to those districts for which the new financial reporting system became effective prior to the 1988–89 fiscal year.

(2) A regional occupational center or program established and maintained by school districts or joint powers agencies may accumulate over a period of two or more given school years, a net ending balance in the capital outlay expenditures or equipment replacement reserved account of more than 15 percent of the previous fiscal year's expenditures, under provisions of a resolution of the governing board pursuant to paragraph (2) of subdivision (b).

(d) With the exception of ending balances governed by provisions of Section 2558.5, funds placed in either the general reserve, the designated fund balance, the unappropriated fund balance, or the capital outlay or equipment replacement accounts, shall only be expended for regional occupational center or program educational purposes.

SEC. 23.5. Section 52335.25 of the Education Code is amended to read:

52335.25. For the 1988–89 fiscal year only, the Superintendent of Public Instruction shall calculate "annual units of funded average daily attendance for the prior fiscal year" for the purposes of Section 52335.2 for each ROC/P, as follows:

(a) (1) Calculate the actual funded average daily attendance in 1986–87.

(2) Calculate the sum of the base and allowed average daily attendance in 1986–87.

(3) Calculate the allowed growth average daily attendance for the 1987–88 fiscal year only.

(4) Calculate the actual funded average daily attendance in 1987–88.

(b) If the amount calculated for a ROC/P pursuant to paragraph (1) of subdivision (a) is less than or equal to the amount calculated pursuant to paragraph (2) of subdivision (a), subtract the amount in paragraph (1) of subdivision (a) from the amount in paragraph (2) of subdivision (a), multiply that result by the factor 0.5, and add that product to the amount in paragraph (1) of subdivision (a).

(c) If the amount calculated for a ROC/P pursuant to paragraph (1) of subdivision (a) is greater than the amount calculated pursuant to paragraph (2) of subdivision (a), subtract the amount in

paragraph (2) of subdivision (a) from the amount in paragraph (1) of subdivision (a), multiply that result by the factor 0.5, and add that product to the amount in paragraph (2) of subdivision (a).

(d) Add to the amounts computed in subdivisions (b) and (c), as appropriate for each ROC/P, the amount calculated pursuant to paragraph (3) of subdivision (a).

(e) For each ROC/P for which subdivision (b) is applicable, the "annual units of funded average daily attendance for the prior fiscal year" shall be the lesser of paragraph (4) of subdivision (a) or subdivision (d).

(f) For each ROC/P for which subdivision (c) is applicable, the "annual units of funded average daily attendance for the prior fiscal year" shall be subdivision (d).

(g) The Superintendent of Public Instruction shall calculate the number of units of average daily attendance funded in 1987–88 which are in excess of the statewide total number of "annual units of funded average daily attendance for the prior fiscal year" pursuant to subdivisions (e) and (f). These excess units of funded average daily attendance shall be allocated on a pro rata basis to ROC/Ps for which the amount in paragraph (4) of subdivision (a) exceeds the amount in subdivision (d).

These allocations shall increase a ROC/P's "annual units of funded average daily attendance for the prior fiscal year" as calculated pursuant to subdivision (e) or (f).

SEC. 24. Section 52462 of the Education Code is amended to read:

52462. The State Board of Education may, with the advice of the Superintendent of Public Instruction, adopt rules and regulations governing the distribution of funds provided for purposes of this article and shall adopt criteria for assessing whether school districts have met the requirements of Section 52461.

SEC. 25. Section 52501.5 of the Education Code is amended to read:

52501.5. (a) Except as provided in subdivision (b), no revenue derived from the average daily attendance of adult education programs shall be expended for other than adult education purposes, nor shall revenue derived from other average daily attendance be expended for adult education purposes.

(b) When a district's adult revenue limit as allowed by Section 43001 is composed of average daily attendance from both a regional occupational center or program and an adult education program, the adult revenue limit income may be allocated to each program in a proportion other than the amount of adult revenue limit per average daily attendance otherwise allocable thereto.

(c) Beginning with the 1976–77 fiscal year, any high school or unified school district may (1) budget and accumulate an amount necessary to meet the cash flow needs of the adult education program, known as a "general reserve," not to exceed 10 percent of the previous year's expenditures for the operation of the adult education program, and (2) budget and accumulate amounts known

as the designated fund balance and as the unappropriated fund balance. These amounts are intended to provide for unforeseen requirements and shall be available for appropriation only after approval by a two-thirds vote of the governing body, and limited to 5 percent of the previous fiscal year's expenditures for the operation of the adult education program.

With the exception of the 1988–89 fiscal year, net ending balances in excess of 15 percent of the amount expended in the prior year shall be deemed to be excessive regardless of the year accumulated. The county superintendent of schools shall subtract from the district's total revenue limit an amount equal to the excess reserves in the adult education fund. For the 1988–89 fiscal year only, the 1987–88 fiscal year net ending balance for the district adult education fund shall be carried forward to the 1988–89 fiscal year with no limit applied if the ending balance in excess of 15 percent of the amount expended in the prior year was the result of accrual policies of the California School Accounting Manual. The preceding sentence shall not apply to those districts for which the new financial reporting system became effective prior to the 1988–89 fiscal year.

SEC. 26. Section 52852 of the Education Code is amended to read:

52852. A schoolsite council shall be established at each school which participates in school-based program coordination. The council shall be composed of the principal and representatives of: teachers selected by teachers at the school; other school personnel selected by other school personnel at the school; parents of pupils attending the school selected by such parents; and, in secondary schools, pupils selected by pupils attending the school.

At the elementary level the council shall be constituted to ensure parity between (a) the principal, classroom teachers and other school personnel; and (b) parents or other community members selected by parents.

At the secondary level the council shall be constituted to ensure parity between (a) the principal, classroom teachers and other school personnel; and (b) equal numbers of parents, or other community members selected by parents, and pupils.

At both the elementary and secondary levels, classroom teachers shall comprise the majority of persons represented under category (a).

Existing schoolwide advisory groups or school support groups may be utilized as the schoolsite council if those groups conform to this section.

The Superintendent of Public Instruction shall provide several examples of selection and replacement procedures that may be considered by schoolsite councils.

An employee of a school who is also a parent or guardian of a pupil who attends a school other than the school of the parent's or guardian's employment, is not disqualified by virtue of this employment from serving as a parent representative on the schoolsite council established for the school that his or her child or

ward attends.

SEC. 27. Section 54724 of the Education Code is amended to read:

54724. A schoolsite council shall be established at each school that participates in motivation and maintenance programs. The council shall be composed of the principal and representatives of: teachers selected by teachers at the school; other school personnel selected by other school personnel at the school; parents of pupils attending the school selected by the parents; and, in secondary schools, pupils selected by pupils attending the school. Also, each school is encouraged to include representatives of the business community as members of the schoolsite council.

At the elementary level, the council shall be constituted to ensure parity between (a) the principal, classroom teachers and other school personnel; and (b) parents or other community members selected by parents.

At the secondary level, the council shall be constituted to ensure parity between (a) the principal, classroom teachers and other school personnel; and (b) equal numbers of parents, or other community members selected by parents, and pupils.

At both the elementary and secondary levels, classroom teachers shall comprise the majority of persons represented under category (a).

Existing schoolwide advisory groups or school support groups may be utilized as the schoolsite council if the groups conform to this section.

The Superintendent of Public Instruction shall provide several examples of selection and replacement procedures that may be considered by schoolsite councils.

SEC. 28. The term "revenue limit for the prior year," for the 1988–89 fiscal year only, for the purposes of Section 52335.2 of the Education Code, shall be an amount calculated by the Superintendent of Public Instruction as follows:

(a) Multiply the base average daily attendance in the 1987–88 fiscal year, not to exceed the "annual units of funded average daily attendance for the prior fiscal year" calculated pursuant to Section 52335.25, by the base revenue limit per unit of average daily attendance for the 1987–88 fiscal year.

(b) Multiply the difference between the base average daily attendance in the 1987–88 fiscal year and the "annual units of funded average daily attendance for the prior fiscal year" calculated pursuant to Section 52335.25, by the 1987–88 fiscal year statewide average revenue limit per unit of average daily attendance.

(c) Add the amounts calculated in subdivisions (a) and (b).

SEC. 29. By adding subdivision (f) to Section 33112 of the Education Code in Section 8 of this act, the Legislature does not intend to alter or in any way impact the authority of the State Personnel Board conferred by Article VII of the California Constitution and the State Civil Service Act (Pt. 2 (commencing with Sec. 18500), Div. 5, Title 2, Gov. C.). Specifically, the Legislature

does not intend to alter or in any way impact Section 18525, 19574, or 19583.1 of the Government Code. The Legislature only intends to conform the authority of the Superintendent of Public Instruction to that of the Treasurer found in Section 12302 of the Government Code and that of the Controller found in Section 12402 of the Government Code so that the Superintendent of Public Instruction shall have the authority to deputize in accordance with the definition of the term "deputy" as found in the case of Hubert v. Mendheim, 64 Cal. 213, 220.

SEC. 30. No requirement imposed pursuant to Section 1240, 35015, or 42100 of the Education Code, as those sections are amended by this act, and no requirement imposed, nor authority granted, pursuant to Section 1626, 33052, or 51747 of the Education Code, as those sections are added to the Education Code by this act, shall become effective prior to January 1, 1989. It is the intent of the Legislature that as of that date any requirement imposed, or authority granted, pursuant to this act be applicable for the entire 1988–89 fiscal year, notwithstanding the January 1, 1989, effective date of this act.

SEC. 31. (a) Notwithstanding any provision of law to the contrary, four of the public members appointed for full four-year terms to the Curriculum Development and Supplemental Materials Commission by the State Board of Education in 1988, pursuant to Section 33532 of the Education Code, as determined by the State Board of Education, shall each serve for a term of five years.

(b) This section is necessary in order that the appointment schedule for the 16 public members of the commission, including the appointees of the Governor, the Speaker of the Assembly, and the Senate Committee on Rules, will be aligned so that four terms expire each year commencing in 1990.

(c) In no event shall any of the commission members appointed by the State Board of Education whose terms expire in 1988 be eligible for reappointment. This subdivision is declaratory of existing law.

SEC. 32. 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 five hundred thousand dollars ($500,000), reimbursement shall be made from the State Mandates Claims Fund.

SEC. 33. No reimbursement is required by Section 18 of 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.

# CHAPTER 1462

An act to amend Sections 1240, 1621, 1623, 35014, 35035, 41020, 41020.2, 41320.1, 42127, 42129, 42601, and 42637 of, to amend and renumber Section 1241.1 of, to add Sections 1623.2, 1623.3, 1623.4, 1623.6, 33127, 33128, 33129, 33131, 33132, 33337, 41450, 41455, 42127.1, 42127.2, 42127.3, and 42127.4 to, and to add and repeal Chapter 3.8 (commencing with Section 44790) of Part 25 of, the Education Code, relating to education, and making an appropriation therefor.

[Approved by Governor September 27, 1988. Filed with Secretary of State September 28, 1988.]

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

SECTION 1. Section 1240 of the Education Code is amended to read:

1240. The superintendent of schools of each county shall:

(a) Superintend the schools of his or her county.

(b) Visit and examine each school in his or her county at reasonable intervals to observe their operation and to learn of their problems. He or she may annually present a report of the state of the schools in his or her county, and of his or her office, including, but not limited to, his or her observations while visiting the schools, to the board of education and the board of supervisors of his or her county.

(c) Distribute all laws, reports, circulars, instructions, and blanks that he or she may receive for the use of the school officers.

(d) Keep in his or her office the reports of the Superintendent of Public Instruction, and the Board of Governors of the California Community Colleges.

(e) Keep a record of his or her official acts, and of all the proceedings of the county board of education, including a record of the standing, in each study, of all applicants for certificates who have been examined, which shall be open to the inspection of any applicant or his or her authorized agent.

(f) Enforce the course of study.

(g) Enforce the use of state textbooks and of high school textbooks regularly adopted by the proper authority.

(h) Preserve carefully all reports of school officers and teachers.

(i) Deliver to his or her successor, at the close of his or her official term, all records, books, documents, and papers belonging to the office, taking a receipt for them, which shall be filed with the State Department of Education.

(j) Submit two reports during the fiscal year to the county board of education. The first report shall cover the financial and budgetary status of the county office of education for the period ending no earlier than October 31 nor later than December 31. The second report shall cover the period ending March 31. Both reports shall be

reviewed by the county board of education and approved by the county superintendent no later than 45 days after the close of the period being reported. As part of each report, the superintendent shall certify in writing whether or not the county office of education is able to meet its financial obligations for the remainder of the fiscal year. The certifications shall be classified as positive, qualified, or negative, as prescribed by the Superintendent of Public Instruction, for the purposes of determining subsequent state agency actions pursuant to Section 1240.1. Copies of each certification in which the superintendent is unable to certify unqualifiedly that these financial obligations will be met and the report containing that certification shall be sent to the Controller and the Superintendent of Public Instruction at the time it is submitted to the county board of education.

All reports and certifications required under this subdivision shall be in a format or on forms prescribed by the Superintendent of Public Instruction, and shall be based on standards and criteria for fiscal stability developed pursuant to Section 33127.

This subdivision does not preclude the submission of additional budgetary or financial reports by the superintendent to the county board of education or to the Superintendent of Public Instruction.

(k) When so requested, act as agent for the purchase of supplies for the city and high school districts of his or her county.

(*l*) For purposes of Section 44421.5, report to the Commission on Teacher Credentialing the identity of any certificated person who knowingly and willingly reports false fiscal expenditure data relative to the conduct of any educational program. This requirement applies only if, in the course of his or her normal duties, the county superintendent of schools discovers information that gives him or her reasonable cause to believe that false fiscal expenditure data relative to the conduct of any educational program has been reported.

SEC. 1.1. Section 1241.1 of the Education Code is amended and renumbered to read:

1240.1. Whenever a county superintendent of schools transmits to the Controller and the Superintendent of Public Instruction a qualified or negative certification as required by subdivision (j) of Section 1240, the State Department of Education, in cooperation with the Controller's office, shall review the certification and the attached report and any other pertinent information, and take the following actions or other actions as deemed appropriate:

(a) With respect to qualified certifications, direct the county superintendent to prepare alternative plans for resolving the identified fiscal problems.

(b) With respect to negative certifications, conduct an onsite review and direct the county superintendent to prepare alternative plans for resolving the identified fiscal problems.

SEC. 1.2. Section 1621 of the Education Code is amended to read:

1621. (a) On or before July 1 each year, the county board of education shall file with the Superintendent of Public Instruction a

single-fund tentative budget showing all the purposes for which the county school service fund will need money.

The budget may also contain a general reserve in that sum as the county board of education may deem sufficient to meet the cash requirements of the next succeeding fiscal year until adequate proceeds of the taxes levied or apportionment of state funds are available.

The budget may also contain a designated fund balance which may be designated for any specific purpose as determined by the county board of education. Those funds shall be available for appropriation by a majority vote of the members of the county board of education.

The budget may also contain an unappropriated fund balance which shall be available for appropriation by a majority vote of the members of the county board of education to cover expenditures that have not been provided for, that have been insufficiently provided for, or for unforeseen requirements as they may arise.

The single fund tentative budget shall include estimated cash balances, estimated apportionments from the State School Fund, and an estimate of revenues from sources other than taxes on the secured roll of the equalized assessment roll of the county.

(b) The Superintendent of Public Instruction shall review each tentative budget filed pursuant to subdivision (a). If the superintendent determines that the budget does not comply with the standards and criteria adopted pursuant to Section 33127, he or she shall return the budget, together with his or her comments, to the county board of education no later than 30 days after the date the budget was filed.

SEC. 1.3. Section 1623 of the Education Code is amended to read:

1623. (a) The county board of education shall hold a public hearing on the county school service fund budget. The public hearing shall be held any day on or before September 15, but at least three days following the availability of the proposed budget for public inspection. Notification of dates, times, and location, or locations at which the proposed budget may be inspected by the public shall be published at least once in a newspaper of general circulation published within the county. The notification shall be no earlier than August 1, nor later than August 31, but not less than 10 days prior to the date set for the hearing. The cost of publication shall be a proper and legal charge against the county school service fund and shall not exceed the rate fixed by the board of supervisors for official advertising. The published notice shall include the time, place, and purpose of the public hearing, and other information that may be determined by the county board of education, and shall state that any taxpayer directly affected by the county school service fund budget may appear before the county board of education and speak on the proposed budget or any item therein.

Following the public hearing, the final budget shall be adopted by the county board of education and filed with the Superintendent of Public Instruction, the board of supervisors, and the county auditor.

(b) On or before November 1, the Superintendent of Public Instruction shall approve or disapprove the county office budget on the basis of standards and criteria for fiscal stability developed pursuant to Section 33127.

(c) If, after examining the final adopted budget of a county office of education, it is the opinion of the Superintendent of Public Instruction that the budget does not comply with the standards and criteria established pursuant to Section 33127, he or she shall, by November 1, transmit to the county superintendent of schools, in writing, his or her recommendations and the reasons therefor.

(d) The county superintendent of schools and county board of education shall, by November 30, do the following:

(1) Review the recommendations of the Superintendent of Public Instruction at a regularly scheduled meeting of the county board of education.

(2) Respond to the recommendations of the Superintendent of Public Instruction. The response shall include the proposed actions to be taken, if any, as a result of the recommendations of the Superintendent of Public Instruction.

(e) The Superintendent of Public Instruction shall, no later than 10 working days after the receipt of the response required by paragraph (2) of subdivision (d), review the county superintendent's and county board of education's comments and either approve or disapprove the budget. If the Superintendent of Public Instruction disapproves the county office of education's budget, the Superintendent of Public Instruction shall call for the formation of a budget review committee pursuant to Section 1623.2.

SEC. 1.4. Section 1623.2 is added to the Education Code, to read:

1623.2. (a) Pursuant to subdivision (e) of Section 1623, upon the disapproval of a county office of education budget by the Superintendent of Public Instruction, the Superintendent of Public Instruction shall call for the formation of a budget review committee.

(b) The budget review committee shall be composed of three persons and shall be selected by the county superintendent and the county board of education solely from a list of candidates provided by the Superintendent of Public Instruction. The list of candidates shall be composed of persons that have expertise in the management of a school district or county office of education. Their experience shall include, but not be limited to, the fiscal and educational aspects of the management of a local educational agency.

(c) Members of the committee shall be reimbursed for their services and associated expenses while on offical business at rates established by the State Board of Education.

SEC. 1.5. Section 1623.3 is added to the Education Code, to read:

1623.3. (a) The county superintendent of schools and the county board of education shall, no later than 15 working days after the receipt of a candidate list from the Superintendent of Public Instruction pursuant to Section 1623.2, select and convene a review committee.

(b) The review committee shall, within 15 working days of being convened, review the proposed budget of the county office of education and the underlying fiscal policies of the county office of education and recommend to the Superintendent of Public Instruction, the county superintendent of schools, and the county board of education either of the following:

(1) Approval of the county office of education budget.

(2) An alternative budget that includes specific detailed recommendations for actions on, or changes to, fiscal policy necessary to achieve long-term fiscal stability, as defined by Section 33127.

(c) In the event the committee is unable to respond within 15 working days, the committee shall state the reasons why it was unable to respond within that time frame and establish a time definite and certain, to be approved by the Superintendent of Public Instruction, as to when their recommendations shall be forthcoming.

SEC. 1.6. Section 1623.4 is added to the Education Code, to read:

1623.4. (a) If the review committee established pursuant to Section 1623.2 recommends approval of the county office of education budget, the Superintendent of Public Instruction shall accept the recommendation of the review committee and approve the budget.

(b) If the review committee established pursuant to Section 1623.2 proposes an alternative budget that includes specific detailed recommendations for actions on, or changes to, fiscal policy necessary to achieve long-term fiscal stability, as defined by Section 33127, the review committee shall transmit to the county superintendent, in writing, the reasons for their recommendations. The county superintendent and the county board of education shall have 10 working days from the receipt of the recommendations to either adopt or appeal the review committee's recommendations at a public meeting.

(1) If the county office of education chooses to adopt the committee's recommendations, or if the board adopts alternative recommendations that would achieve the same fiscal results and that are accepted by the review committee, the Superintendent of Public Instruction shall accept the budget proposed by the review committee and approve the budget.

(2) If the county office of education chooses not to adopt the committee's recommendations, it may submit a written appeal of the recommendations to the Superintendent of Public Instruction no later than 10 working days after receiving the recommendations.

(c) No later than 15 working days after receiving the written appeal described in subdivision (b), the Superintendent of Public Instruction shall either:

(1) Approve the county office of education budget.

(2) Prepare an alternative budget that includes specific detailed recommendations for actions on, or changes to, fiscal policy necessary to achieve long-term fiscal stability, as defined by Section

33127. Upon the agreement of the review committee, the Superintendent of Public Instruction shall approve the alternative budget.

SEC. 1.7. Section 1623.6 is added to the Education Code, to read:

1623.6. Until the time the county office of education receives approval of its final budget, the county office of education shall continue to operate on the basis of the last budget adopted or revised by the county board of education.

SEC. 1.8. Section 33127 is added to the Education Code, to read:

33127. The Superintendent of Public Instruction, the Controller, and the Director of the Department of Finance shall develop, on or before March 1, 1989, standards and criteria to be reviewed and adopted by the State Board of Education, and to be used by local educational agencies in the development of annual budgets and the management of subsequent expenditures from that budget. During the development of the standards and criteria, the Superintendent of Public Instruction's Fiscal Management Advisory Committee composed of representatives from school districts, county offices of education, state agencies, the Legislature, and appropriate professional organizations, shall review and comment prior to the enactment of the standards and criteria. In addition, the standards and criteria shall be used to monitor the fiscal stability of local educational agencies as provided for in Sections 1240.1, 1240.2, 1621, 1623, 1623.2, 33131, 35014.3, 42127, and 42127.1.

SEC. 1.9. Section 33128 is added to the Education Code, to read:

33128. The standards and criteria to be adopted by the State Board of Education pursuant to Section 33127 shall include, but not be limited to, the following:

(a) Methods of projecting average daily attendance.

(b) Methods of projecting revenues.

(c) Maintenance of reserves.

(d) Uses of special fund accounting.

(e) Conformance with the California School Accounting Manual.

SEC. 1.10. Section 33129 is added to the Education Code, to read:

33129. Notwithstanding any provision of law to the contrary, beginning with the first fiscal year following the adoption by the State Board of Education of standards and criteria developed pursuant to Section 33127, local educational agencies shall use the standards and criteria in developing their budgets and managing their expenditures.

SEC. 1.11. Section 33131 is added to the Education Code, to read:

33131. The standards and criteria for fiscal accountability referred to in Section 33127 shall not be subject to Sections 11340 to 11356, inclusive, of the Government Code. However, any standards and criteria adopted by the State Board of Education pursuant to Section 33127 shall be codified and published in Title 5 of the California Code of Regulations.

SEC. 1.12. Section 33132 is added to the Education Code, to read:

33132. If at any time during the fiscal year the Superintendent of

Public Instruction concludes that the budget of a school district or county office of education does not comply with the standards and criteria established pursuant to Section 33127, he or she shall notify the district or county office of education in writing of that conclusion and may conduct, directly or pursuant to contract, a comprehensive review of the financial and budgetary conditions of the district or county office of education or direct the county superintendent to do so pursuant to Section 42637. The Superintendent of Public Instruction shall report his or her findings and recommendations to the governing board of the district or county office of education and may include recommendations of methods by which the budgeted expenditures for the balance of the fiscal year may be brought into balance with anticipated revenues. The report shall be made to the governing board at a public meeting of the governing board. The governing board shall, no later than 15 days after receipt of the report, notify the Superintendent of Public Instruction of its proposed actions on his or her recommendations.

SEC. 1.122. Section 33337 is added to the Education Code, to read:

33337. It is the intent of the Legislature that, for the 1989–90 fiscal year and each year thereafter, funds shall be provided to the State Department of Education through the annual Budget Act for the purposes of carrying out the duties of the department in connection with Section 33127 of, Article 2 (commencing with Section 1240) of Chapter 2 of Part 2 of, Article 2 (commencing with Section 1620) of Chapter 5 of Part 2 of, Article 3 (commencing with Section 14050) of Chapter 1 of Part 9 of, Article 2 (commencing with Section 35010) of Chapter 1 of Part 21 of, and Article 2 (commencing with Section 42120) of Chapter 6 of Part 24 of, the Education Code.

SEC. 1.125. Section 35014 of the Education Code is amended to read:

35014. (a) As prescribed in subdivision (g) of Section 35035, the governing board of each school district shall certify, in writing, within 45 days after the close of the period being reported, whether or not the school district is able to meet its financial obligations for the remainder of the fiscal year. These certifications shall be based upon the board's assessment of the district budget on the basis of standards and criteria for fiscal stability established pursuant to Section 33127. The certifications shall be classified as positive, qualified, or negative certifications, as prescribed by the Superintendent of Public Instruction for the purposes of determining subsequent state agency actions pursuant to subdivision (b). These certifications shall be based upon the financial and budgetary reports required by subdivision (g) of Section 35035 but may include additional financial information known by the governing board to exist at the time of each certification. A copy of each certification and a copy of the report submitted to the governing board pursuant to subdivision (g) of Section 35035 shall be filed with the county superintendent of schools. If a county office of

education receives a positive certification when it determines a negative or qualified certification should have been filed, the county superintendent of schools shall take appropriate action as described in Section 42637, and provide notice of any action taken to the Superintendent of Public Instruction. Copies of any certification in which the governing board is unable to certify unqualifiedly that these financial obligations will be met and a copy of the report submitted to the governing board pursuant to subdivision (g) of Section 35035 shall be sent to the Controller and the Superintendent of Public Instruction at the time of the certification, together with a completed transmittal form provided by the Superintendent of Public Instruction. County superintendents shall comment within 75 days of the close of the reporting period on all school district certifications that are classified as qualified or negative pursuant to this section and send those comments to the Superintendent of Public Instruction and the Controller.

All reports and certifications required under this subdivision shall be in a format or on forms prescribed by the Superintendent of Public Instruction, and shall be based on standards and criteria for fiscal stability developed pursuant to Section 33127.

This subdivision shall not preclude the submission of additional budgetary or financial reports by the county superintendent to the district governing board, or to the Superintendent of Public Instruction.

(b) Whenever a district governing board transmits to the Controller and the Superintendent of Public Instruction a qualified or negative certification as required by subdivision (a), the State Department of Education, in cooperation with the Controller's office, shall review the certification and the attached report together with the comments by the county superintendent and any other pertinent information available to them. After consulting with the county superintendent of schools the State Department of Education, in cooperation with the Controller's office, may take the following actions, or other actions as appropriate:

(1) With respect to qualified certifications, direct the county superintendent of schools to exercise his or her authority as prescribed in Section 42637.

(2) With respect to negative certifications, conduct an onsite review, direct the county superintendent of schools to exercise his or her authority as prescribed in Section 42637, and direct the district to prepare alternative plans for resolving the identified fiscal problems.

(c) Within 60 days after the close of each reporting period, each county superintendent of schools shall report to the Controller and the Superintendent of Public Instruction as to whether the governing board of each of the school districts under his or her jurisdiction has submitted the certification required by subdivision (a). That report shall account for all districts under the jurisdiction of the county office of education and indicate the type of certification

filed by each district.

SEC. 1.13. Section 35035 of the Education Code is amended to read:

35035. The superintendent of each school district shall, in addition to any other powers and duties granted to or imposed upon him or her:

(a) Be the chief executive officer of the governing board of the district.

(b) Except in a district where the governing board has appointed or designated an employee other than the superintendent, or a deputy, or assistant superintendent, to prepare and submit a budget, prepare and submit to the governing board of the district, at the time it may direct, the budget of the district for the next ensuing school year, and revise and take other action in connection with the budget as the board may desire.

(c) Subject to the approval of the governing board, assign all employees of the district employed in positions requiring certification qualifications, to the positions in which they are to serve. This power to assign includes the power to transfer a teacher from one school to another school at which the teacher is certificated to serve within the district when the superintendent concludes that the transfer is in the best interest of the district.

(d) Upon adoption, by the district board, of a district policy concerning transfers of teachers from one school to another school within the district, have authority to transfer teachers consistent with that policy.

(e) Determine that each employee of the district in a position requiring certification qualifications has a valid certificated document registered as required by law authorizing him or her to serve in the position to which he or she is assigned.

(f) Enter into contracts for and on behalf of the district pursuant to Section 39656.

(g) Submit two reports during the fiscal year to the governing board. The first report shall cover the financial and budgetary status of the district for the period ending no earlier than October 31 nor later than December 31. The second report shall cover the period ending March 31. Both reports shall be approved by the district governing board no later than 45 days after the close of the period being reported. All reports required by this subdivision shall be in a format or on forms prescribed by the Superintendent of Public Instruction, and shall be based on standards and criteria for fiscal stability developed pursuant to Section 33127.

SEC. 1.132. Section 41020 of the Education Code is amended to read:

41020. It is the intent of the Legislature to encourage sound fiscal management practices among school districts for the most efficient and effective use of public funds for the education of children in California by strengthening fiscal accountability at the district, county, and state levels.

Not later than the first day of May of each fiscal year each county superintendent of schools shall provide for an audit of all funds under his or her jurisdiction and control and the governing board of each district shall either provide for an audit of the books and accounts of the district, including an audit of school district income and expenditures by source of funds, or make arrangements with the county superintendent of schools having jurisdiction over the district to provide for such auditing. In the event the governing board of a school district has not provided for an audit of the books and accounts of the district by April 1, the county superintendent of schools having jurisdiction over the district shall provide for the audit.

Each audit shall include all funds of the district including the student body and cafeteria funds and accounts and any other funds under the control or jurisdiction of the district; funds of regional occupational centers and programs maintained by the county superintendent of schools, a school district, or pursuant to a joint powers agreement. Each audit shall also include an audit of attendance procedures.

All audit reports for the 1988–89 fiscal year, and for each subsequent fiscal year, shall be developed and reported using a format established by the Controller after consultation with the Superintendent of Public Instruction.

The cost of the audits provided for by the county superintendent of schools shall be paid from the county school service fund and the county superintendent of schools shall transfer the pro rata share of the cost chargeable to each district from district funds.

The cost of the audit provided for by a governing board shall be paid from district funds. The audit of the funds under the jurisdiction and control of the county superintendent of schools shall be paid from the county school service fund.

The audits shall be made by a certified public accountant or a public accountant, licensed by the State Board of Accountancy.

The auditor's report shall include (1) a statement that the audit was conducted pursuant to standards and procedures developed in accordance with Chapter 3 (commencing with Section 14500) of Part 9 of Division 1 of Title 1 and (2) a summary of audit exceptions and management improvement recommendations.

Not later than December 15, a report of each audit for the preceding fiscal year shall be filed with the county superintendent of schools of the county in which the district is located, the Department of Education, and the Controller. The Superintendent of Public Instruction shall make any adjustments necessary in future apportionments of all state funds, to correct any audit exceptions revealed by such audit reports.

Each county superintendent of schools shall be responsible for the correction of any audit exceptions revealed by audit reports issued pursuant to this section that do not affect state funds and are not corrected by the Superintendent of Public Instruction when the audit exceptions affect any revenue and expenditures under his or

her control or the control of any school district within his or her jurisdiction. The county superintendent of schools shall adjust the future local property tax requirements to correct audit exceptions relating to school district tax rates and tax revenues.

If a governing board or county superintendent of schools fails or is unable to make satisfactory arrangements for audit pursuant to this section, the Controller shall make arrangements for the audit and the cost of the audit shall be paid from school district funds or the county school service fund, as the case may be.

Audits of regional occupational centers and programs are subject to the provisions of this section.

Nothing in this section shall be construed to authorize examination into or report on the curriculum used or provided for in any school district.

SEC. 1.134. Section 41020.2 of the Education Code is amended to read:

41020.2. (a) If a school district governing board has entered into a contract for an independent audit of its financial statements in accordance with Section 41020 and the audited financial statements have not been filed with the county superintendent of schools on or before the due date established under Section 41020, the county superintendent of schools may investigate the causes for the delay and initiate one of the following actions that will provide the required audited financial statements in the most effective manner:

(1) The county superintendent of schools may, after consultation with the school district governing board and the auditors under contract to the district, and with the consent of the Controller's office and the Superintendent of Public Instruction, grant an appropriate extension for the completion of the audit and the filing of the audited financial statements. An extension does not waive the legal deadline, but permits the filing of the report after the deadline.

(2) The county superintendent of schools may, after consultation with the school district governing board, the auditors under contract to the district, and the Controller's office, contract with another qualified certified public accountant or public accountant to obtain the required audited financial statements and charge the cost of the audit to the funds of the district. The county superintendent of schools shall, to the extent feasible, assist the district in initiating action to avoid payment to the auditors under contract who did not complete the original audit.

(3) The county superintendent of schools may request the Controller's office to investigate the situation and initiate action as provided in subdivision (b).

(b) If the audited financial statements required by Section 41020 have not been filed by a school district or county superintendent of schools with the Controller's office on or before the due date established under Section 41020, the Controller's office shall determine the most advantageous method of obtaining the required audited financial statements. The Controller's office may do any of

the following:

(1) Accept the action of the county superintendent of schools permitted by subdivision (a).

(2) Conduct the audit and prepare the auditor's report, utilizing the staff available within that office and charge the cost of the audit to the next regular apportionment from the State School Fund to the district or county superintendent of schools.

(3) Contract with any qualified certified public accountant or public accountant, utilizing the appropriate contracting procedures, for the conduct of the audit and preparation of the audited financial statements and charge the cost of the audit to the next regular apportionment from the State School Fund to the district or county superintendent of schools.

(4) Grant a reasonable extension of the time for filing the report if, in the judgment of the Controller's office, this will provide the required audited financial statements within the shortest time period. The extension of the time for filing does not waive the legal deadline, but permits the filing of the report after the deadline.

The Controller's office shall consult with the district governing board, the county superintendent of schools, and the auditors under contract to the district or county superintendent of schools before making the determination of the method to be used in obtaining the audited financial statements. The Controller's office shall, to the extent feasible, assist the district or county superintendent in initiating action to avoid payment to the auditors under contract who did not complete the original audit.

(c) Notwithstanding any extension granted under paragraph (1) of subdivision (a) or paragraph (4) of subdivision (b), the Controller's office may determine at any time after the due date for filing of audit reports established by Section 41020 that the audited financial statements not yet filed with that office are delinquent and that the audit will be performed under paragraph (2) or (3) of subdivision (b).

SEC. 1.14. Section 41320.1 of the Education Code is amended to read:

41320.1. Acceptance by the district of the apportionments made pursuant to Section 41320 shall constitute agreement by the district to all of the following conditions:

(a) The Superintendent of Public Instruction shall appoint a trustee who shall have recognized expertise in management and finance, and who shall be bonded. The expenses incurred by the trustee and the costs of the bonding shall be borne by the district. The superintendent shall establish the terms and conditions of the employment, including the remuneration of the trustee. The trustee shall serve at the pleasure of, and report directly to, the superintendent until the loan called for by this section is repaid.

Notwithstanding any other provision of law, all reports submitted to the trustee shall be public records.

(b) The trustee appointed by the superintendent shall monitor

and review the operation of the district. During the period of his or her service, the trustee may stay or rescind any action of the local district governing board that, in the judgment of the trustee, may affect the financial condition of the district. The trustee shall approve or reject all reports and other materials required from the district as a condition of receiving the apportionment. The superintendent, upon the recommendation of the trustee, may reduce any apportionment to the district in an amount up to two hundred dollars ($200) per day for each late or unacceptable report or other material required under Part 24 (commencing with Section 41000) of the Education Code, and shall report to the Legislature any failure of the district to comply with the requirements of this section.

(c) At the request of the Superintendent of Public Instruction, the Controller shall transfer to the State Department of Education, from any apportionment to which the district would otherwise have been entitled pursuant to Section 42238, the amount necessary to pay the expenses incurred by the trustee, the costs of the trustee's bonding, and any associated costs incurred by the county superintendent of schools.

(d) For the fiscal year in which the apportionments are disbursed and each year thereafter, the Controller, or his or her designee, shall cause an audit to be conducted of the books and accounts of the district, in lieu of the audit required by Section 41020. At the Controller's discretion, the audit may be conducted by the Controller, his or her designee, or an auditor selected by the district and approved by the Controller. The costs of these audits shall be borne by the district. These audits shall be required until the Controller determines, in consultation with the Superintendent of Public Instruction, that the district is financially solvent, but in no event earlier than one year following the implementation of the plan or later than the time the apportionment made is repaid, including interest.

(e) For all purposes of errors and omissions liability insurance, the trustee appointed pursuant to this section shall be deemed to be an employee of the local education agency to which he or she is assigned.

SEC. 1.15. Section 41450 is added to the Education Code, to read:

41450. The Legislature finds that each year one or more school districts or county offices of education experience severe financial difficulty. In some cases these school districts or county offices of education request emergency apportionments from the state under the provisions of Article 2 (commencing with Section 41320). In order to reduce the need for these apportionments, it is the intent of the Legislature that the Superintendent of Public Instruction be authorized to provide assistance and guidance to school districts and county offices of education that are experiencing severe financial difficulty. That assistance and guidance shall be limited to the fiscal concerns addressed by the standards and criteria adopted pursuant to Section 33127.

SEC. 1.16. Section 41455 is added to the Education Code, to read:

41455. After receiving the advice of the Controller, the Superintendent of Public Instruction is authorized pursuant to Section 41450 to contract with consultants possessing financial and administrative expertise, including county offices of education, to examine the financial problems of county offices of education and school districts that are identified as being in severe financial difficulty. The examination shall result in a written report to the Superintendent of Public Instruction regarding financial problems identified and recommendations on ways to alleviate them, which report shall be presented at a public meeting of the governing board of each of the school districts and county offices of education.

SEC. 1.17. Section 42127 of the Education Code is amended to read:

42127. (a) On or before the first day in July in each year, each school district shall file a tentative budget with the county superintendent of schools.

(1) The budget shall indicate the date, time, and location at which the governing board of the district will hold the public hearing required pursuant to Section 42103.

(2) If the governing board of the district does not want all or a portion of the property tax requirement levied for the purpose of making payments for the interest and principal on outstanding general obligation bonds or other indebtedness approved by the voters prior to July 1, 1978, the budget shall include a statement of the amount or portion for which a levy shall not be made.

(b) On or before August 1, in each year, based on standards and criteria for fiscal stability established pursuant to Section 33127, the county superintendent of schools:

(1) Shall examine and make technical corrections to the tentative budget and indicate changes he or she deems desirable or necessary to determine any tax requirement.

(2) Shall make any recommendations he or she deems necessary to ensure that the district's budget complies with the standards and criteria established pursuant to Section 33127, and shall transmit to the governing board a written explanation of the reasons for those recommended changes.

(3) May make written recommendations at any time prior to final adoption of the budget by the governing board of the district.

(4) May accept changes in the date, time, or location of the public hearing pursuant to Section 42103 and changes in the statement required by paragraph (2) of subdivision (a) of the amount or portion for which a property tax levy shall not be made.

(c) The county superintendent or the county auditor shall compute the actual amounts to be levied on the property tax rolls of the district for purposes that exceed apportionments to the district pursuant to Sections 95 to 100, inclusive, of the Revenue and Taxation Code. Each school district shall provide all data needed by the county superintendent or the county auditor to compute the amounts. On

or before August 15, the county superintendent shall transmit the amounts so computed to the county auditor who shall compute the tax rates necessary to produce the amounts. On or before September 1, the county auditor shall submit the rate so computed to the board of supervisors for adoption.

(d) On or before September 15, the governing board of each school district shall adopt a final budget including any tax requirements computed pursuant to subdivision (c) as adjusted by paragraph (2) of subdivision (a) of Section 42127 and shall file that budget with the county superintendent of schools.

(e) On or before November 1, the county superintendent shall approve or disapprove the adopted final budget for each school district after doing the following:

(1) Examining the adopted final budget to determine whether it complies with the standards and criteria established pursuant to Section 33127.

(2) Suggesting, if necessary, any technical corrections needed to bring the budget into compliance with the standards and criteria established pursuant to Section 33127.

(f) If, after examining the adopted final budget of a school district, it is the opinion of the county superintendent that it does not comply with the standards and criteria established pursuant to Section 33127, he or she shall, by November 1, transmit to the governing board, in writing, his or her recommendations and the reasons therefor.

(g) The superintendent and district governing board shall, by November 30, do all of the following:

(1) Review the recommendations of the county superintendent of schools at a regularly scheduled meeting of the governing board.

(2) Respond to the recommendations of the county superintendent. The response shall include the proposed actions to be taken, if any, as a result of the county superintendent's recommendations.

(h) The county superintendent of schools shall, no later than 10 working days after the receipt of the response required by paragraph (2) of subdivision (g), review the district governing board's comments and either approve or disapprove the budget. If the county superintendent disapproves the district's budget, he or she shall call for the formation of a budget review committee pursuant to Section 42127.1.

(j) School districts for which the county board of education serves as the governing board are not subject to subdivision (d), (e), (f), or (h), but are governed instead by the budget procedures set forth in Section 1623.

SEC. 1.171. Section 42127.1 is added to the Education Code, to read:

42127.1. (a) Pursuant to subdivision (h) of Section 42127, upon the disapproval of a school district budget by the county superintendent, the county superintendent shall call for the formation of a budget review committee.

(b) The budget review committee shall be composed of three persons selected by the governing board of the school district from a list of candidates provided by the Superintendent of Public Instruction. The list of candidates shall be composed of persons that have expertise in the management of a school district or county office of education. Their experience shall include, but not be limited to, the fiscal and educational aspects of local educational agency management.

(c) Members of the committee shall be reimbursed by the State Department of Education for their services and associated expenses while on official business at rates established by the State Board of Education.

SEC. 1.172. Section 42127.2 is added to the Education Code, to read:

42127.2. (a) The district governing board shall, no later than 15 working days after the receipt of a candidate list from the Superintendent of Public Instruction pursuant to Section 42127.1, select and convene a review committee.

(b) The review committee shall, within 15 working days of being convened, review the proposed budget of the district and the underlying fiscal policies of the district and recommend to the Superintendent of Public Instruction, the county superintendent of schools, and the district governing board either of the following:

(1) Approval of the school district budget.

(2) An alternative budget that includes specific detailed recommendations for actions on, or changes to, fiscal policy necessary to achieve long-term fiscal stability, as defined by Section 33127.

(c) In the event the committee is unable to respond within 15 working days, the committee shall state the reasons why it was unable to respond within that time frame and establish a time definite and certain, to be approved by the Superintendent of Public Instruction, as to when their recommendations shall be forthcoming.

SEC. 1.173. Section 42127.3 is added to the Education Code, to read:

42127.3. (a) If the review committee established pursuant to Section 42127.1 recommends approval of the school district budget, the Superintendent of Public Instruction shall accept the recommendation of the review committee and approve the budget.

(b) If the review committee established pursuant to Section 42127.1 proposes an alternative budget that includes specific detailed recommendations for actions on, or changes to, fiscal policy necessary to achieve long-term fiscal stability, as defined by Section 33127, the review committee shall transmit to the district governing board, in writing, the reasons for their recommendations. The district governing board shall have 10 working days from the receipt of the recommendations to either adopt or appeal the review committee's recommendations at a public meeting.

(1) If the district governing board chooses to adopt the

committee's recommendations, or if the board adopts alternative recommendations that would achieve the same fiscal results and that are accepted by the review committee, the Superintendent of Public Instruction shall accept the budget proposed by the review committee and approve the budget.

(2) If the district governing board chooses not to adopt the committee's recommendations, it may submit a written appeal of the recommendations to the Superintendent of Public Instruction no later than 10 working days after receiving the recommendations.

(c) No later than 15 working days after receiving the written appeal described in subdivision (b), the Superintendent of Public Instruction shall either:

(1) Approve the school district budget.

(2) Prepare an alternative budget that includes specific detailed recommendations for actions on, or changes to, fiscal policy necessary to achieve long-term fiscal stability, as defined by Section 33127. This alternative budget shall be jointly agreed to by the county office of education and the review committee.

SEC. 1.174. Section 42127.4 is added to the Education Code, to read:

42127.4. Until a school district receives approval of its final budget, the school district shall continue to operate on the basis of the last budget adopted or revised by the governing board of the school district.

SEC. 1.19. Section 42129 of the Education Code is amended to read:

42129. School districts and county offices of education shall transmit to the State Department of Education, on a timely basis, all budget reports, prior year expenditure reports, qualified and negative financial status reports, program cost accounting reports, certifications, and audit reports as prescribed by subdivision (j) of Section 1240, subdivision (g) of Section 35035, Sections 1621, 1623, 35014, 41020, 42127, and 56730.5, and those reports used to calculate the first, second, and annual principal apportionments and special purpose apportionments for school districts and county offices of education. In the event that the reports are not submitted to the Superintendent of Public Instruction within 14 days after the submission date prescribed in the statute or specified by the Superintendent of Public Instruction, the Superintendent of Public Instruction may direct the county auditor to withhold payment of any stipend, expenses, or salaries to the district superintendent, county superintendent, or members of the governing boards, as appropriate. The withholding shall continue only until the delinquent reports have been submitted to the State Department of Education. If the county superintendent performs the functions of the county auditor, the Superintendent of Public Instruction may direct the county superintendent to withhold the payments specified in this section.

SEC. 2. Section 42601 of the Education Code is amended to read:

42601. At the close of any school year a school district may, with the approval of the governing board, identify and request the county superintendent of schools to make the transfers between the designated fund balance or the unappropriated fund balance and any expenditure classification or classifications, or balance any expenditure classifications of the budget of the district for that school year as necessary to permit the payment of obligations of the district incurred during that school year. For each elementary, high school, and unified school district that, during the preceding school year, had an average daily attendance less than the level, as appropriate, specified in subdivision (a) of Section 41301, the county superintendent of schools, with the consent of the governing board of the school district, may identify and make the transfers, and shall so notify the districts.

SEC. 3. Section 42637 of the Education Code is amended to read:

42637. If at any time during a fiscal year the county superintendent of schools concludes that the budget of any school district within his or her jurisdiction does not comply with the standards and criteria for fiscal stability developed pursuant to Section 33127 for that fiscal year, he or she shall notify the Superintendent of Public Instruction and the district in writing of that conclusion and may conduct a comprehensive review of the financial and budgetary conditions of the district. The superintendent shall report his or her findings and recommendations to the governing board of the district and the Superintendent of Public Instruction and may include recommendations of methods by which the budgeted expenditures for the balance of the fiscal year may be brought into balance with the revenue of the district. That report shall be made to the governing board at a public meeting of the governing board. The governing board shall, no later than 15 days after receipt of the report, notify the county superintendent of schools and the Superintendent of Public Instruction of its proposed actions on their recommendations.

SEC. 4. Chapter 3.8 (commencing with Section 44790) is added to Part 25 of the Education Code, to read:

## CHAPTER 3.8. ETHICS AND CIVIC VALUES IN THE SCHOOLS

44790. (a) The Legislature finds and declares that there is a compelling need to promote the development and implementation of effective educational programs in ethics and civic values in California schools in kindergarten and grades 1 to 12, inclusive. The Legislature further finds and declares that this compelling need is based upon a recognition of each of the following:

(1) According to many public opinion polls, including a 1980 Gallup Poll, more than two-thirds of the American people favor education in ethics, and rank this at or near the top of desirable educational goals.

(2) Young children and adolescents need to develop an

understanding of, and an appreciation for, the need for a sound set of values and principles that are consistent with their own and others' well-being in the school, the community, the state, the nation, and the world.

(3) The current emphasis upon science and technology in the schools often occurs in the face of relative neglect of fundamental ethical and civic values. Those values that are essential to the maintenance of a fair and just democratic society must not become a forgotten part of the education and development of children.

(4) The development of ethics and civic values results from a combination of intellectual formation and emotional development, and is fostered by instruction, experience, and, in particular, role modeling by parents and teachers.

(5) There is mounting evidence that well-considered programs in ethics and civic values from kindergarten and grades 1 to 12, inclusive, can be effective in fostering the development of ethical behavior, civic competence, and responsibility. However, there is a need for further investigation, research, and development to determine the most effective programs for California's schools.

(b) Accordingly, the purpose of this chapter is to provide guidelines that encourage schools and school districts to provide programs in ethics and civic values that will foster the development of those values, traits of character, cognitive skills, and emotional capacities that are essential for ethical conduct and the achievement of the ideals of a democratic society.

(c) "Ethics and civic values in the schools" means instructional programs designed to provide pupils at all grade levels with instruction that, while respecting the dignity and worth of each pupil, teaches an understanding of, and an appreciation for, basic and shared ethical and civic values; fosters the development of those capacities and traits of character consistent with and conducive to basic and shared ethical and civic values; and develops those cognitive and critical thinking skills, insights, and emotional capacities essential for sound judgment in matters of ethical conduct and civic responsibility.

(1) Basic and shared ethical and civic values include, but are not limited to, all of the following:

(A) Human individuality, dignity, and worth.

(B) Fairness and equity.

(C) Honesty, including both truth-telling and keeping commitments.

(D) Courage.

(E) Freedom and autonomy.

(F) Personal and social responsibiltiy.

(G) Community and the common good.

(H) Justice.

(I) Equality of opportunity.

(2) Insights, emotional capacities, and traits of character consistent with and conducive to basic and shared ethical and civic

values include, but are not limited to, all of the following:

(A) Respect for oneself and for the rights of others.

(B) Empathy for, and sensitivity to, the feelings of others.

(C) Cooperativeness.

(D) Responsibility for personal decisions and conduct.

(E) Concern for, and willingness to promote, the well-being of others.

(F) Fair-mindedness and conscientiousness.

(G) Courage to stand by one's reasoned convictions.

(3) Cognitive and critical thinking skills necessary for sound judgment in matters of ethical conduct and civic responsibility include, but are not limited to, all of the following:

(A) The ability to recognize and think clearly about the relevant general principles and relevant factual questions in dealing with ethical questions and controversies.

(B) The ability to determine and engage in the appropriate means of resolving factual disputes.

(C) The ability to imagine realistically and recognize the consequences of one's actions.

(D) The ability to recognize when a claim is reasonable and when it is unreasonable, in view of the relevant evidence and supporting arguments.

(E) The ability to understand and entertain the reasons for points of view other than one's own.

44791. (a) For the purpose of promoting ethics and civic values in the schools, as defined in subdivision (b) of Section 44791, the Superintendent of Public Instruction may administer, with any available resources, grants for the development or implementation of programs of ethics and civic values. Each of the following agencies shall be eligible for grants:

(1) Public elementary, secondary, and unified school districts.

(2) County offices of education.

(3) Public and private institutions of higher education.

(4) Private, nonprofit organizations with demonstrated expertise in developing programs to promote ethics and civic values in schools.

(b) Grants may be of the following types:

(1) Project grants for developing classroom materials and appropriate staff development.

(2) Project grants for making exemplary materials and teacher education available for interested school districts.

(3) Planning grants to provide for the study of ethical, political, educational, and developmental theory, as well as existing programs for teaching ethical reasoning and conduct and civic responsibility, and to plan operational programs as described in paragraph (5).

(4) Research and development projects for developing and utilizing classroom materials and developing appropriate teacher education.

(5) Operational program grants of up to three years to enable a school or several schools within a district to conduct pilot programs

aimed at promoting the development of ethics and civic values as defined in subdivision (b) of Section 44791. Operational grants shall include components for teacher education, materials, evaluation, and, to the maximum extent reasonable, pupil, parental and community involvement. There shall be appropriate involvement and participation of school district teachers in the development of all pilot program proposals, including both the review of teacher education techniques and materials.

(c) Whenever practical or feasible, as determined by the Superintendent of Public Instruction, funds for grants shall be distributed to a variety of types of programs and educational settings.

44792. The Superintendent of Public Instruction shall seek the advice of classroom teachers, school administrators, governing board members, parents, postsecondary educators, representative community groups, and pupils in developing programs that foster an emphasis on ethics and civic values in the schools.

44793. (a) The State Department of Education may provide information and technical assistance to schools and districts interested in developing programs in ethics and civic values. Technical assistance activities may include, but need not be limited to, each of the following kinds of activities:

(1) Development of an annotated listing of existing programs in ethics and civic values, pertinent models developed by the State Board of Education, and pertinent references contained in this code.

(2) Promotion of statewide awareness of existing programs in ethics and civic values through the distribution of annotated listings, presentations at meetings and conferences, and the publication of articles in lay and scholarly media.

(3) Support for research and development in the areas of educational materials, and dissemination of the results of these activities.

(4) Development of a clearinghouse of information for the public and for educators concerning ethics and civic values in the schools.

(b) If the Superintendent of Public Instruction administers the grant program described in this chapter, his or her authority for that purpose shall include all of the following:

(1) Review and evaluation of existing programs in ethics and civic values in the state and dissemination of this information to eligible agencies.

(2) Preparation of guidelines and criteria for evaluating grant proposals, which criteria shall include the requirement that programs demonstrate the involvement of sound scholarship in the relevant disciplines.

(3) Dissemination of announcements of the availability of grants to eligible agencies.

(4) Provision of assistance to agencies interested in developing grant proposals.

(5) Review and evaluation of proposals and the awarding of grants.

(6) Monitoring of any funded programs and reporting to the Legislature no later than two years after the awarding of the grants regarding the results of the grants.

(c) The Superintendent of Public Instruction may prescribe regulations considered necessary to carry out the purposes of this chapter.

44794. The Legislative Analyst shall report on the implementation of any ethics and civic values programs established pursuant to this chapter, in the Analysis of the Budget Bill, no later than two years after the awarding of any grants. The report shall include findings, comments, and recommendations as the Legislative Analyst determines to be appropriate.

44795. This chapter shall remain in effect only until January 1, 1993, and as of that date is repealed, unless a later enacted statute, which deletes or extends that date, is chaptered on or before that date.

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 five hundred thousand dollars ($500,000), reimbursement shall be made from the State Mandates Claims Fund.

SEC. 6. The Superintendent of Public Instruction shall seek and utilize any federal and private funds that may be made available for the purposes of Chapter 3.8 (commencing with Section 44790) of Part 25 of the Education Code.

SEC. 7. The sum of four hundred thirty-five thousand dollars ($435,000) is hereby appropriated from the General Fund to the Superintendent of Public Instruction for the 1988–89 fiscal year for purposes of Section 33337 of the Education Code.

SEC. 8. Sections 1, 1.3, 1.6, 1.62, 1.8, 1.13, and 1.17 of this act shall become operative on July 1, 1989.

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## CHAPTER 1463

An act to amend Section 7082 of the Government Code, and to amend Sections 17052.13, 17053.8, 17053.9, 17053.11, 17231, 17252.5, 17265, 17276, 17276.1, 17276.2, 23612, 24331, 24333, and 24416.2 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor September 27, 1988. Filed with Secretary of State September 28, 1988.]

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

SECTION 1. Section 7082 of the Government Code is amended to read:

7082. For purposes of this chapter:

(a) "Block group" means the smallest area for which the United States Department of Commerce, Bureau of the Census, provides data on personal income.

(b) "Cluster of block groups" means one or more contiguous block groups.

(c) "Poverty level" means the poverty level, as defined by the United States Department of Commerce, Bureau of the Census, as periodically updated.

(d) "High density unemployment area" means any of the following:

(1) A metropolitan statistical area or nonmetropolitan statistical area within this state, as identified by the Department of Commerce, which contains at least 4,000 people (in the case of a metropolitan statistical area) or at least 2,500 people (in the case of a nonmetropolitan statistical area) in a cluster of block groups, each of which meets the following criteria according to the most recent available decennial census information:

(A) The average unemployment rate for the block group for the most recent 12-month period for which data are available was at least one and one-half times the average national rate of unemployment for that 12-month period.

(B) The average poverty rate for the block group for the most recent 12-month period was at least one and one-half times the average national poverty rate for that 12-month period.

(C) At least 70 percent of the household earnings for the block group for the most recent 12-month period was a maximum of 80 percent of the average state household earnings for that 12-month period.

(D) Excludes nondistressed areas.

(2) If an area does not meet the criteria of a high density unemployment area specified above, an applicant may petition to the department for the designation based upon compliance with one or more of the following:

(A) A special census is conducted and approved by the population research unit of the Department of Finance which demonstrates compliance with paragraph (1).

(B) The applicant's jurisdiction has experienced a major economic dislocation resulting from plant closure or closure of a federal installation within the last 12 months prior to the application.

(C) The applicant's jurisdiction contains a specifically defined geographic area that meets the eligibility criteria for pockets of

poverty under the United States Department of Housing and Urban Development's Urban Development Action Grant (UDAG) program as described in 24 CFR Part 570, Sections 570.466(a) (2) and (a) (3), and as periodically updated.

(D) A block group meets substantially similar criteria measuring economic distress as that measured in paragraph (1). Each census block shall meet the "substantially similar" criteria.

(E) The area consists of the entire geographic area of a community. Area boundaries shall be synonymous with the boundaries of the community. As used in this subparagraph, "community" means a subdivision of a city or county (not including a city), including a neighborhood or suburb which has distinct boundaries, is recognized as a community by the individuals residing and working within the community, and has existed prior to the program planning process. Documentation demonstrating that the area meets the definition of "community" may include a map prepared for purposes other than the program, which lists both the name and boundaries of the community. The area shall meet the following criteria:

(i) Complies with the above definition of "community."

(ii) A minimum of 51 percent of the geographic area or population of the area meets the criteria of subparagraphs (A), (B), and (C) of paragraph (1), and the remainder of the area has substantially similar economic distress.

(3) A petition for designation of a high density unemployment area received by the department after April 1, 1985, shall be reviewed by the department pursuant to the criteria specified in paragraph (2).

(e) "Nondistressed area" means any block group which does not meet the definition of a high density unemployment area.

(f) "One-stop service" means an efficient and expeditious method for providing services to qualified businesses.

(g) "Department" means the Department of Commerce.

(h) "Qualified business" means any person, corporation, or other entity certified during the taxable or income year by the department as meeting paragraphs (1) and (2).

(1) During the period of designation, the entity is engaged in the active conduct of a trade or business within the program area.

(2) Meets any of the following requirements:

(A) Has an average of at least 50 percent of its employees who are residents of a high density unemployment area.

(B) Has an average of at least 30 percent of its employees who are residents of a high density unemployment area, and has set up a community service program or programs approved by the local government entity and the community advisory council in which the program area is located.

(C) Is a business at least 30 percent owned and operated by a resident or residents of a high density unemployment area. For purposes of this subparagraph, "owned and operated" means that

the resident or residents of a high density unemployment area who are owners of the business are responsible for at least 30 percent of the work performed by the business and share in at least 30 percent of the ownership, control, management responsibility, risks, and profits of the business.

For purposes of this subdivision, "a high density unemployment area" means the high density unemployment area contained in the applicant's final application to the department if the population of that high density unemployment area is in excess of 150,000.

A business entity shall be certified prior to obtaining any benefits of a qualified business, and shall be recertified no less than every three years, as determined by the department. The department shall periodically audit qualified businesses for compliance with this section, and decertify any business found not in compliance. Priority shall be given to auditing qualified businesses within 18 months of the original certification of a business. A business may appeal to the director of the department a decision to deny certification or recertification or a decision to decertify, within 30 days of the decision.

Financial institutions shall not be qualified businesses. A business shall not be a qualified business if it abandons operations elsewhere in the state or relocates existing operations within the state, unless the business obtains written approval of its relocation from the appropriate office of the city or county it is moving from.

(3) A person, corporation, or other entity shall not be a qualified business if the business uses a residential structure in a high density unemployment area for a nonresidential use, unless the structure has been unoccupied for at least one year prior to designation of the program area.

(i) "Program area" means one targeted economic development area and, where applicable, one neighborhood economic development area in the Employment and Economic Incentive Program. The term applies both to areas contained in an application for designation, and an area awarded designation. In an application containing a high density unemployment area with a population in excess of 75,000, "program area" means the targeted economic development area, the high density unemployment area, and, where applicable, the neighborhood economic development area. The benefits of the Employment and Economic Incentive Program shall only accrue to program areas after designation.

(j) "Agent" means the person or entity designated by an applicant to facilitate the operations of the Employment and Economic Incentive Program as described in subdivisions (a) and (b) of Section 7087.

(k) "Applicant" means a city, county, or city and county applying for designation under the Employment and Economic Incentive Act.

(*l*) "Resident" means, unless otherwise defined, a person whose principal place of residence is within a high density unemployment area and who has lived in that area for six months prior to

employment by the qualified business.

(m) "Infrastructure" means the physical systems and services which support development and people, including, but not limited to, streets and highways, transit services, airports, and water and sewer systems.

(n) "Community services" means any type of emergency assistance, counseling and advice, medical care, instructional or social services, or recreational programs and facilities furnished to individuals or groups in high density unemployment areas or program areas.

(o) "Neighborhood economic development area" means an area which meets all of the following criteria:

(1) It shall be located entirely within or contiguous to the high density unemployment area contained in the application for designation.

(2) It shall be zoned primarily commercial.

(3) Its boundary shall be continuous.

(4) It shall be of sufficient size to sustain a diverse mix of commercial businesses and its size and location shall be appropriate to reducing the economic distress within the high density unemployment area.

(5) At least a part of its area shall be within the territorial jurisdiction of the applicant. If an area for which designation is sought encompasses the territorial jurisdiction of two or more local governmental entities, all of those entities shall be a party to the application for designation, except that any one or more of those entities by resolution or ordinance may specify that it shall not participate in the application as an applicant, but shall agree to complete all actions stated within the application which apply to its jurisdiction, if the area is designated.

No residential structure may be used for nonresidential use unless the structure has been unoccupied for at least one year prior to designation as a program area, or unless comparable replacement housing is provided for all persons displaced in accordance with Section 33413 of the Health and Safety Code. No person shall be displaced under this section unless relocation assistance is provided pursuant to Section 33415 of the Health and Safety Code.

An agricultural area shall not be designated as a neighborhood economic development area.

(p) "Targeted economic development area" means an area which meets all of the following criteria:

(1) Its boundary shall be continuous.

(2) It shall be zoned primarily industrial or other mixed business uses.

(3) It shall be of sufficient size to sustain a diverse mix of businesses and its size and location shall be appropriate to reducing the economic distress within the high density unemployment area.

(4) At least a part of its area shall be within the territorial jurisdiction of the applicant. If an area for which designation is

sought encompasses the territorial jurisdiction of two or more local governmental entities, all of those entities shall be a party to the application for designation, except that any one or more of those entities by resolution or ordinance may specify that it shall not participate in the application as an applicant, but shall agree to complete all actions stated within the application which apply to its jurisdiction, if the area is designated.

The area may be, but is not required to be, within a high density unemployment area. However, if the area is outside a high density unemployment area, it shall be within reasonable commuting distance of the high density unemployment area which is contained in the application for designation. If the area is outside a high density unemployment area, the applicant jurisdiction in which the area is located, in making its application, shall secure the endorsement of its application from at least one city or county which has jurisdiction within the high density unemployment area and is in close geographic proximity to the high density unemployment area.

The area may include vacant or sparsely developed parcels of land or abandoned facilities.

No residential structure may be used for nonresidential use unless the structure has been unoccupied for at least one year prior to designation as a program area, or unless comparable replacement housing is provided for all persons displaced in accordance with Section 33413 of the Health and Safety Code. No person shall be displaced under this section unless relocation assistance is provided pursuant to Section 33415 of the Health and Safety Code.

An agricultural area shall not be designated as a targeted economic development area.

(q) "Application area" means the program area and high density unemployment area contained in an application for designation.

SEC. 2. Section 17052.13 of the Revenue and Taxation Code is amended to read:

17052.13. (a) There shall be allowed as a credit against the "net tax" (as defined in Section 17039) for the taxable year the amount equal to the sales or use tax paid or incurred by the taxpayer in connection with the purchase of qualified property.

(b) For purposes of this section:

(1) "Taxpayer" means either of the following:

(A) A qualified business as defined in Section 7082 of the Government Code.

(B) A person or entity engaged in a trade or business within an enterprise zone designated pursuant to Section 7073 of the Government Code.

(2) "Qualified property" means machinery and machinery parts used for fabricating, processing, assembling, and manufacturing, and machinery and machinery parts used for the production of renewable energy resources or air or water pollution control mechanisms, up to a value of one million dollars ($1,000,000), which, in the case of a taxpayer described in subparagraph (A) of paragraph

(1), is used exclusively in a program area, and, in the case of a taxpayer described in subparagraph (B) of paragraph (1), is used exclusively in an enterprise zone.

(c) If the taxpayer has purchased property upon which a use tax has been paid or incurred, the credit provided under subdivision (a) shall be allowed only if qualified property of a comparable quality and price is not timely available for purchase in this state.

(d) In the case where the credit allowed under this section exceeds the "net tax" for the taxable year, that portion of the credit which exceeds the "net tax" may be carried over to the "net tax" in succeeding taxable years, until the credit is used. The credit shall be applied first to the earliest years possible.

(e) Any taxpayer who elects to be subject to this section shall not be entitled to increase the basis of the property as otherwise required by Section 164(a) of the Internal Revenue Code with respect to sales or use tax paid or incurred in connection with the purchase of qualified property.

(f) In the case of a taxpayer described in subparagraph (A) of paragraph (1) of subdivision (b), the amount of the credit provided by this section in any taxable year shall not exceed the amount of tax which would be imposed on the income attributed to business activities of the taxpayer within the program area (as defined in Section 7082 of the Government Code) as if that attributed income represented all of the net income of the taxpayer subject to tax under this part. The amount of that attributed income shall be determined in accordance with the provisions of Article 2 (commencing with Section 25120) of Chapter 17 of Part 11.

(g) In the case of a taxpayer described in subparagraph (B) of paragraph (1) of subdivision (b), the amount of the credit provided by this section in any taxable year shall not exceed the amount of tax which would be imposed on the income attributed to business activities of the taxpayer within an enterprise zone (designated pursuant to Section 7073 of the Government Code) as if that attributed income represented all of the net income of the taxpayer subject to tax under this part. The amount of that attributed income shall be determined in accordance with the provisions of Article 2 (commencing with Section 25120) of Chapter 17 of Part 11.

SEC. 2.5. Section 17052.13 of the Revenue and Taxation Code is amended to read:

17052.13. (a) There shall be allowed as a credit against the "net tax" (as defined in Section 17039) for the taxable year the amount equal to the sales or use tax paid or incurred by the taxpayer in connection with the purchase of qualified property.

(b) For purposes of this section:

(1) "Taxpayer" means either of the following:

(A) A qualified business as defined in Section 7082 of the Government Code.

(B) A person or entity engaged in a trade or business within an enterprise zone designated pursuant to Section 7073 of the

Government Code or a harbor revitalization zone designated pursuant to Section 7103 of that code.

(2) "Qualified property" means machinery and machinery parts used for fabricating, processing, assembling, manufacturing, shipbuilding, ship repair, and machinery and machinery parts used for the production of renewable energy resources or air or water pollution control mechanisms, up to a value of one million dollars ($1,000,000), which, in the case of a taxpayer described in subparagraph (A) of paragraph (1), is used exclusively in a program area, and, in the case of a taxpayer described in subparagraph (B) of paragraph (1), is used exclusively in an enterprise zone or harbor revitalization zone.

(c) If the taxpayer has purchased property upon which a use tax has been paid or incurred, the credit provided under subdivision (a) shall be allowed only if qualified property of a comparable quality and price is not timely available for purchase in this state.

(d) In the case where the credit allowed under this section exceeds the "net tax" for the taxable year, that portion of the credit which exceeds the "net tax" may be carried over to the "net tax" in succeeding taxable years, until the credit is used. The credit shall be applied first to the earliest years possible.

(e) Any taxpayer who elects to be subject to this section shall not be entitled to increase the basis of the property as otherwise required by Section 164(a) of the Internal Revenue Code with respect to sales or use tax paid or incurred in connection with the purchase of qualified property.

(f) In the case of a taxpayer described in subparagraph (A) of paragraph (1) of subdivision (b), the amount of the credit provided by this section in any taxable year shall not exceed the amount of tax which would be imposed on the income attributed to business activities of the taxpayer within the program area (as defined in Section 7082 of the Government Code) as if that attributed income represented all of the net income of the taxpayer subject to tax under this part. The amount of that attributed income shall be determined in accordance with the provisions of Article 2 (commencing with Section 25120) of Chapter 17 of Part 11.

(g) In the case of a taxpayer described in subparagraph (B) of paragraph (1) of subdivision (b), the amount of the credit provided by this section in any taxable year shall not exceed the amount of tax which would be imposed on the income attributed to business activities of the taxpayer within an enterprise zone (designated pursuant to Section 7073 of the Government Code) or a harbor revitalization zone (designated pursuant to Section 7103 of that code) as if that attributed income represented all of the net income of the taxpayer subject to tax under this part. The amount of that attributed income shall be determined in accordance with the provisions of Article 2 (commencing with Section 25120) of Chapter 17 of Part 11.

SEC. 3. Section 17053.8 of the Revenue and Taxation Code is

amended to read:

17053.8. (a) There shall be allowed as credit against the "net tax" (as defined in Section 17039) for the taxable year an amount equal to the sum of each of the following:

(1) Fifty percent for qualified wages in the first year of employment.

(2) Forty percent for qualified wages in the second year of employment.

(3) Thirty percent for qualified wages in the third year of employment.

(4) Twenty percent for qualified wages in the fourth year of employment.

(5) Ten percent for qualified wages in the fifth year of employment.

(b) For purposes of this section:

(1) "Qualified wages" means the wages paid or incurred by the employer during the taxable year to qualified disadvantaged individuals. "Qualified wages" means that portion of hourly wages which does not exceed 150 percent of the minimum wage.

(2) "Qualified years one through five wages" means, with respect to any individual, qualified wages received during the 60-month period beginning with the day the individual commences employment within an enterprise zone.

(3) "Minimum wage" means the wage established by the Industrial Welfare Commission as provided for in Chapter 1 (commencing with Section 1171) of Part 4 of Division 2 of the Labor Code.

(c) For purposes of this section:

(1) "Qualified disadvantaged individual" means an individual—

(A) Who is a qualified employee within the meaning of subdivision (d).

(B) Who is hired by the employer after the designation of the area in which services were performed as an enterprise zone (under Section 7073 of the Government Code).

(C) Who is any of the following:

(i) An individual who has been determined eligible by the administrative entity of a service delivery area for services under the federal Job Training Partnership Act (29 U.S.C. Sec. 1501 et seq.) and who is receiving subsidized employment, training, or services funded by the federal Job Training Partnership Act, except for an individual who only receives outreach, intake, or assessment services or a combination thereof.

(ii) Any voluntary or mandatory registrant under the Greater Avenues for Independence Act of 1985 provided for pursuant to Article 3.2 (commencing with Section 11320) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code.

(iii) Any voluntary or mandatory registrant for the Work Incentive Demonstration Program provided for pursuant to Section 11347 of the Welfare and Institutions Code.

(iv) Any voluntary or mandatory registrant for the Employment Preparation Program provided for pursuant to Article 3.5 (commencing with Section 11325) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code.

(v) Any individual who has been certified eligible by the California Employment Development Department under the federal Targeted Jobs Tax Credit Program as long as that program is in effect.

(d) For purposes of this section: "qualified employee" means an individual—

(1) At least 90 percent of whose services for the taxpayer during the taxable year are directly related to the conduct of the taxpayer's trade or business located in an enterprise zone, and

(2) Who performs at least 50 percent of his or her services for the taxpayer during the taxable year in an enterprise zone.

(e) (1) For purposes of this section:

(A) All employees of trades or businesses (which are not incorporated) which are under common control shall be treated as employed by a single employer, and

(B) The credit (if any) allowable by this section with respect to each trade or business shall be determined by reference to its proportionate share of the qualified wages giving rise to the credit.

The regulations prescribed under this paragraph shall be based on principles similar to the principles which apply in the case of controlled groups of corporations as specified in subdivision (e) of Section 24331.

(2) If an employer acquires the major portion of a trade or business of another employer (hereinafter in this paragraph referred to as the "predecessor") or the major portion of a separate unit of a trade or business of a predecessor, then, for purposes of applying this section (other than subdivision (f)) for any calendar year ending after that acquisition, the employment relationship between an employee and an employer shall not be treated as terminated if the employee continues to be employed in that trade or business.

(f) (1) If the employment of any employee, with respect to whom qualified wages are taken into account under subdivision (a) is terminated by the taxpayer at any time during the first 270 days of that employment (whether or not consecutive) or before the close of the 270th calendar day after the day in which that employee completes 90 days of employment with the taxpayer, the tax imposed by this part for the taxable year in which that employment is terminated shall be increased by an amount (determined under those regulations) equal to the credit allowed under subdivision (a) for that taxable year and all prior taxable years attributable to qualified wages paid or incurred with respect to that employee.

(2) (A) Paragraph (1) shall not apply to any of the following:

(i) A termination of employment of an employee who voluntarily leaves the employment of the taxpayer.

(ii) A termination of employment of an individual who, before the

close of the period referred to in paragraph (1), becomes disabled to perform the services of that employment, unless that disability is removed before the close of that period and the taxpayer fails to offer reemployment to that individual.

(iii) A termination of employment of an individual, if it is determined under the applicable employment compensation provisions that the termination was due to the misconduct of that individual.

(iv) A termination of employment of an individual due to a substantial reduction in the trade or business operations of the taxpayer.

(v) A termination of employment of an individual, if that individual is replaced by other qualified employees so as to create a net increase in both the number of employees and the hours of employment.

(B) For purposes of paragraph (1), the employment relationship between the taxpayer and an employee shall not be treated as terminated by reason of a mere change in the form of conducting the trade or business of the taxpayer, if the employee continues to be employed in that trade or business and the taxpayer retains a substantial interest in that trade or business.

(3) Any increase in tax under paragraph (1) shall not be treated as tax imposed by this part for purposes of determining the amount of any credit allowable under this part.

(g) In the case of an estate or trust—

(A) The qualified wages for any taxable year shall be apportioned between the estate or trust and the beneficiaries on the basis of the income of the estate or trust allocable to each, and

(B) Any beneficiary to whom any qualified wages have been apportioned under paragraph (A) shall be treated (for purposes of this part) as the employer with respect to those wages.

(h) For purposes of this section, "enterprise zone" means an area for which designation as an enterprise zone is in effect under Section 7073 of the Government Code.

(i) The credit shall be reduced by the credit allowed under Section 17053.7. The credit shall also be reduced by the credit allowed under Section 51 of the Internal Revenue Code.

In addition, no deduction shall be allowed as provided in Section 162 of the Internal Revenue Code for that portion of the wages or salaries paid or incurred for the taxable year upon which the credit is based.

(j) In the case where the credit allowed under this section exceeds the net tax for the taxable year, that portion of the credit which exceeds the net tax may be carried over to the net tax in succeeding taxable years for the number of taxable years in which the designation of an enterprise zone under Section 7073 of the Government Code is operative, or 15 taxable years, if longer, until the credit is used. The credit shall be applied first to the earliest taxable years possible.

(k) The amount of the credit allowed by this section in any taxable year shall not exceed the amount of tax which would be imposed on the income attributed to business activities of the taxpayer within the enterprise zone (as defined in Section 7073 of the Government Code) as if that attributed income represented all of the net income of the taxpayer subject to tax under this part. The amount of that attributed income shall be determined in accordance with the provisions of Article 2 (commencing with Section 25120) of Chapter 17 of Part 11.

SEC. 3.5. Section 17053.8 of the Revenue and Taxation Code is amended to read:

17053.8. (a) There shall be allowed as credit against the "net tax" (as defined in Section 17039) for the taxable year an amount equal to the sum of each of the following:

(1) Fifty percent for qualified wages in the first year of employment.

(2) Forty percent for qualified wages in the second year of employment.

(3) Thirty percent for qualified wages in the third year of employment.

(4) Twenty percent for qualified wages in the fourth year of employment.

(5) Ten percent for qualified wages in the fifth year of employment.

(b) For purposes of this section:

(1) "Qualified wages" means the wages paid or incurred by the employer during the taxable year to qualified disadvantaged individuals. "Qualified wages" means that portion of hourly wages which does not exceed 150 percent of the minimum wage.

(2) "Qualified years one through five wages" means, with respect to any individual, qualified wages received during the 60-month period beginning with the day the individual commences employment within an enterprise zone or harbor revitalization zone.

(3) "Minimum wage" means the wage established by the Industrial Welfare Commission as provided for in Chapter 1 (commencing with Section 1171) of Part 4 of Division 2 of the Labor Code.

(c) For purposes of this section, "qualified disadvantaged individual" means an individual—

(A) Who is a qualified employee within the meaning of subdivision (d).

(B) Who is hired by the employer after the designation of the area in which services were performed as an enterprise zone (under Section 7073 of the Government Code) or a harbor revitalization zone (under Section 7103 of that code).

(C) Who is any of the following:

(i) An individual who has been determined eligible by the administrative entity of a service delivery area for services under the federal Job Training Partnership Act (29 U.S.C. Sec. 1501 et seq.) and

who is receiving subsidized employment, training, or services funded by the federal Job Training Partnership Act, except for an individual who only receives outreach, intake, or assessment services or a combination thereof.

(ii) Any voluntary or mandatory registrant under the Greater Avenues for Independence Act of 1985 provided for pursuant to Article 3.2 (commencing with Section 11320) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code.

(iii) Any voluntary or mandatory registrant for the Work Incentive Demonstration Program provided for pursuant to Section 11347 of the Welfare and Institutions Code.

(iv) Any voluntary or mandatory registrant for the Employment Preparation Program provided for pursuant to Article 3.5 (commencing with Section 11325) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code.

(v) Any individual who has been certified eligible by the California Employment Development Department under the federal Targeted Jobs Tax Credit Program as long as that program is in effect.

(d) For purposes of this section, "qualified employee" means an individual—

(1) At least 90 percent of whose services for the taxpayer during the taxable year are directly related to the conduct of the taxpayer's trade or business located in an enterprise zone or harbor revitalization zone, and

(2) Who performs at least 50 percent of his or her services for the taxpayer during the taxable year in an enterprise zone or harbor revitalization zone.

(e) (1) For purposes of this section:

(A) All employees of trades or businesses (which are not incorporated) which are under common control shall be treated as employed by a single employer, and

(B) The credit (if any) allowable by this section with respect to each trade or business shall be determined by reference to its proportionate share of the qualified wages giving rise to the credit.

The regulations prescribed under this paragraph shall be based on principles similar to the principles which apply in the case of controlled groups of corporations as specified in subdivision (e) of Section 24331.

(2) If an employer acquires the major portion of a trade or business of another employer (hereinafter in this paragraph referred to as the "predecessor") or the major portion of a separate unit of a trade or business of a predecessor, then, for purposes of applying this section (other than subdivision (f)) for any calendar year ending after that acquisition, the employment relationship between an employee and an employer shall not be treated as terminated if the employee continues to be employed in that trade or business.

(f) (1) If the employment of any employee, with respect to whom qualified wages are taken into account under subdivision (a)

is terminated by the taxpayer at any time during the first 270 days of that employment (whether or not consecutive) or before the close of the 270th calendar day after the day in which that employee completes 90 days of employment with the taxpayer, the tax imposed by this part for the taxable year in which that employment is terminated shall be increased by an amount (determined under those regulations) equal to the credit allowed under subdivision (a) for that taxable year and all prior taxable years attributable to qualified wages paid or incurred with respect to that employee.

(2) (A) Paragraph (1) shall not apply to any of the following:

(i) A termination of employment of an employee who voluntarily leaves the employment of the taxpayer.

(ii) A termination of employment of an individual who, before the close of the period referred to in paragraph (1), becomes disabled to perform the services of that employment, unless that disability is removed before the close of that period and the taxpayer fails to offer reemployment to that individual.

(iii) A termination of employment of an individual, if it is determined under the applicable employment compensation provisions that the termination was due to the misconduct of that individual.

(iv) A termination of employment of an individual due to a substantial reduction in the trade or business operations of the taxpayer.

(v) A termination of employment of an individual, if that individual is replaced by other qualified employees so as to create a net increase in both the number of employees and the hours of employment.

(B) For purposes of paragraph (1), the employment relationship between the taxpayer and an employee shall not be treated as terminated by reason of a mere change in the form of conducting the trade or business of the taxpayer, if the employee continues to be employed in that trade or business and the taxpayer retains a substantial interest in that trade or business.

(3) Any increase in tax under paragraph (1) shall not be treated as tax imposed by this part for purposes of determining the amount of any credit allowable under this part.

(g) In the case of an estate or trust—

(1) The qualified wages for any taxable year shall be apportioned between the estate or trust and the beneficiaries on the basis of the income of the estate or trust allocable to each, and

(2) Any beneficiary to whom any qualified wages have been apportioned under paragraph (1) shall be treated (for purposes of this part) as the employer with respect to those wages.

(h) For purposes of this section, "enterprise zone" means an area for which designation as an enterprise zone is in effect under Section 7073 of the Government Code. "Harbor revitalization zone" means an area for which designation as a harbor revitalization zone is in effect under Section 7103 of the Government Code.

(i) The credit shall be reduced by the credit allowed under Section 17053.7. The credit shall also be reduced by the credit allowed under Section 51 of the Internal Revenue Code.

In addition, no deduction shall be allowed as provided in Section 162 of the Internal Revenue Code for that portion of the wages or salaries paid or incurred for the taxable year upon which the credit is based.

(j) In the case where the credit allowed under this section exceeds the net tax for the taxable year, that portion of the credit which exceeds the net tax may be carried over to the net tax in succeeding taxable years for the number of taxable years in which the designation of an enterprise zone under Section 7073 of the Government Code or a harbor revitalization zone under Section 7103 of that code is operative, or 15 taxable years, if longer, until the credit is used. The credit shall be applied first to the earliest taxable years possible.

(k) The amount of the credit allowed by this section in any taxable year shall not exceed the amount of tax which would be imposed on the income attributed to business activities of the taxpayer within the enterprise zone (as defined in Section 7073 of the Government Code) or the harbor revitalization zone (as defined in Section 7103 of that code) as if that attributed income represented all of the net income of the taxpayer subject to tax under this part. The amount of that attributed income shall be determined in accordance with the provisions of Article 2 (commencing with Section 25120) of Chapter 17 of Part 11.

SEC. 4. Section 17053.9 of the Revenue and Taxation Code is amended to read:

17053.9. (a) In the case of a qualified employee, there is allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to 5 percent of the qualified wages for the taxable year.

(b) For purposes of this section:

(1) "Qualified employee" means an individual—

(A) Who is described in subdivision (d) of Section 17053.8.

(B) Who is not an employee of the federal government or of this state or of any political subdivision of this state.

(2) (A) "Qualified wages" has the meaning given to the term "wages" under subsection (b) of Section 3306 of the Internal Revenue Code, attributable to services performed for an employer with respect to whom the employee is a qualified employee, in an amount which does not exceed one and one-half times the dollar limitation specified in that subsection.

(B) "Qualified wages" does not include any compensation received from the federal government or this state or any political subdivision of this state.

(3) "Enterprise zone" means any area with respect to which a designation as an enterprise zone is in effect under Section 7073 of the Government Code.

(c) For each dollar of income received by the taxpayer in excess of qualified wages, as defined in this section, the credit shall be reduced by nine cents ($0.09).

(d) The amount of the credit allowed by this section in any taxable year shall not exceed the amount of tax which would be imposed on the income of the employee attributable to employment within the enterprise zone as if that income represented all of the net income of the taxpayer subject to tax under this part.

SEC. 4.5. Section 17053.9 of the Revenue and Taxation Code is amended to read:

17053.9. (a) In the case of a qualified employee, there is allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to 5 percent of the qualified wages for the taxable year.

(b) For purposes of this section:

(1) "Qualified employee" means an individual—

(A) Who is described in subdivision (d) of Section 17053.8.

(B) Who is not an employee of the federal government or of this state or of any political subdivision of this state.

(2) (A) "Qualified wages" has the meaning given to the term "wages" under subsection (b) of Section 3306 of the Internal Revenue Code, attributable to services performed for an employer with respect to whom the employee is a qualified employee, in an amount which does not exceed one and one-half times the dollar limitation specified in that subsection.

(B) "Qualified wages" does not include any compensation received from the federal government or this state or any political subdivision of this state.

(3) "Enterprise zone" means any area with respect to which a designation as an enterprise zone is in effect under Section 7073 of the Government Code.

(4) "Harbor revitalization zone" means any area with respect to which a designation as a harbor revitalization zone is in effect under Section 7103 of the Government Code.

(c) For each dollar of income received by the taxpayer in excess of qualified wages, as defined in this section, the credit shall be reduced by nine cents ($0.09).

(d) The amount of the credit allowed by this section in any taxable year shall not exceed the amount of tax which would be imposed on the income of the employee attributable to employment within the enterprise zone or harbor revitalization zone as if that income represented all of the net income of the taxpayer subject to tax under this part.

SEC. 5. Section 17053.11 of the Revenue and Taxation Code is amended to read:

17053.11. (a) There shall be allowed as a credit against the "net tax" (as defined in Section 17039) for the taxable year the amount determined in subdivisions (c) and (d) for a qualified business which hires a qualified employee.

(b) For purposes of this section:

(1) "Qualified business" means either (A) a qualified business, as defined in Section 7082 of the Government Code, or (B) a qualified business, as defined in Section 7082 of the Government Code, except that the percentage requirements with respect to employment of residents of a high-density unemployment area shall be applicable only to those employees hired within the 12 months immediately preceding the date that the business seeks certification from the Department of Commerce and not to the entire workforce of the business. A business that qualifies under clause (B) shall be a qualified business only for the purposes of this section, provided that the Department of Commerce certifies that the business meets the standards set forth in this paragraph.

(2) "Qualified employee" means an employee who has been an unemployed resident of a high density unemployment area (as defined in Section 7082 of the Government Code) prior to being employed by the qualified business. For the purposes of this section, participation by a prospective employee in a state or federally funded job training or work demonstration program shall not constitute employment, or effect the eligibility of an otherwise qualified employee. Qualified employee includes an otherwise qualified employee who is employed by a qualified business in the 90 days prior to its certification by the Department of Commerce as a qualified business for the purpose of becoming eligible for that certification.

(c) The credit provided for each qualified employee who has been unemployed for at least six months prior to being employed and has been hired pursuant to subdivision (a), shall be an amount equal to the sum of each of the following:

(1) Fifty percent for qualified wages in the first year of employment.

(2) Forty percent for qualified wages in the second year of employment.

(3) Thirty percent for qualified wages in the third year of employment.

(4) Twenty percent for qualified wages in the fourth year of employment.

(5) Ten percent for qualified wages in the fifth year of employment.

(d) The credit provided for each qualified employee who has been unemployed for at least three months but less than six months prior to being employed shall be 25 percent of qualified wages for the first year of employment; however, the credit for the second year of employment shall be that provided in paragraph (2) of subdivision (c), the credit for the third year of employment shall be that provided in paragraph (3) of subdivision (c), the credit for the fourth year of employment shall be that provided in paragraph (4) of subdivision (c), and the credit for the fifth year of employment shall be that provided in paragraph (5) of subdivision (c).

(e) For purposes of this section, "qualified wages" means that portion of wages not in excess of 150 percent of the minimum hourly wage paid or incurred by the qualified business during the taxable year to the qualified employee.

(f) (1) If the employment of any employee with respect to whom qualified wages are taken into account under subdivision (c) or (d) is terminated by the taxpayer at any time during the first 270 days of that employment (whether or not consecutive) or before the close of the 270th calendar day after the day in which that employee completes 90 days of employment with the taxpayer, the tax imposed by this part for the taxable year in which that employment is terminated shall be increased by an amount equal to the credit allowed under subdivision (a) for that taxable year and all prior taxable years attributable to qualified wages paid or incurred with respect to that employee.

(2) Paragraph (1) shall not apply to any of the following:

(A) A termination of employment of an employee who voluntarily leaves the employment of the taxpayer.

(B) A termination of employment of an individual who, before the close of the period referred to in paragraph (1), becomes disabled to perform the services of that employment, unless that disability is removed before the close of that period and the taxpayer fails to offer reemployment to that individual.

(C) A termination of employment of an individual, if it is determined under the applicable unemployment compensation provisions that the termination was due to the misconduct of that individual.

(D) A termination of employment of an individual due to a substantial reduction in the trade or business operations of the taxpayer other than regularly occurring seasonal reductions.

(E) A termination of employment of an individual, if that individual is replaced by other qualified employees so as to create a net increase in both number of employees and hours of employment.

(g) In the case of an estate or trust—

(1) The qualified wages for any taxable year shall be apportioned between the estate or trust and the beneficiaries on the basis of the income of the estate or trust allocable to each, and

(2) Any beneficiary to whom any qualified wages have been apportioned under paragraph (1) shall be treated (for purposes of this part) as the employer with respect to those wages.

(h) The credit shall be reduced by the credit allowed under Section 17053.7. The credit shall also be reduced by the credit allowed under Section 51 of the Internal Revenue Code.

In addition, no deduction shall be allowed as provided in Section 162 of the Internal Revenue Code for that portion of the wages or salaries paid or incurred for the taxable year upon which the credit is based.

(i) In the case where the credit allowed under this section exceeds the "net tax" for the taxable year, that portion of the credit which

exceeds the "net tax" may be carried over to the "net tax" in succeeding taxable years until the credit is used. The credit shall be applied first to the earliest taxable years possible.

(j) The amount of the credit allowed by this section for any taxable year shall not exceed the amount of tax which would be imposed on the income attributed to business activities of the taxpayer within the program area (as defined in Section 7082 of the Government Code) as if that attributed income represented all of the net income of the taxpayer subject to tax under this part. The amount of that attributed income shall be determined in accordance with the provisions of Article 2 (commencing with Section 25120) of Chapter 17 of Part 11.

SEC. 6. Section 17231 of the Revenue and Taxation Code is amended to read:

17231. (a) There shall be allowed as a deduction the amount of net interest received by the taxpayer in payment on indebtedness of either of the following:

(1) A qualified business (as defined in Section 7082 of the Government Code).

(2) A person or entity engaged in the conduct of a trade or business located in an enterpise zone (as defined in Section 7073 of the Government Code).

(b) No deduction shall be allowed under subdivision (a) unless at the time the indebtedness is incurred each of following requirements are met:

(1) The qualified business is located solely within a program area (as defined in Section 7082 of the Government Code), or the trade or business is located solely within an enterprise zone (as defined in Section 7073 of the Government Code).

(2) The indebtedness is incurred solely in connection with activity within the program area or enterprise zone.

(3) The taxpayer has no equity or other ownership interest in the debtor.

SEC. 6.5. Section 17231 of the Revenue and Taxation Code is amended to read:

17231. (a) There shall be allowed as a deduction the amount of net interest received by the taxpayer in payment on indebtedness of either of the following:

(1) A qualified business (as defined in Section 7082 of the Government Code).

(2) A person or entity engaged in the conduct of a trade or business located in an enterprise zone (as defined in Section 7073 of the Government Code) or harbor revitalization zone (as defined in Section 7103 of that code).

(b) No deduction shall be allowed under subdivision (a) unless at the time the indebtedness is incurred each of the following requirements are met:

(1) The qualified business is located solely within a program area (as defined in Section 7082 of the Government Code), or the trade

or business is located solely within an enterprise zone (as defined in Section 7073 of the Government Code) or harbor revitalization zone (as defined in Section 7103 of that code).

(2) The indebtedness is incurred solely in connection with activity within the program area, enterprise zone, or harbor revitalization zone.

(3) The taxpayer has no equity or other ownership interest in the debtor.

SEC. 7. Section 17252.5 of the Revenue and Taxation Code, as added by Chapter 32 of the Statutes of 1988, is amended to read:

17252.5. (a) A taxpayer may elect to treat the cost of any Section 17252.5 property as an expense which is not chargeable to capital account. Any cost so treated shall be allowed as a deduction for the taxable year in which Section 17252.5 property is placed in service.

(b) In the case of a husband or wife filing separate returns for a taxable year in which a spouse is entitled to the deduction under subdivision (a), the applicable amount shall be equal to 50 percent of the amount otherwise determined under subdivision (a).

(c) (1) An election under this section for any taxable year shall—

(A) Specify the items of Section 17252.5 property to which the election applies and the portion of the cost of each of those items which is to be taken into account under subdivision (a), and

(B) Be made on the taxpayer's return of the tax imposed by this part for the taxable year.

(2) Any election made under this section, and any specification contained in that election, may not be revoked except with the consent of the Franchise Tax Board.

(d) (1) For purposes of this section, "Section 17252.5 property" means any recovery property which is Section 38 property under the terms of the Internal Revenue Code and which is acquired by purchase for exclusive use in a trade or business conducted within an enterprise zone designated pursuant to Section 7073 of the Government Code.

(2) For purposes of paragraph (1), "purchase" means any acquisition of property, but only if—

(A) The property is not acquired from a person whose relationship to the person acquiring it would result in the disallowance of losses under Section 267 or 707(b) of the Internal Revenue Code (but, in applying subsections (b) and (c) of Section 267 of the Internal Revenue Code for purposes of this section, Section 267(c)(4) of the Internal Revenue Code shall be treated as providing that the family of an individual shall include only his or her spouse, ancestors, and lineal descendants),

(B) The basis of the property in the hands of the person acquiring it is not determined—

(i) In whole or in part by reference to the adjusted basis of such property in the hands of the person from whom acquired, or

(ii) Under Section 1014 of the Internal Revenue Code, relating to basis of property acquired from a decedent.

(3) For purposes of this section, the cost of property does not include so much of the basis of the property as is determined by reference to the basis of other property held at any time by the person acquiring the property.

(4) This section shall not apply to estates and trusts.

(5) This section shall not apply to any Section 17252.5 property purchased by any person described in Section 46(e)(3) of the Internal Revenue Code unless the credit under Section 38 of the Internal Revenue Code is allowable with respect to that person from that property (determined without regard to this section).

(6) In the case of a partnership, the dollar limitation contained in paragraph (1) of subdivision (f) shall apply with respect to the partnership and with respect to each partner.

(e) For purposes of this section, "taxpayer" means a taxpayer who conducts a trade or business within an enterprise zone designated pursuant to Section 7073 of the Government Code.

(f) The deduction allowable under subdivision (a) for any taxable year shall not exceed the following applicable amount for the taxable year of the designation of an enterprise zone and taxable years thereafter:

| | The applicable amount is: |
|---|---|
| Taxable year of designation | $ 5,000 |
| 1st taxable year thereafter | 5,000 |
| 2nd taxable year thereafter | 7,500 |
| 3rd taxable year thereafter | 7,500 |
| Each taxable year thereafter | 10,000 |

(g) This section shall apply only to property which is used exclusively in a trade or business conducted within an enterprise zone.

(h) Any amounts deducted under subdivision (a) with respect to property which ceases to be used in the trade or business within an enterprise zone at any time before the close of the second taxable year after the property was placed in service shall be included in income for that year.

(i) Any taxpayer who elects to be subject to this section shall not be entitled to claim for the same property the deduction under Section 179 of the Internal Revenue Code, relating to an election to expense certain depreciable business assets.

SEC. 7.5. Section 17252.5 of the Revenue and Taxation Code, as added by Chapter 32 of the Statutes of 1988, is amended to read:

17252.5. (a) A taxpayer may elect to treat the cost of any Section 17252.5 property as an expense which is not chargeable to capital account. Any cost so treated shall be allowed as a deduction for the taxable year in which Section 17252.5 property is placed in service.

(b) In the case of a husband or wife filing separate returns for a taxable year in which a spouse is entitled to the deduction under

subdivision (a), the applicable amount shall be equal to 50 percent of the amount otherwise determined under subdivision (a).

(c) (1) An election under this section for any taxable year shall—

(A) Specify the items of Section 17252.5 property to which the election applies and the portion of the cost of each of those items which is to be taken into account under subdivision (a), and

(B) Be made on the taxpayer's return of the tax imposed by this part for the taxable year.

(2) Any election made under this section, and any specification contained in that election, may not be revoked except with the consent of the Franchise Tax Board.

(d) (1) For purposes of this section, "Section 17252.5 property" means any recovery property which is Section 38 property under the terms of the Internal Revenue Code and which is acquired by purchase for exclusive use in a trade or business conducted within an enterprise zone designated pursuant to Section 7073 of the Government Code or a harbor revitalization zone designated pursuant to Section 7103 of that code.

(2) For purposes of paragraph (1), "purchase" means any acquisition of property, but only if—

(A) The property is not acquired from a person whose relationship to the person acquiring it would result in the disallowance of losses under Section 267 or 707(b) of the Internal Revenue Code (but, in applying subsections (b) and (c) of Section 267 of the Internal Revenue Code for purposes of this section, Section 267(c)(4) of the Internal Revenue Code shall be treated as providing that the family of an individual shall include only his or her spouse, ancestors, and lineal descendants),

(B) The basis of the property in the hands of the person acquiring it is not determined—

(i) In whole or in part by reference to the adjusted basis of such property in the hands of the person from whom acquired, or

(ii) Under Section 1014 of the Internal Revenue Code, relating to the basis of property acquired from a decedent.

(3) For purposes of this section, the cost of property does not include so much of the basis of the property as is determined by reference to the basis of other property held at any time by the person acquiring the property.

(4) This section shall not apply to estates and trusts.

(5) This section shall not apply to any Section 17252.5 property purchased by any person described in Section 46(e)(3) of the Internal Revenue Code unless the credit under Section 38 of the Internal Revenue Code is allowable with respect to that person from that property (determined without regard to this section).

(6) In the case of a partnership, the dollar limitation contained in subdivision (f) shall apply with respect to the partnership and with respect to each partner.

(e) For purposes of this section, "taxpayer" means a taxpayer who conducts a trade or business within an enterprise zone designated

pursuant to Section 7073 of the Government Code or a harbor revitalization zone designated pursuant to Section 7103 of that code.

(f) The deduction allowable under subdivision (a) for any taxable year shall not exceed the following applicable amount for the taxable year of the designation of an enterprise zone or harbor revitalization zone and taxable years thereafter:

| | The applicable amount is: |
|---|---|
| Taxable year of designation | $ 5,000 |
| 1st taxable year thereafter | 5,000 |
| 2nd taxable year thereafter | 7,500 |
| 3rd taxable year thereafter | 7,500 |
| Each taxable year thereafter | 10,000 |

(g) This section shall apply only to property which is used exclusively in a trade or business conducted within an enterprise zone or harbor revitalization zone.

(h) Any amounts deducted under subdivision (a) with respect to property which ceases to be used in the trade or business within an enterprise zone or harbor revitalization zone at any time before the close of the second taxable year after the property was placed in service shall be included in income for that year.

(i) Any taxpayer who elects to be subject to this section shall not be entitled to claim for the same property the deduction under Section 179 of the Internal Revenue Code, relating to an election to expense certain depreciable business assets.

SEC. 8. Section 17265 of the Revenue and Taxation Code, as amended by Chapter 32 of the Statutes of 1988, is amended to read:

17265. (a) A taxpayer may elect to treat 40 percent of the cost of any Section 17265 property as an expense which is not chargeable to capital account. Any cost so treated shall be allowed as a deduction for the taxable year in which the Section 17265 property is placed in service.

(b) In the case of a husband and wife filing separate returns for a taxable year, the applicable amount under subdivision (a) shall be equal to 50 percent of the percentage specified in subdivision (a).

(c) (1) An election under this section for any taxable year shall—

(A) Specify the items of Section 17265 property to which the election applies and the percentage of the cost of each of those items which is to be taken into account under subdivision (a).

(B) Be made on the taxpayer's return of the tax imposed by this part for the taxable year.

This election shall be made in the time, form, and manner which the Franchise Tax Board may prescribe.

(2) Any election made under this section, and any specification contained in that election, may not be revoked except with the consent of the Franchise Tax Board.

(d) (1) For purposes of this section, "Section 17265 property"

means property acquired by the taxpayer which is used exclusively within a program area (as defined in Section 7082 of the Government Code) and consists of machinery and machinery parts used for fabricating, processing, assembling, and manufacturing and machinery and machinery parts used for the production of renewable energy resources or air or water pollution control mechanisms.

"Section 17265 property" also means property used as an integral part of a qualified business within a program area (as defined in Section 7082 of the Government Code).

(2) For purposes of paragraph (1), "purchase" means any acquisition of property, but only if—

(A) The property is not acquired from a person whose relationship to the person acquiring it would result in the disallowance of losses under Section 267 or Section 707(b) of the Internal Revenue Code (but, in applying Sections 267(b) and 267(c) for purposes of this section, Section 267(c)(4) shall be treated as providing that the family of an individual shall include only the individual's spouse, ancestors, and lineal descendants),

(B) The basis of the property in the hands of the person acquiring it is not determined—

(i) In whole or in part by reference to the adjusted basis of that property in the hands of the person from whom it is acquired, or

(ii) Under Sections 18032 and 18033 (relating to property acquired from a decedent).

(3) For purposes of this section, the cost of property does not include so much of the basis of the property as is determined by reference to the basis of other property held at any time by the person acquiring the property.

(4) This section shall not apply to estates and trusts.

(5) This section shall not apply to any Section 17265 property purchased by any person described in Section 46(e)(3) of the Internal Revenue Code unless the credit under Section 38 of the Internal Revenue Code is allowable with respect to that person for that property (determined without regard to this section).

(6) In the case of a partnership, the percentage limitation specified in subdivision (a) shall apply with respect to the partnership and with respect to each partner.

(e) For purposes of this section, "taxpayer" means a taxpayer who conducts a qualified business within a program area (as defined in Section 7082 of the Government Code).

(f) Any taxpayer who elects to be subject to this section shall not be entitled to claim additional depreciation pursuant to Section 17252 with respect to any property which constitutes Section 17265 property; however, the taxpayer may claim depreciation by any method permitted by Section 17250, commencing with the taxable year following the taxable year in which the Section 17265 property is placed in service.

(g) The aggregate cost which may be taken into account under

subdivision (a) for any taxable year shall not exceed the following applicable amount for the taxable year of the designation of a program area and taxable years thereafter:

| | The applicable amount is: |
|---|---|
| Taxable year of designation | $100,000 |
| 1st taxable year thereafter | 100,000 |
| 2nd taxable year thereafter | 75,000 |
| 3rd taxable year thereafter | 75,000 |
| Each taxable year thereafter | 50,000 |

(h) Any amounts deducted under subdivision (a) with respect to property which ceases to be qualified property at any time before the close of the second taxable year after the property is placed in service shall be included in income for that year.

SEC. 9. Section 17276 of the Revenue and Taxation Code, as amended by Chapter 11 of the Statutes of 1988, is amended to read:

17276. Except as provided in Sections 17276.1 and 17276.2, the deduction provided by Section 172 of the Internal Revenue Code, relating to a net operating loss deduction, shall be modified as follows:

(a) (1) Net operating losses attributable to taxable years beginning before January 1, 1985, and beginning on or after January 1, 1992, shall not be allowed.

(2) A net operating loss shall not be carried forward to any taxable year beginning before January 1, 1987.

(b) The provisions of Section 172(b)(2) of the Internal Revenue Code, relating to the amount of carryovers, shall be modified so that 50 percent of the entire amount of the net operating loss for any taxable year shall not be eligible for carryover to any subsequent taxable year.

(c) Net operating loss carrybacks shall not be allowed.

(d) Notwithstanding the provisions of Section 172(b)(1) of the Internal Revenue Code—

(1) A net operating loss attributable to a taxable year beginning in 1985 or 1986, shall be a net operating loss carryover to the first taxable year beginning in 1987, and for each of the two succeeding taxable years.

(2) A net operating loss attributable to a taxable year ending on or after January 1, 1985 and before December 31, 1985, shall be a net operating loss carryover to the first taxable year beginning in 1987, and for each of the two succeeding taxable years.

(3) For purposes of paragraph (2), the amount of the carryover shall be reduced so that the amount of carryover, after application of this paragraph and subdivision (b), shall be equal to the following percentage of the entire amount of the net operating loss for the taxable year:

(A) For taxable years ending in January 1985, 4 percent.

(B) For taxable years ending in February 1985, 8 percent.
(C) For taxable years ending in March 1985, 12 percent.
(D) For taxable years ending in April 1985, 17 percent.
(E) For taxable years ending in May 1985, 21 percent.
(F) For taxable years ending in June 1985, 25 percent.
(G) For taxable years ending in July 1985, 29 percent.
(H) For taxable years ending in August 1985, 33 percent.
(I) For taxable years ending in September 1985, 37 percent.
(J) For taxable years ending in October 1985, 42 percent.
(K) For taxable years ending in November 1985, 46 percent.
(L) For taxable years ending in December 1985, 50 percent.

(e) For purposes of computing the net operating loss deduction under Section 172(a) of the Internal Revenue Code, as modified by this section, the amount of a net operating loss sustained in any taxable year during any part of which the taxpayer was not a resident of this state shall be limited to the sum of the following:

(1) The portion of the net operating loss attributable to the part of the year in which the taxpayer is a resident.

(2) The portion of the net operating loss which, during the part of the year the taxpayer is not a resident, is attributable to California source income and deductions.

(f) For taxable years beginning on or after January 1, 1987, net operating loss carryovers shall be applied in accordance with Section 172 of the Internal Revenue Code (earliest year first)—

(1) First, from losses which were allowable under prior law, incurred in taxable years beginning prior to January 1, 1985.

(2) Second, from losses, other than losses allowed under prior law, incurred in taxable years ending in 1985.

(3) Third, from losses, other than losses allowed under prior law, incurred in taxable years beginning in 1985.

(4) Fourth, from losses which were allowable under prior law, incurred in taxable years beginning in 1985.

(5) Fifth, from losses, other than losses allowed under prior law, incurred in taxable years beginning in 1986.

(6) Sixth, from losses which were allowable under prior law, incurred in taxable years beginning in 1986.

(7) Seventh, from losses incurred in taxable years beginning on or after January 1, 1987.

(g) Notwithstanding any provisions of this section, a deduction shall be allowed to a "qualified taxpayer" as provided in Sections 17276.1 and 17276.2.

SEC. 10. Section 17276.1 of the Revenue and Taxation Code, as added by Chapter 32 of the Statutes of 1988, is amended to read:

17276.1. (a) A qualified taxpayer, as defined in Section 17276.2, may elect to take the deduction provided by Section 172 of the Internal Revenue Code, relating to the net operating loss deduction with the following exceptions:

(1) Net operating losses attributable to years beginning before January 1, 1984, shall not be allowed.

(2) Net operating loss carrybacks shall not be allowed.

(3) For purposes of computing the net operating loss deduction under Section 172(a) of the Internal Revenue Code, as modified by this section, the amount of a net operating loss sustained in any taxable year during any part of which the taxpayer was not a resident of this state shall be limited to the sum of the following:

(A) The portion of the net operating loss attributable to the part of the year in which the taxpayer is a resident.

(B) The portion of the net operating loss which, during the part of the year the taxpayer is not a resident, is attributable to California source income and deductions.

(b) The election to compute the net operating loss under this section shall be made in a statement attached to the original return, timely filed for the year in which the net operating loss is incurred and shall be irrevocable.

SEC. 11. Section 17276.2 of the Revenue and Taxation Code, as added by Chapter 32 of the Statutes of 1988, is amended to read:

17276.2. The term "qualified taxpayer" as used in Section 17276.1 means either of the following:

(a) A taxpayer engaged in the conduct of a qualified business within a program area (as defined in Section 7082 of the Government Code).

(1) A net operating loss shall not be a net operating loss carryback to any taxable year and a net operating loss for any taxable year beginning on or after the date that the taxpayer becomes a qualified business shall be a net operating loss carryover to each of the 15 taxable years following the taxable year of loss.

(2) For purposes of this subdivision:

(A) "Net operating loss" means the loss determined under Section 172 of the Internal Revenue Code, as modified by Section 17276.1, attributable to the business activities of the taxpayer within the program area (as defined in Section 7082 of the Government Code). That attributed loss shall be determined in accordance with the provisions of Article 2 (commencing with Section 25120) of Chapter 17 of Part 11.

(B) A net operating loss carryover shall be a deduction only with respect to income attributed to the business activities of the taxpayer within the program area (as defined in Section 7082 of the Government Code) determined in accordance with the provisions of Article 2 (commencing with Section 25120) of Chapter 17 of Part 11.

(3) No net operating loss deduction shall be allowed for any loss which occurs prior to January 1, 1984, or for any loss which occurs in any taxable year beginning prior to January 1, 1984.

(b) A taxpayer who is engaged in the conduct of a trade or business within an enterprise zone designated pursuant to Section 7073 of the Government Code on or after that designation.

(1) A net operating loss shall not be a net operating loss carryback to any taxable year and a net operating loss for any taxable year beginning on or after the date that the area in which the taxpayer

conducts a trade or business is designated an enterprise zone shall be a net operating loss carryover to each following taxable year that ends before the expiration or revocation of the designation of the enterprise zone under Section 7073 of the Government Code or to each of 15 taxable years following the taxable year of loss, if longer.

(2) For purposes of this subdivision:

(A) "Net operating loss" means the loss determined under Section 172 of the Internal Revenue Code, as modified by Section 17276.1, attributable to the business activities of the taxpayer within the enterprise zone (as defined in Section 7073 of the Government Code). The attributed loss shall be determined in accordance with the provisions of Article 2 (commencing with Section 25120) of Chapter 17 of Part 11.

(B) A net operating loss carryover shall be a deduction only with respect to income attributed to the business activities of the taxpayer within the enterprise zone (as defined in Section 7073 of the Government Code) determined in accordance with the provisions of Article 2 (commencing with Section 25120) of Chapter 17 of Part 11.

(3) No net operating loss deduction shall be allowed for any loss which occurs prior to January 1, 1984, or for any loss which occurs in any taxable year beginning prior to January 1, 1984.

(c) A taxpayer who qualifies as a "qualified taxpayer" shall, for the taxable year of the net operating loss and any taxable year to which that net operating loss may be carried, designate on the return filed for each year the subdivision of this section which applies to that taxpayer with respect to that net operating loss. If the taxpayer is eligible to qualify under more than one subdivision of this section, the designation is to be made after taking into account the election required by subdivision (d) and shall be consistent with that election.

(d) If a taxpayer is eligible to qualify under more than one subdivision of this section as a "qualified taxpayer," with respect to a net operating loss in a taxable year, the taxpayer shall elect which subdivision of this section is to apply to the taxpayer. The election is to be made in a statement attached to the original return, timely filed, for the year the net operating loss is incurred and shall be irrevocable.

SEC. 11.5. Section 17276.2 of the Revenue and Taxation Code, as added by Chapter 32 of the Statutes of 1988, is amended to read:

17276.2. The term "qualified taxpayer" as used in Section 17276.1 means either of the following:

(a) A taxpayer engaged in the conduct of a qualified business within a program area (as defined in Section 7082 of the Government Code).

(1) A net operating loss shall not be a net operating loss carryback to any taxable year and a net operating loss for any taxable year beginning on or after the date that the taxpayer becomes a qualified business shall be a net operating loss carryover to each of the 15 taxable years following the taxable year of loss.

(2) For purposes of this subdivision:

(A) "Net operating loss" means the loss determined under Section 172 of the Internal Revenue Code, as modified by Section 17276.1, attributable to the business activities of the taxpayer within the program area (as defined in Section 7082 of the Government Code). That attributed loss shall be determined in accordance with the provisions of Article 2 (commencing with Section 25120) of Chapter 17 of Part 11.

(B) A net operating loss carryover shall be a deduction only with respect to income attributed to the business activities of the taxpayer within the program area (as defined in Section 7082 of the Government Code) determined in accordance with the provisions of Article 2 (commencing with Section 25120) of Chapter 17 of Part 11.

(3) No net operating loss deduction shall be allowed for any loss which occurs prior to January 1, 1984, or for any loss which occurs in any taxable year beginning prior to January 1, 1984.

(b) A taxpayer who is engaged in the conduct of a trade or business within an enterprise zone designated pursuant to Section 7073 of the Government Code or within a harbor revitalization zone designated pursuant to Section 7103 of that code, on or after that designation.

(1) A net operating loss shall not be a net operating loss carryback to any taxable year and a net operating loss for any taxable year beginning on or after the date that the area in which the taxpayer conducts a trade or business is designated an enterprise zone or harbor revitalization zone shall be a net operating loss carryover to each following taxable year that ends before the expiration or revocation of the designation of the enterprise zone under Section 7073 of the Government Code or harbor revitalization zone under Section 7103 of that code, or to each of 15 taxable years following the taxable year of loss, if longer.

(2) For purposes of this subdivision:

(A) "Net operating loss" means the loss determined under Section 172 of the Internal Revenue Code, as modified by Section 17276.1, attributable to the business activities of the taxpayer within the enterprise zone (as defined in Section 7073 of the Government Code) or harbor revitalization zone (as defined in Section 7103 of that code). The attributed loss shall be determined in accordance with the provisions of Article 2 (commencing with Section 25120) of Chapter 17 of Part 11.

(B) A net operating loss carryover shall be a deduction only with respect to income attributed to the business activities of the taxpayer within the enterprise zone (as defined in Section 7073 of the Government Code) or harbor revitalization zone (as defined in Section 7103 of that code), determined in accordance with the provisions of Article 2 (commencing with Section 25120) of Chapter 17 of Part 11.

(3) No net operating loss deduction shall be allowed for any loss which occurs prior to January 1, 1984, or for any loss which occurs in any taxable year beginning prior to January 1, 1984.

(c) A taxpayer who qualifies as a "qualified taxpayer" shall, for the taxable year of the net operating loss and any taxable year to which that net operating loss may be carried, designate on the return filed for each year the subdivision of this section which applies to that taxpayer with respect to that net operating loss. If the taxpayer is eligible to qualify under more than one subdivision of this section, the designation is to be made after taking into account the election required by subdivision (d) and shall be consistent with that election.

(d) If a taxpayer is eligible to qualify under more than one subdivision of this section as a "qualified taxpayer," with respect to a net operating loss in a taxable year, the taxpayer shall elect which subdivision of this section is to apply to the taxpayer. The election is to be made in a statement attached to the original return, timely filed, for the year the net operating loss is incurred and shall be irrevocable.

SEC. 12. Section 23612 of the Revenue and Taxation Code is amended to read:

23612. (a) There shall be allowed as a credit against the taxes imposed by this part (except the minimum franchise tax and the alternative minimum tax) for the year an amount equal to the sales or use tax paid or incurred by the taxpayer in connection with the purchase of qualified property.

(b) For purposes of this section:

(1) "Taxpayer" means either of the following:

(A) A qualified business as defined in Section 7082 of the Government Code.

(B) A bank or corporation engaged in a trade or business within an enterprise zone designated pursuant to Section 7073 of the Government Code.

(2) "Qualified property" means machinery and machinery parts used for fabricating, processing, assembling, and manufacturing and machinery and machinery parts used for the production of renewable energy resources or air or water pollution control mechanisms, up to a value of twenty million dollars ($20,000,000), which, in the case of a taxpayer described in subparagraph (A) of paragraph (1), is used exclusively in a program area, and, in the case of a taxpayer described in subparagraph (B) of paragraph (1), is used exclusively in an enterprise zone.

(c) If the taxpayer has purchased property upon which a use tax has been paid or incurred, the credit provided under subdivision (a) shall be allowed only if qualified property of a comparable quality and price is not timely available for purchase in this state.

(d) In the case where the credit allowed under this section exceeds the taxes imposed by this part (except the minimum franchise tax and the alternative minimum tax) for the year, that portion of the credit which exceeds those taxes may be carried over to the taxes imposed by this part (except the minimum franchise tax and the alternative minimum tax) in succeeding years, until the credit is used. The credit shall be applied first to the earliest years

possible.

(e) Any taxpayer who elects to be subject to this section shall not be entitled to increase the basis of the property as otherwise required by Section 164(a) of the Internal Revenue Code with respect to sales or use tax paid or incurred in connection with the purchase of qualified property.

(f) In the case of a taxpayer described in subparagraph (A) of paragraph (1) of subdivision (b), the amount of the credit provided by this section shall not in any year exceed the amount of tax which would be imposed on the income attributed to business activities of the taxpayer within the program area (as defined in Section 7082 of the Government Code). The amount of that attributed income shall be determined in accordance with the provisions of Article 2 (commencing with Section 25120) of Chapter 17.

(g) In the case of a taxpayer described in subparagraph (B) of paragraph (1) of subdivision (b), the amount of the credit provided by this section in any year shall not exceed the amount of tax which would be imposed on the income attributed to business activities of the taxpayer within the enterprise zone (designated pursuant to Section 7073 of the Government Code). The amount of that attributed income shall be determined in accordance with the provisions of Article 2 (commencing with Section 25120) of Chapter 17.

SEC. 12.5. Section 23612 of the Revenue and Taxation Code is amended to read:

23612. (a) There shall be allowed as a credit against the taxes imposed by this part (except the minimum franchise tax and the alternative minimum tax) for the year an amount equal to the sales or use tax paid or incurred by the taxpayer in connection with the purchase of qualified property.

(b) For purposes of this section:

(1) "Taxpayer" means either of the following:

(A) A qualified business as defined in Section 7082 of the Government Code.

(B) A bank or corporation engaged in a trade or business within an enterprise zone designated pursuant to Section 7073 of the Government Code or a harbor revitalization zone designated pursuant to Section 7103 of that code.

(2) "Qualified property" means machinery and machinery parts used for fabricating, processing, assembling, manufacturing, shipbuilding, ship repair, and machinery and machinery parts used for the production of renewable energy resources or air or water pollution control mechanisms, up to a value of twenty million dollars ($20,000,000), which, in the case of a taxpayer described in subparagraph (A) of paragraph (1), is used exclusively in a program area, and, in the case of a taxpayer described in subparagraph (B) of paragraph (1), is used exclusively in an enterprise zone or harbor revitalization zone.

(c) If the taxpayer has purchased property upon which a use tax

has been paid or incurred, the credit provided under subdivision (a) shall be allowed only if qualified property of a comparable quality and price is not timely available for purchase in this state.

(d) In the case where the credit allowed under this section exceeds the taxes imposed by this part (except the minimum franchise tax and the alternative minimum tax) for the year, that portion of the credit which exceeds those taxes may be carried over to the taxes imposed by this part (except the minimum franchise tax and the alternative minimum tax) in succeeding years, until the credit is used. The credit shall be applied first to the earliest years possible.

(e) Any taxpayer who elects to be subject to this section shall not be entitled to increase the basis of the property as otherwise required by Section 164(a) of the Internal Revenue Code with respect to sales or use tax paid or incurred in connection with the purchase of qualified property.

(f) In the case of a taxpayer described in subparagraph (A) of paragraph (1) of subdivision (b), the amount of the credit provided by this section shall not in any year exceed the amount of tax which would be imposed on the income attributed to business activities of the taxpayer within the program area (as defined in Section 7082 of the Government Code). The amount of that attributed income shall be determined in accordance with the provisions of Article 2 (commencing with Section 25120) of Chapter 17.

(g) In the case of a taxpayer described in subparagraph (B) of paragraph (1) of subdivision (b), the amount of the credit provided by this section in any year shall not exceed the amount of tax which would be imposed on the income attributed to business activities of the taxpayer within the enterprise zone (designated pursuant to Section 7073 of the Government Code) or harbor revitalization zone (designated pursuant to Section 7103 of that code). The amount of that attributed income shall be determined in accordance with the provisions of Article 2 (commencing with Section 25120) of Chapter 17.

SEC. 13. Section 24331 of the Revenue and Taxation Code is amended to read:

24331. (a) There shall be allowed as a credit against the tax imposed by this part for the year (except the minimum franchise tax and the alternative minimum tax) an amount equal to the sum of each of the following:

(1) Fifty percent for qualified wages in the first year of employment.

(2) Forty percent for qualified wages in the second year of employment.

(3) Thirty percent for qualified wages in the third year of employment.

(4) Twenty percent for qualified wages in the fourth year of employment.

(5) Ten percent for qualified wages in the fifth year of

employment.

(b) For purposes of this section:

(1) "Qualified wages" means the wages paid or incurred by the employer during the income year to qualified disadvantaged individuals. "Qualified wages" means that portion of hourly wages which does not exceed 150 percent of the minimum wage.

(2) "Qualified years one through five wages" means, with respect to any individual, qualified wages received during the 60-month period beginning with the day the individual commences employment within an enterprise zone.

(3) "Minimum wage" means the wage established by the Industrial Welfare Commission as provided for in Chapter 1 (commencing with Section 1171) of Part 4 of Division 2 of the Labor Code.

(c) For purposes of this section:

(1) "Qualified disadvantaged individual" means an individual—

(A) Who is a qualified employee within the meaning of subdivision (d).

(B) Who is hired by the employer after the designation of the area in which services were performed as an enterprise zone (under Section 7073 of the Government Code).

(C) Who is any of the following:

(i) An individual who has been determined eligible by the administrative entity of a service delivery area for services under the federal Job Training Partnership Act (29 U.S.C. Sec. 1501 et seq.) and who is receiving subsidized employment, training, or services funded by the federal Job Training Partnership Act, except for an individual who only receives outreach, intake, or assessment services or a combination thereof.

(ii) Any voluntary or mandatory registrant under the Greater Avenues for Independence Act of 1985 provided for pursuant to Article 3.2 (commencing with Section 11320) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code.

(iii) Any voluntary or mandatory registrant for the Work Incentive Demonstration Program provided for pursuant to Section 11347 of the Welfare and Institutions Code.

(iv) Any voluntary or mandatory registrant for the Employment Preparation Program provided for pursuant to Article 3.5 (commencing with Section 11325) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code.

(v) Any individual who has been certified eligible by the California Employment Development Department under the federal Targeted Jobs Tax Credit Program as long as that program is in effect.

(d) For purposes of this section, "qualified employee" means an individual—

(1) At least 90 percent of whose services for the taxpayer during the income year are directly related to the conduct of the taxpayer's trade or business located in an enterprise zone.

(2) Who performs at least 50 percent of his or her services for the taxpayer during the income year in an enterprise zone.

(e) (1) For purposes of this section, all employees of all corporations which are members of the same controlled group of corporations shall be treated as employed by a single employer. In any such case, the credit (if any) allowable by this section to each member shall be determined by reference to its proportionate share of the qualified wages giving rise to the credit. For purposes of this subdivision, "controlled group of corporations" has the meaning given to that term by Section 1563(a) of the Internal Revenue Code, except that—

(A) "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.

(B) The determination shall be made without regard to subsections (a)(4) and (e)(3)(C) of Section 1563 of the Internal Revenue Code.

(2) If an employer acquires the major portion of a trade or business of another employer (hereinafter in this paragraph referred to as the "predecessor") or the major portion of a separate unit of a trade or business of a predecessor, then, for purposes of applying this section (other than subdivision (f)) for any calendar year ending after that acquisition, the employment relationship between an employee and an employer shall not be treated as terminated if the employee continues to be employed in that trade or business.

(f) (1) If the employment of any employee with respect to whom qualified wages are taken into account under subdivision (a) is terminated by the taxpayer at any time during the first 270 days of that employment (whether or not consecutive) or before the close of the 270th calendar day after the day in which that employee completes 90 days of employment with the taxpayer, the tax imposed by this part for the income year in which that employment is terminated shall be increased by an amount equal to the credit allowed under subdivision (a) for that income year and all prior income years attributable to qualified wages paid or incurred with respect to that employee.

(2) (A) Paragraph (1) shall not apply to any of the following:

(i) A termination of employment of an employee who voluntarily leaves the employment of the taxpayer.

(ii) A termination of employment of an individual who, before the close of the period referred to in paragraph (1), becomes disabled to perform the services of that employment, unless that disability is removed before the close of that period and the taxpayer fails to offer reemployment to that individual.

(iii) A termination of employment of an individual, if it is determined under the applicable unemployment compensation provisions that the termination was due to the misconduct of that individual.

(iv) A termination of employment of an individual due to a

substantial reduction in the trade or business operations of the taxpayer.

(v) A termination of employment of an individual, if that individual is replaced by other qualified employees so as to create a net increase in both the number of employees and the hours of employment.

(B) For purposes of paragraph (1), the employment relationship between the taxpayer and an employee shall not be treated as terminated—

(i) By a transaction to which Section 381(a) of the Internal Revenue Code applies, if the employee continues to be employed by the acquiring corporation, or

(ii) By reason of a mere change in the form of conducting the trade or business of the taxpayer, if the employee continues to be employed in that trade or business and the taxpayer retains a substantial interest in that trade or business.

(3) Any increase in tax under paragraph (1) shall not be treated as tax imposed by this part for purposes of determining the amount of any credit allowable under this part.

(g) In the case of—

(1) An organization to which Section 593 of the Internal Revenue Code applies, and

(2) A regulated investment company or a real estate investment trust subject to taxation under this part rules similar to the rules provided in subsections (e) and (h) of Section 46 of the Internal Revenue Code shall apply.

(h) For purposes of this section, "enterprise zone" means an area for which designation as an enterprise zone is in effect under Section 7073 of the Government Code.

(i) The credit shall be reduced by the credit allowed under Section 24330. The credit shall also be reduced by the credit allowed under Section 51 of the Internal Revenue Code.

In addition, no deduction shall be allowed under Section 24343 for that portion of the wages or salaries paid or incurred for the income year upon which the credit allowable under this section is based.

(j) In the case where the credit allowed under this section exceeds the taxes imposed by this part for the year (except the minimum franchise tax and the alternative minimum tax) that portion of the credit which exceeds those taxes may be carried over to the taxes imposed by this part (except the minimum franchise tax and the alternative minimum tax) in succeeding years for the number of years in which the designation of an enterprise zone under Section 7073 of the Government Code is operative, or 15 income years, if longer, until the credit is used. The credit shall be applied first to the earliest years possible.

(k) The amount of the credit provided by this section shall not in any year exceed the amount of tax which would be imposed on the income attributed to business activities of the taxpayer within the enterprise zone (as defined in Section 7073 of the Government

Code). The amount of that attributed income shall be determined in accordance with the provisions of Article 2 (commencing with Section 25120) of Chapter 17.

SEC. 13.5. Section 24331 of the Revenue and Taxation Code is amended to read:

24331. (a) There shall be allowed as a credit against the tax imposed by this part for the year (except the minimum franchise tax and the alternative minimum tax) an amount equal to the sum of each of the following:

(1) Fifty percent for qualified wages in the first year of employment.

(2) Forty percent for qualified wages in the second year of employment.

(3) Thirty percent for qualified wages in the third year of employment.

(4) Twenty percent for qualified wages in the fourth year of employment.

(5) Ten percent for qualified wages in the fifth year of employment.

(b) For purposes of this section:

(1) "Qualified wages" means the wages paid or incurred by the employer during the income year to qualified disadvantaged individuals. "Qualified wages" means that portion of hourly wages which does not exceed 150 percent of the minimum wage.

(2) "Qualified years one through five wages" means, with respect to any individual, qualified wages received during the 60-month period beginning with the day the individual commences employment within an enterprise zone or harbor revitalization zone.

(3) "Minimum wage" means the wage established by the Industrial Welfare Commission as provided for in Chapter 1 (commencing with Section 1171) of Part 4 of Division 2 of the Labor Code.

(c) For purposes of this section:

(1) "Qualified disadvantaged individual" means an individual—

(A) Who is a qualified employee within the meaning of subdivision (d).

(B) Who is hired by the employer after the designation of the area in which services were performed as an enterprise zone (under Section 7073 of the Government Code) or a harbor revitalization zone (under Section 7103 of that code).

(C) Who is any of the following:

(i) An individual who has been determined eligible by the administrative entity of a service delivery area for services under the federal Job Training Partnership Act (29 U.S.C. Sec. 1501 et seq.) and who is receiving subsidized employment, training, or services funded by the federal Job Training Partnership Act, except for an individual who only receives outreach, intake, or assessment services or a combination thereof.

(ii) Any voluntary or mandatory registrant under the Greater

Avenues for Independence Act of 1985 provided for pursuant to Article 3.2 (commencing with Section 11320) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code.

(iii) Any voluntary or mandatory registrant for the Work Incentive Demonstration Program provided for pursuant to Section 11347 of the Welfare and Institutions Code.

(iv) Any voluntary or mandatory registrant for the Employment Preparation Program provided for pursuant to Article 3.5 (commencing with Section 11325) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code.

(v) Any individual who has been certified eligible by the California Employment Development Department under the federal Targeted Jobs Tax Credit Program as long as that program is in effect.

(d) For purposes of this section, "qualified employee" means an individual—

(1) At least 90 percent of whose services for the taxpayer during the income year are directly related to the conduct of the taxpayer's trade or business located in an enterprise zone or harbor revitalization zone.

(2) Who performs at least 50 percent of his or her services for the taxpayer during the income year in an enterprise zone or harbor revitalization zone.

(e) (1) For purposes of this section, all employees of all corporations which are members of the same controlled group of corporations shall be treated as employed by a single employer. In any such case, the credit (if any) allowable by this section to each member shall be determined by reference to its proportionate share of the qualified wages giving rise to the credit. For purposes of this subdivision, "controlled group of corporations" has the meaning given to that term by Section 1563(a) of the Internal Revenue Code, except that—

(A) "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.

(B) The determination shall be made without regard to subsections (a)(4) and (e)(3)(C) of Section 1563 of the Internal Revenue Code.

(2) If an employer acquires the major portion of a trade or business of another employer (hereinafter in this paragraph referred to as the "predecessor") or the major portion of a separate unit of a trade or business of a predecessor, then, for purposes of applying this section (other than subdivision (f)) for any calendar year ending after that acquisition, the employment relationship between an employee and an employer shall not be treated as terminated if the employee continues to be employed in that trade or business.

(f) (1) If the employment of any employee with respect to whom qualified wages are taken into account under subdivision (a) is terminated by the taxpayer at any time during the first 270 days of

that employment (whether or not consecutive) or before the close of the 270th calendar day after the day in which that employee completes 90 days of employment with the taxpayer, the tax imposed by this part for the income year in which that employment is terminated shall be increased by an amount equal to the credit allowed under subdivision (a) for that income year and all prior income years attributable to qualified wages paid or incurred with respect to that employee.

(2) (A) Paragraph (1) shall not apply to any of the following:

(i) A termination of employment of an employee who voluntarily leaves the employment of the taxpayer.

(ii) A termination of employment of an individual who, before the close of the period referred to in paragraph (1), becomes disabled to perform the services of that employment, unless that disability is removed before the close of that period and the taxpayer fails to offer reemployment to that individual.

(iii) A termination of employment of an individual, if it is determined under the applicable unemployment compensation provisions that the termination was due to the misconduct of that individual.

(iv) A termination of employment of an individual due to a substantial reduction in the trade or business operations of the taxpayer.

(v) A termination of employment of an individual, if that individual is replaced by other qualified employees so as to create a net increase in both the number of employees and the hours of employment.

(B) For purposes of paragraph (1), the employment relationship between the taxpayer and an employee shall not be treated as terminated—

(i) By a transaction to which Section 381(a) of the Internal Revenue Code applies, if the employee continues to be employed by the acquiring corporation, or

(ii) By reason of a mere change in the form of conducting the trade or business of the taxpayer, if the employee continues to be employed in that trade or business and the taxpayer retains a substantial interest in that trade or business.

(3) Any increase in tax under paragraph (1) shall not be treated as tax imposed by this part for purposes of determining the amount of any credit allowable under this part.

(g) In the case of—

(1) An organization to which Section 593 of the Internal Revenue Code applies, and

(2) A regulated investment company or a real estate investment trust subject to taxation under this part rules similar to the rules provided in subsections (e) and (h) of Section 46 of the Internal Revenue Code shall apply.

(h) For purposes of this section, "enterprise zone" means an area for which designation as an enterprise zone is in effect under Section

7073 of the Government Code. "Harbor revitalization zone" means an area for which designation as a harbor revitalization zone is in effect under Section 7103 of the Government Code.

(i) The credit shall be reduced by the credit allowed under Section 24330. The credit shall also be reduced by the credit allowed under Section 51 of the Internal Revenue Code.

In addition, no deduction shall be allowed under Section 24343 for that portion of the wages or salaries paid or incurred for the income year upon which the credit allowable under this section is based.

(j) In the case where the credit allowed under this section exceeds the taxes imposed by this part for the year (except the minimum franchise tax and the alternative minimum tax) that portion of the credit which exceeds those taxes may be carried over to the taxes imposed by this part (except the minimum franchise tax and the alternative minimum tax) in succeeding years for the number of years in which the designation of an enterprise zone under Section 7073 of the Government Code or a harbor revitalization zone under Section 7103 of that code is operative, or 15 income years, if longer, until the credit is used. The credit shall be applied first to the earliest years possible.

(k) The amount of the credit provided by this section shall not in any year exceed the amount of tax which would be imposed on the income attributed to business activities of the taxpayer within the enterprise zone (as defined in Section 7073 of the Government Code) or harbor revitalization zone (as defined in Section 7103 of that code). The amount of that attributed income shall be determined in accordance with the provisions of Article 2 (commencing with Section 25120) of Chapter 17.

SEC. 14. Section 24333 of the Revenue and Taxation Code is amended to read:

24333. (a) There shall be allowed as a credit against the tax imposed by this part for the year (except the minimum franchise tax and the alternative minimum tax) for the year the amount determined in subdivisions (c) and (d) for a qualified business which hires a qualified employee.

(b) For purposes of this section:

(1) "Qualified business" means either (A) a qualified business, as defined in Section 7082 of the Government Code, or (B) a qualified business, as defined in Section 7082 of the Government Code, except that the percentage requirements with respect to employment of residents of a high-density unemployment area shall be applicable only to those employees hired within the 12 months immediately preceding the date that the business seeks certification from the Department of Commerce and not to the entire work force of the business. A business that qualifies under clause (B) shall be a qualified business only for the purposes of this section, provided that the Department of Commerce certifies that the business meets the standards set forth in this paragraph.

(2) "Qualified employee" means an employee who has been an

unemployed resident of a high density unemployment area (as defined in Section 7082 of the Government Code) prior to being employed by the qualified business. For the purposes of this section, participation by a prospective employee in a state or federally funded job training or work demonstration program shall not constitute employment, or effect the eligibility of an otherwise qualified employee. Qualified employee includes an otherwise qualified employee who is employed by a qualified business in the 90 days prior to its certification by the Department of Commerce as a qualified business for the purpose of becoming eligible for that certification.

(c) The credit provided for each qualified employee who has been unemployed for at least six months prior to being employed pursuant to subdivision (a) shall be an amount equal to the sum of each of the following:

(1) Fifty percent for qualified wages in the first year of employment.

(2) Forty percent for qualified wages in the second year of employment.

(3) Thirty percent for qualified wages in the third year of employment.

(4) Twenty percent for qualified wages in the fourth year of employment.

(5) Ten percent for qualified wages in the fifth year of employment.

(d) The credit provided for each qualified employee who has been unemployed for at least three months but less than six months prior to being employed shall be 25 percent of qualified wages for the first year of employment; however, the credit for the second year of employment shall be that provided in paragraph (2) of subdivision (c), the credit for the third year of employment shall be that provided in paragraph (3) of subdivision (c), the credit for the fourth year of employment shall be that provided in paragraph (4) of subdivision (c), and the credit for the fifth year of employment shall be that provided in paragraph (5) of subdivision (c).

(e) For purposes of this section, "qualified wages" means that portion of wages not in excess of 150 percent of the minimum hourly wage paid or incurred by the qualified business during the income year to the qualified employee.

(f) (1) If the employment of any employee with respect to whom qualified wages are taken into account under subdivision (c) is terminated by the taxpayer at any time during the first 270 days of that employment (whether or not consecutive) or before the close of the 270th calendar day after the day in which that employee completes 90 days of employment with the taxpayer, the tax imposed by this part for the income year in which that employment is terminated shall be increased by an amount equal to the credit allowed under subdivision (a) for that income year and all prior income years attributable to qualified wages paid or incurred with

respect to that employee.

(2) Paragraph (1) shall not apply to any of the following:

(A) A termination of employment of an employee who voluntarily leaves the employment of the taxpayer.

(B) A termination of employment of an individual who, before the close of the period referred to in paragraph (1), becomes disabled to perform the services of that employment, unless that disability is removed before the close of that period and the taxpayer fails to offer reemployment to that individual.

(C) A termination of employment of an individual, if it is determined under the applicable unemployment compensation provisions that the termination was due to the misconduct of that individual.

(D) A termination of employment of an individual due to a substantial reduction in the trade or business operations of the taxpayer other than regularly occurring seasonal reductions.

(E) A termination of employment of an individual, if that individual is replaced by other qualified employees so as to create a net increase in both number of employees and hours of employment.

(g) The credit shall be reduced by the credit allowed under Section 24330. The credit shall also be reduced by the credit allowed under Section 51 of the Internal Revenue Code.

In addition, no deduction shall be allowed under Section 24343 for that portion of the wages or salaries paid or incurred for the income year upon which the credit allowable under this section is based.

(h) In the case where the credit allowed under this section exceeds the taxes imposed by this part for the year (except the minimum franchise tax and the alternative minimum tax) that portion of the credit which exceeds those taxes may be carried over to the taxes imposed by this part (except the minimum franchise tax and the alternative minimum tax) in succeeding years until the credit is used. The credit shall be applied first to the earliest years possible.

(i) The amount of the credit allowed by this section for any year shall not exceed the amount of tax which would be imposed on the income attributed to business activities of the taxpayer within the program area (as defined in Section 7082 of the Government Code) as if that attributed income represented all of the net income of the taxpayer subject to tax under this part. The amount of that attributed income shall be determined in accordance with the provisions of Article 2 (commencing with Section 25120) of Chapter 17.

SEC. 15. Section 24416.2 of the Revenue and Taxation Code, as added by Chapter 32 of the Statutes of 1988, is amended to read:

24416.2. The term "qualified taxpayer" as used in Section 24416.1 means either of the following:

(a) A taxpayer engaged in the conduct of a qualified business within a program area (as defined in Section 7082 of the Government Code).

(1) A net operating loss shall not be a net operating loss carryback

for any income year and a net operating loss for any income year beginning on or after the date that the taxpayer becomes a qualified business shall be a net operating loss carryover to each of the 15 income years following the income year of loss.

(2) For purposes of this subdivision:

(A) "Net operating loss" means the loss determined under Section 172 of the Internal Revenue Code, as modified by Section 24416.1, attributable to the business activities of the taxpayer within the program area (as defined in Section 7082 of the Government Code). That attributed loss shall be determined in accordance with the provisions of Article 2 (commencing with Section 25120) of Chapter 17.

(B) A net operating loss carryover shall be a deduction only with respect to income attributed to the business activities of the taxpayer within the program area (as defined in Section 7082 of the Government Code) determined in accordance with the provisions of Article 2 (commencing with Section 25120) of Chapter 17.

(3) No net operating loss deduction shall be allowed for any loss which occurs prior to January 1, 1984, or for any loss which occurs in any income year beginning prior to January 1, 1984.

(b) A taxpayer who is engaged in the conduct of a trade or business within an enterprise zone designated pursuant to Section 7073 of the Government Code on or after that designation.

(1) (A) A net operating loss shall not be a net operating loss carryback to any income year and, except as provided in subparagraph (B), a net operating loss for any income year beginning on or after the date that the area in which the taxpayer conducts a trade or business is designated an enterprise zone shall be a net operating loss carryover to each following income year that ends before the expiration or revocation of the designation of the enterprise zone under Section 7073 of the Government Code or to each of 15 income years following the income year of loss, if longer.

(B) In the case of a financial institution to which Section 585, 586, or 593 of the Internal Revenue Code applies, a net operating loss for any income year beginning on or after January 1, 1984, shall be a net operating loss carryover to each of the five income years following the income year of the loss. Subdivision (b) of Section 24416.1 and Section 172 (b) (1) (F) and (G) of the Internal Revenue Code shall not apply.

(2) For purposes of this subdivision:

(A) "Net operating loss" means the loss determined under Section 172 of the Internal Revenue Code, as modified by Section 24416.1, attributable to the business activities of the taxpayer within the enterprise zone (as defined in Section 7073 of the Government Code). The attributed loss shall be determined in accordance with the provisions of Article 2 (commencing with Section 25120) of Chapter 17.

(B) A net operating loss carryover shall be a deduction only with respect to income attributed to the business activities of the taxpayer

within the enterprise zone (as defined in Section 7073 of the Government Code) determined in accordance with the provisions of Article 2 (commencing with Section 25120) of Chapter 17.

(3) No net operating loss deduction shall be allowed for any loss which occurs prior to January 1, 1984, or for any loss which occurs in any income year beginning prior to January 1, 1984.

(c) A taxpayer who qualifies as a "qualified taxpayer" shall, for the income year of the net operating loss and any income year to which that net operating loss may be carried, designate on the return filed for each year the subdivision of this section which applies to that taxpayer with respect to that net operating loss. If the taxpayer is eligible to qualify under more than one subdivision of this section, the designation is to be made after taking into account the election required by subdivision (d) and shall be consistent with that election.

(d) If a taxpayer is eligible to qualify under more than one subdivision of this section as a "qualified taxpayer," with respect to a net operating loss in an income year, the taxpayer shall elect which subdivision of this section is to apply to the taxpayer. The election is to be made in a statement attached to the original return, timely filed, for the year the net operating loss is incurred and shall be irrevocable.

SEC. 15.5. Section 24416.2 of the Revenue and Taxation Code, as added by Chapter 32 of the Statutes of 1988, is amended to read:

24416.2. The term "qualified taxpayer" as used in Section 24416.1 means either of the following:

(a) A taxpayer engaged in the conduct of a qualified business within a program area (as defined in Section 7082 of the Government Code).

(1) A net operating loss shall not be a net operating loss carryback for any income year and, except as provided in subparagraph (B), a net operating loss for any income year beginning on or after the date that the taxpayer becomes a qualified business shall be a net operating loss carryover to each of the 15 income years following the income year of loss.

(2) For purposes of this subdivision:

(A) "Net operating loss" means the loss determined under Section 172 of the Internal Revenue Code, as modified by Section 24416.1, attributable to the business activities of the taxpayer within the program area (as defined in Section 7082 of the Government Code). That attributed loss shall be determined in accordance with the provisions of Article 2 (commencing with Section 25120) of Chapter 17.

(B) A net operating loss carryover shall be a deduction only with respect to income attributed to the business activities of the taxpayer within the program area (as defined in Section 7082 of the Government Code) determined in accordance with the provisions of Article 2 (commencing with Section 25120) of Chapter 17.

(3) No net operating loss deduction shall be allowed for any loss which occurs prior to January 1, 1984, or for any loss which occurs in

any income year beginning prior to January 1, 1984.

(b) A taxpayer who is engaged in the conduct of a trade or business within an enterprise zone designated pursuant to Section 7073 of the Government Code or a harbor revitalization zone designated pursuant to Section 7103 of that code, on or after that designation.

(1) (A) A net operating loss shall not be a net operating loss carryback to any income year and, except as provided in subparagraph (B), a net operating loss for any income year beginning on or after the date that the area in which the taxpayer conducts a trade or business is designated an enterprise zone or harbor revitalization zone shall be a net operating loss carryover to each following income year that ends before the expiration or revocation of the designation of the enterprise zone under Section 7073 of the Government Code or harbor revitalization zone under Section 7103 of that code, or to each of 15 income years following the income year of loss, if longer.

(B) In the case of a financial institution to which Section 585, 586, or 593 of the Internal Revenue Code applies, a net operating loss for any income year beginning on or after January 1, 1984, shall be a net operating loss carryover to each of the five income years following the income year of the loss. Subdivision (d) of Section 24416.1 and Section 172 (b) (1) (F) and (G) of the Internal Revenue Code shall not apply.

(2) For purposes of this subdivision:

(A) "Net operating loss" means the loss determined under Section 172 of the Internal Revenue Code, as modified by Section 24416.1, attributable to the business activities of the taxpayer within the enterprise zone (as defined in Section 7073 of the Government Code) or harbor revitalization zone (as defined in Section 7103 of that code). The attributed loss shall be determined in accordance with the provisions of Article 2 (commencing with Section 25120) of Chapter 17.

(B) A net operating loss carryover shall be a deduction only with respect to income attributed to the business activities of the taxpayer within the enterprise zone (as defined in Section 7073 of the Government Code) or harbor revitalization zone (as defined in Section 7103 of that code), determined in accordance with the provisions of Article 2 (commencing with Section 25120) of Chapter 17.

(3) No net operating loss deduction shall be allowed for any loss which occurs prior to January 1, 1984, or for any loss which occurs in any income year beginning prior to January 1, 1984.

(c) A taxpayer who qualifies as a "qualified taxpayer" shall, for the income year of the net operating loss and any income year to which that net operating loss may be carried, designate on the return filed for each year the subdivision of this section which applies to that taxpayer with respect to that net operating loss. If the taxpayer is eligible to qualify under more than one subdivision of this section,

the designation is to be made after taking into account the election required by subdivision (d) and shall be consistent with that election.

(d) If a taxpayer is eligible to qualify under more than one subdivision of this section as a "qualified taxpayer," with respect to a net operating loss in an income year, the taxpayer shall elect which subdivision of this section is to apply to the taxpayer. The election is to be made in a statement attached to the original return, timely filed, for the year the net operating loss is incurred and shall be irrevocable.

SEC. 15.7. Sections 2.5, 3.5, 4.5, 6.5, 7.5, 11.5, 12.5, 13.5, and 15.5 of this bill incorporate amendments to Section 17052.13, 17053.8, 17053.9, 17231, 17252.5, 17276.2, 23612, 24331, and 24416.2, respectively, of the Revenue and Taxation Code proposed by both this bill and SB 368. They shall become operative only if (1) both bills are enacted and become effective on or before January 1, 1989, (2) each bill amends the above sections of the Revenue and Taxation Code, and (3) this bill is enacted after SB 368, in which case the above sections of the Revenue and Taxation Code, as amended by SB 368, shall remain operative only until the operative date of this bill, at which time Sections 2.5, 3.5, 4.5, 6.5, 7.5, 11.5, 12.5, 13.5, and 15.5 of this bill shall become operative, and Sections 2, 3, 4, 6, 7, 11, 12, 13, and 15 of this bill shall not become operative.

SEC. 16. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect. However, unless otherwise specifically provided, the provisions of this act shall be applied in the computation of taxes for taxable or income years beginning on or after January 1, 1988.

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## CHAPTER 1464

An act to amend Sections 7077, 7082, 7095, 15327, and 15328 of, and to add Sections 15327.6 and 15339 to, of the Government Code, relating to economic development, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 27, 1988. Filed with Secretary of State September 28, 1988.]

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

SECTION 1. Section 7077 of the Government Code is amended to read:

7077. An area may only be designated either as an enterprise zone under this chapter or as a program area under Chapter 12.9 (commencing with Section 7080).

SEC. 2. Section 7082 of the Government Code is amended to read:

7082. For purposes of this chapter:

(a) "Block group" means the smallest area for which the United States Department of Commerce, Bureau of the Census, provides data on personal income.

(b) "Cluster of block groups" means one or more contiguous block groups.

(c) "Poverty level" means the poverty level, as defined by the United States Department of Commerce, Bureau of the Census, as periodically updated.

(d) "High density unemployment area" means any of the following:

(1) A metropolitan statistical area or nonmetropolitan statistical area within this state, as identified by the Department of Commerce, which contains at least 4,000 people (in the case of a metropolitan statistical area) or at least 2,500 people (in the case of a nonmetropolitan statistical area) in a cluster of block groups, each of which meets the following criteria according to the most recent available decennial census information:

(A) The average unemployment rate for the block group for the most recent 12-month period for which data are available was at least one and one-half times the average national rate of unemployment for that 12-month period.

(B) The average poverty rate for the block group for the most recent 12-month period was at least one and one-half times the average national poverty rate for that 12-month period.

(C) At least 70 percent of the household earnings for the block group for the most recent 12-month period was a maximum of 80 percent of the average state household earnings for that 12-month period.

(D) Excludes nondistressed areas.

(2) If an area does not meet the criteria of a high density unemployment area specified above, an applicant may petition to the department for the designation based upon compliance with one or more of the following:

(A) A special census is conducted and approved by the population research unit of the Department of Finance which demonstrates compliance with paragraph (1).

(B) The applicant's jurisdiction has experienced a major economic dislocation resulting from plant closure or closure of a federal installation within the last 12 months prior to the application.

(C) The applicant's jurisdiction contains a specifically defined geographic area that meets the eligibility criteria for pockets of poverty under the United States Department of Housing and Urban Development's Urban Development Action Grant (UDAG) program as described in 24 CFR Part 570, Sections 570.466(a) (2) and (a) (3), and as periodically updated.

(D) A block group meets substantially similar criteria measuring economic distress as that measured in paragraph (1). Each census block shall meet the "substantially similar" criteria.

(E) The area consists of the entire geographic area of a community. Area boundaries shall be synonymous with the boundaries of the community. As used in this subparagraph, "community" means a subdivision of a city or county (not including a city), including a neighborhood or suburb which has distinct boundaries, is recognized as a community by the individuals residing and working within the community, and has existed prior to the program planning process. Documentation demonstrating that the area meets the definition of "community" may include a map prepared for purposes other than the program, which lists both the name and boundaries of the community. The area shall meet the following criteria:

(i) Complies with the above definition of "community."

(ii) A minimum of 51 percent of the geographic area or population of the area meets the criteria of subparagraphs (A), (B), and (C) of paragraph (1), and the remainder of the area has substantially similar economic distress.

(3) A petition for designation of a high density unemployment area received by the department after April 1, 1985, shall be reviewed by the department pursuant to the criteria specified in paragraph (2).

(e) "Nondistressed area" means any block group which does not meet the definition of a high density unemployment area.

(f) "One-stop service" means an efficient and expeditious method for providing services to qualified businesses.

(g) "Department" means the Department of Commerce.

(h) "Qualified business" means any person, corporation, or other entity certified during the taxable or income year by the department as meeting paragraphs (1) and (2).

(1) During the period of designation, the entity is engaged in the active conduct of a trade or business within the program area.

(2) Meets any of the following requirements:

(A) Has an average of at least 50 percent of its employees who are residents of a high density unemployment area.

(B) Has an average of at least 30 percent of its employees who are residents of a high density unemployment area, and has set up a community service program or a substantial equivalent as defined by regulations, or programs approved by the local government entity and the community advisory council in which the program area is located, or both.

(C) Is a business at least 30 percent owned and operated by a resident or residents of a high density unemployment area. For purposes of this subparagraph, "owned and operated" means that the resident or residents of a high density unemployment area who are owners of the business are responsible for at least 30 percent of the work performed by the business and share in at least 30 percent of the ownership, control, management responsibility, risks, and profits of the business.

For purposes of this subdivision, "a high density unemployment

area" means the high density unemployment area contained in the applicant's final application to the department if the population of that high density unemployment area is in excess of 150,000.

A business entity shall be certified prior to obtaining any benefits of a qualified business, and shall be recertified no less than every three years, as determined by the department. The department shall periodically audit qualified businesses for compliance with this section, and decertify any business found not in compliance. Priority shall be given to auditing qualified businesses within 18 months of the original certification of a business. A business may appeal to the director of the department a decision to deny certification or recertification or a decision to decertify, within 30 days of the decision.

Financial institutions shall not be qualified businesses.

(3) A person, corporation, or other entity shall not be a qualified business if the business uses a residential structure in a high density unemployment area for a nonresidential use, unless the structure has been unoccupied for at least one year prior to designation of the program area.

(i) "Program area" means one targeted economic development area and, where applicable, one neighborhood economic development area in the Employment and Economic Incentive Program. The term applies both to areas contained in an application for designation, and an area awarded designation. In an application containing a high density unemployment area with a population in excess of 75,000, "program area" means the targeted economic development area, the high density unemployment area, and, where applicable, the neighborhood economic development area. The benefits of the Employment and Economic Incentive Program shall only accrue to program areas after designation.

(j) "Agent" means the person or entity designated by an applicant to facilitate the operations of the Employment and Economic Incentive Program as described in subdivisions (a) and (b) of Section 7087.

(k) "Applicant" means a city, county, or city and county applying for designation under the Employment and Economic Incentive Act.

(*l*) "Resident" means, unless otherwise defined, a person whose principal place of residence is within a high density unemployment area and who has lived in that area for six months prior to employment by the qualified business.

(m) "Infrastructure" means the physical systems and services which support development and people, including, but not limited to, streets and highways, transit services, airports, and water and sewer systems.

(n) "Community services" means any type of emergency assistance, counseling and advice, medical care, instructional or social services, or recreational programs and facilities furnished to individuals or groups in high density unemployment areas or program areas.

(o) "Neighborhood economic development area" means an area which meets all of the following criteria:

(1) It shall be located entirely within or contiguous to the high density unemployment area contained in the application for designation.

(2) It shall be zoned primarily commercial.

(3) Its boundary shall be continuous.

(4) It shall be of sufficient size to sustain a diverse mix of commercial businesses and its size and location shall be appropriate to reducing the economic distress within the high density unemployment area.

(5) At least a part of its area shall be within the territorial jurisdiction of the applicant. If an area for which designation is sought encompasses the territorial jurisdiction of two or more local governmental entities, all of those entities shall be a party to the application for designation, except that any one or more of those entities by resolution or ordinance may specify that it shall not participate in the application as an applicant, but shall agree to complete all actions stated within the application which apply to its jurisdiction, if the area is designated.

No residential structure may be used for nonresidential use unless the structure has been unoccupied for at least one year prior to designation as a program area, or unless comparable replacement housing is provided for all persons displaced in accordance with Section 33413 of the Health and Safety Code. No person shall be displaced under this section unless relocation assistance is provided pursuant to Section 33415 of the Health and Safety Code.

An agricultural area shall not be designated as a neighborhood economic development area.

(p) "Targeted economic development area" means an area which meets all of the following criteria:

(1) Its boundary shall be continuous.

(2) It shall be zoned primarily industrial or other mixed business uses.

(3) It shall be of sufficient size to sustain a diverse mix of businesses and its size and location shall be appropriate to reducing the economic distress within the high density unemployment area.

(4) At least a part of its area shall be within the territorial jurisdiction of the applicant. If an area for which designation is sought encompasses the territorial jurisdiction of two or more local governmental entities, all of those entities shall be a party to the application for designation, except that any one or more of those entities by resolution or ordinance may specify that it shall not participate in the application as an applicant, but shall agree to complete all actions stated within the application which apply to its jurisdiction, if the area is designated.

The area may be, but is not required to be, within a high density unemployment area. However, if the area is outside a high density unemployment area, it shall be within reasonable commuting

distance of the high density unemployment area which is contained in the application for designation. If the area is outside a high density unemployment area, the applicant jurisdiction in which the area is located, in making its application, shall secure the endorsement of its application from at least one city or county which has jurisdiction within the high density unemployment area and is in close geographic proximity to the high density unemployment area.

The area may include vacant or sparsely developed parcels of land or abandoned facilities.

No residential structure may be used for nonresidential use unless the structure has been unoccupied for at least one year prior to designation as a program area, or unless comparable replacement housing is provided for all persons displaced in accordance with Section 33413 of the Health and Safety Code. No person shall be displaced under this section unless relocation assistance is provided pursuant to Section 33415 of the Health and Safety Code.

An agricultural area shall not be designated as a targeted economic development area.

(q) "Application area" means the program area and high density unemployment area contained in an application for designation.

SEC. 3. Section 7095 of the Government Code is amended to read:

7095. (a) Whenever the state prepares an invitation for bid (I.F.B.) for a contract for goods in excess of one hundred thousand dollars ($100,000), except a contract in which the worksite is fixed by the provisions of the contract, the state shall award a 5-percent preference to California-based companies who certify under penalty of perjury that no less than 50 percent of the labor required to perform the contract shall be accomplished at a worksite or worksites located in a program area.

(b) Where a bidder complies with the provisions of subdivision (a), the state shall award a 1-percent preference for bidders who shall agree to hire persons living within a high density unemployment area or are enterprise zone qualified employees equal to 5 to 9 percent of its work force during the period of contract performance; a 2-percent preference for bidders who shall agree to hire persons living within a high density unemployment area or are enterprise zone qualified employees equal to 10 to 14 percent of its work force during the period of contract performance; a 3-percent preference for bidders who shall agree to hire persons living within a high density unemployment area or are enterprise zone qualified employees equal to 15 to 19 percent of its work force during the period of contract performance; and a 4-percent preference for bidders who shall agree to hire persons living within a high density unemployment area or are enterprise zone qualified employees equal to 20 or more percent of its work force during the period of contract performance.

(c) In evaluating proposals for contracts for services in excess of one hundred thousand dollars ($100,000), except a contract in which

the worksite is fixed by the provisions of the contract, the state shall award a 5-percent preference on the price submitted by California-based companies who certify under penalty of perjury that they shall perform the contract at a worksite or worksites located in a program area.

(d) Where a bidder complies with the provisions of subdivision (c), the state shall award the additional preferences as set forth in subdivision (b) as appropriate.

(e) In each instance in this section a program area shall also mean any enterprise zone which is designated under any other provision of state law.

(f) As used in this section, "enterprise zone qualified employees" means employees who meet any of the requirements of subparagraph (C) of paragraph (1) of subdivision (c) of Section 17053.8 or subparagraph (C) of paragraph (1) of subdivision (c) of Section 24331 of the Revenue and Taxation Code, as these sections read on January 1, 1988.

SEC. 4. Section 15327 of the Government Code is amended to read:

15327. In order to carry out the provisions of this chapter, there is hereby created in the State Treasury the California Economic Development Grant and Loan Fund.

The California Economic Development Grant and Loan Fund is created only for the purpose of: (a) receiving federal, state, and local money for subsequent allocation by the department in the form of grants or loans to public agencies and private entities; (b) receiving repayments of loans or grants and interest on those loans and grants for subsequent reallocation as grants or loans without regard to a federal matching share so long as the proceeds are used for economic development in a manner consistent with Section 304 of Public Law 89-136 (42 U.S.C. 3153); and (c) receiving fees for subsequent expenditure as authorized by Section 15328. These conditions shall apply retroactively to all federal, state, and local moneys, including interest received by, allocated by, and returned to the Department of Economic and Business Development since its inception in 1975.

State funds allocated to the fund in excess of any amount needed to match the federal, state, and local funds, shall be available for economic development grants or loans or both, without regard to the matching share.

Notwithstanding Section 13340, all money deposited in the California Economic Development Grant and Loan Fund and the Grant and Loan Collection Account established pursuant to Section 15327.6 shall remain available, and is continuously appropriated to the department, until expended or obligated without regard to fiscal years for purposes of this part.

At the request of the director, the Treasurer shall invest existing moneys in the fund and in the account pursuant to Sections 16470 through 16475 and to the extent and under the conditions specified by present law.

The department may advance to the recipient up to 50 percent of the state's share of any loan or grant awarded once final approvals have been made by the state.

SEC. 4.5. Section 15327 of the Government Code is amended to read:

15327. In order to carry out the provisions of this chapter, there is hereby created in the State Treasury the California Economic Development Grant and Loan Fund.

The California Economic Development Grant and Loan Fund is created only for the purpose of: (a) receiving federal, state, and local money for subsequent allocation by the department in the form of grants or loans to public agencies and private entities; (b) receiving repayments of loans or grants and interest on those loans and grants for subsequent reallocation as grants or loans without regard to a federal matching share so long as the proceeds are used for economic development in a manner consistent with Section 304 of Public Law 89-136 (42 U.S.C. 3153); and (c) receiving fees for subsequent expenditure as authorized by Section 15328. These conditions shall apply retroactively to all federal, state, and local moneys, including interest received by, allocated by, and returned to the Department of Economic and Business Development since its inception in 1975.

State funds allocated to the fund in excess of any amount needed to match the federal, state, and local funds, shall be available for economic development grants or loans or both, without regard to the matching share.

The California Economic Development Grant and Loan Fund shall be available to new or expanding businesses for the specific purpose of providing employment to participants in the Family Economic Security Act (FESA), Job Training Partnership Act (JTPA), Employment Training Panel (ETP), and Greater Avenues for Independence (GAIN) programs pursuant to Article 3.7 (commencing with Section 15345).

Notwithstanding Section 13340, all money deposited in the California Economic Development Grant and Loan Fund and the Grant and Loan Collection Account established pursuant to Section 15327.6 shall remain available, and is continuously appropriated to the department, until expended or obligated without regard to fiscal years for purposes of this part.

At the request of the director, the Treasurer shall invest existing moneys in the fund and in the account pursuant to Sections 16470 through 16475 and to the extent and under the conditions specified by present law.

The department may advance to the recipient up to 50 percent of the state's share of any loan or grant awarded once final approvals have been made by the state.

SEC. 5. Section 15327.6 is added to the Government Code, to read:

15327.6. There is in the California Economic Development Grant and Loan Fund the Grant and Loan Collection Account.

The Grant and Loan Collection Account is created solely for the purpose of receiving charges, fees, income and collections, and paying costs necessary to protect the state's interests as specified in Section 15328.

SEC. 6. Section 15328 of the Government Code is amended to read:

15328. (a) In order to defray costs to the department for administration of its direct loans and grant programs, the department may do all of the following:

(1) Impose reasonable charges on all applications, approved grants, and approved loans.

(2) Recover collection costs from the borrower, grantee, or other party.

(3) Earn income on any asset recovered pursuant to a loan default.

(b) The department may use these fees or other charges for those costs necessary to protect the state's position as a lender-creditor. These costs shall be broadly construed to include, but are not limited to, foreclosure expenses, auction fees, title searches, appraisals, real estate brokerage fees, attorney fees, mortgage payments, insurance payments, utility costs, repair costs, removal and storage costs for repossessed equipment and inventory, and additional expenditures to purchase a senior lien in foreclosure or bankruptcy proceedings.

SEC. 7. Section 15339 is added to the Government Code, to read:

15339. The department, with the approval of the Department of General Services, may sell real property acquired by the department in a foreclosure, by deed in lieu of foreclosure, judgment, or sale under a power of sale on a deed of trust, lien, or by exercise of any other security interest on real property securing repayment of a loan or performance under a grant or loan made by the department. Notwithstanding any other provision of law, real property so acquired shall be sold for its market value and the sale proceeds shall be deposited in the fund from which the secured loan or grant was made.

The sales shall be conducted on behalf of the department by the Department of General Services, except that the department, with the approval of the Department of General Services, may conduct the sale, utilize the assistance of any local public agency, or contract with a real estate broker to conduct the sale, if the department determines that one of those options will result in a more prompt or cost-efficient sale.

SEC. 8. Section 4.5 of this bill incorporates amendments to Section 15327 of the Government Code proposed by both this bill and AB 1810. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1989, but this bill becomes operative first, (2) each bill amends Section 15327 of the Government Code, and (3) this bill is enacted after AB 1810, in which case Section 15327 of the Government Code, as amended by Section 4 of this bill, shall remain operative only until the operative

date of AB 1810, at which time Section 4.5 of this bill shall become operative.

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 clarify as soon as possible the Enterprise Zone Act, which is intended to bring immediate economic relief to economically depressed areas of the state, it is necessary for this act to take effect immediately.

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## CHAPTER 1465

An act to amend Sections 17052.4, 17054, 17061.5, 17063, 17073.5, 17252.5, 17507, 17551, 17551.5, 17561, 17683, 18001, 18002, 18402, 18410.6, 18551, 19062.13, 23036, 23151, 23153, 23181, 23184, 23453, 23601.4, 23603, 23609, 23609.5, 23610.5, 23612, 23800, 23802, 24416, 24416.2, 24637, 24833, 24941, 24990, 25553, 25562, 25563, and 25931.3 of, to amend the heading of Article 4.5 (commencing with Section 24990) of Chapter 15 of Part 11 of Division 2 of, to amend and renumber Sections 24330, 24331, and 24333 of, to add Sections 17142, 24905, 24990.5, and 24995 to, to repeal and add Sections 24379 and 24721 of, to repeal Sections 23630, 24378, 24722, 24722.1, 24722.2, 24722.3, 24723, and 24903 of, and to repeal the heading of Article 4 (commencing with Section 24330) of Chapter 6 of Part 11 of Division 2 of, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor September 27, 1988. Filed with Secretary of State September 28, 1988.]

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

SECTION 1. Section 17052.4 of the Revenue and Taxation Code, as amended by Chapter 11 of the Statutes of 1988, is amended to read:

17052.4. (a) For taxable years beginning on or after January 1, 1987, and before January 1, 1989, there shall be allowed as a credit against the "net tax" (as defined by Section 17039) and the tax imposed by Section 17062, relating to the alternative minimum tax, an amount equal to 12 percent of the cost of a solar energy system installed on premises, used for commercial purposes, which are located in California and which are owned by the taxpayer during the taxable year. For purposes of taxpayers who lease a solar energy system pursuant to subdivision (m), the tax credit shall apply only to the principal recovery portion of lease payments for the term of the lease not to exceed 10 years, as defined in subdivision (o), which are made during the taxable year, and to the amounts which are expended on the purchased portion of the solar energy system,

including installation charges, during the taxable year. For taxable years beginning on or after January 1, 1988, and before January 1, 1989, the credit percentage allowed by this section shall be 10 percent.

(b) The solar energy tax credit shall be claimed on the state income tax return for the taxable year in which the solar energy system was installed.

(c) A taxpayer who claimed the solar energy tax credit in the state income tax return for the taxable year in which the solar energy system was installed may claim the credit in subsequent years for additions to the system or additional systems by the amount prescribed in subdivision (a).

(d) For purposes of computing the credit provided by this section, the cost of any solar energy system eligible for the credit shall be reduced by any grant provided by a public entity for that system.

(e) The basis of any system for which a credit is allowed shall be reduced by the amount of the credit and the amount of any grant provided by a utility or public agency for the solar energy system. The basis adjustment shall be made for the taxable year for which the credit is allowed.

(f) With the exception of a husband and wife, if there is more than one owner of a premises on which a solar energy system is installed, each owner shall be eligible to receive the solar energy tax credit in proportion to his or her ownership interests in the premises. In the case of a husband or wife who files a separate return, the credit may be taken by either or equally divided between them.

(g) In the case of a partnership, the solar energy tax credit may be divided between the partners pursuant to a written partnership agreement.

(h) In the case where the credit allowed under this section exceeds the "net tax," and the tax imposed by Section 17062, relating to the alternative minimum tax, the excess may be carried over to reduce the "net tax" and the tax imposed by Section 17062, relating to the alternative minimum tax, in the following year, and succeeding years if necessary, until the credit has been exhausted. This subdivision shall also apply to the credit allowed under former Section 17052.5 within the limitations of subdivision (e) of that section (except that "net tax" shall include the tax imposed under Section 17062).

(i) No tax credit may be claimed under this section for any expenditures which have been otherwise claimed as a tax credit for the current or any prior taxable year as energy conservation measures under this part.

(j) Energy conservation measures applied in conjunction with solar energy systems to reduce the total cost or backup energy requirements of those systems shall be considered part of the systems, and shall be eligible for the tax credit. Qualified energy conservation measures installed within six months of the date of installation of the solar energy system are considered to be installed

"in conjunction with" the solar energy system, even if the period spans two taxable years. In cases involving more than six months between the dates of installation of the energy conservation measures and the solar energy system, the taxpayer must be able to provide persuasive evidence that the energy conservation measures were in fact installed in conjunction with a solar energy system. Eligible conservation measures applied in conjunction with solar space heating include, but are not limited to, ceiling, wall, and floor insulation above that required by law at the time of original construction. Eligible conservation measures applied in conjunction with solar water heating include, but are not limited to, water heater insulation jackets, and shower and faucet flow reducing devices. Energy conservation measures which shall be eligible for the tax credit when applied in conjunction with solar energy systems shall be defined by the Energy Resources Conservation and Development Commission as part of the solar energy system eligibility criteria.

(k) Taxpayers who lease a solar energy system installed on premises in California shall receive a tax credit as provided in subdivision (a), if the lessee can confirm, if necessary, by a written document signed by the lessor that (1) the lessor irrevocably elects not to claim a state tax credit for the solar energy system, and (2) if the system is installed in a locality served by a municipal solar utility, that the lessor holds a valid permit from the municipal solar utility. Leasing requirements may be established by the State Energy Resources Conservation and Development Commission as part of the solar energy system eligibility criteria.

(*l*) The State Energy Resources Conservation and Development Commission shall, after one or more public hearings, establish guidelines and criteria for solar energy systems which shall be eligible for the credit provided by this section. These guidelines and criteria may include, but are not limited to, minimum requirements for safety, reliability, and durability of solar energy systems. The Franchise Tax Board shall prescribe such regulations as may be necessary to carry out the purposes of this section.

(m) For purposes of this section, the following definitions shall apply:

(1) "Installed" means placed in a functionally operative state.

(2) "Cost" includes equipment, installation charges, and compensation paid to the owner of burdened property in connection with the acquisition of a solar easement, as defined in Section 801.5 of the Civil Code, and the fees for the recording of the easement. In the case of a system which is leased, "cost" means the principal recovery portion of lease payments, which is the cost incurred by the taxpayer in acquiring the solar energy system, excluding interest charges and maintenance expenses.

"Cost" does not include interest charges and costs associated with the acquisition of an easement other than a solar easement.

(3) "Owner" includes duly recorded holders of legal title, lessees with at least three years remaining on their lease or easement

granting use of the premises, a person purchasing premises under a contract of sale, or who holds shares or membership in a cooperative housing corporation, which holding is a requisite to the exclusive right of occupancy to the premises, a person who is a member of a nonprofit corporation or association which is a lessee with at least three years remaining on its lease.

(4) "Premises" means the principal stationary location in California where the system is installed for direct use or for purposes of sale of energy, and includes land, easements, and buildings or portions thereof.

(5) "Commercial purposes" means the installation of solar energy systems on premises other than single-family dwellings.

(6) "Single-family dwelling" means single-family residences, mobilehomes, and the individual units of condominiums.

"Single-family dwelling" does not include cooperatives, apartment buildings, or other similar multiple dwellings, including buildings and any other common areas of a condominium maintained by a homeowners association.

(7) (A) "Solar energy system" means the use of solar devices for the individual function of:

(i) Domestic or service water heating.

(ii) Space conditioning.

(iii) Production of electricity.

(iv) Process heat.

(v) Solar mechanical energy.

"Solar energy system" includes, but is not limited to, passive thermal systems, semipassive thermal systems, active thermal systems, and photovoltaic systems.

For purposes of this section, "solar energy system" does not include solar devices for the individual function of wind energy for the production of electricity or mechanical work.

(B) Eligible solar energy systems shall have a useful life of not less than three years.

(8) "Solar device" means the equipment associated with the collection, conversion, transfer, distribution, storage, or control of solar energy. In the case of a solar device associated with two or more solar energy systems, the credit allowed for the solar device may be taken for any one of the systems, or divided equally between them.

(9) "Passive thermal system" means a system which utilizes the structural elements of the building, and is not augmented by mechanical components, to provide for collection, storage, or distribution of solar energy for heating or cooling.

(10) "Active thermal system" means a system which utilizes solar devices thermally isolated from the commercial space to provide for collection, storage, or distribution of solar energy for heating or cooling.

(11) "Semipassive thermal system" means a system which utilizes the structural elements of a building and is augmented by mechanical components to provide for collection, storage, or

distribution of solar energy for heating or cooling.

(12) "Municipal solar utility" means a city, county, or municipal utility district, or agency thereof, which sells or leases solar or other energy generating equipment or energy saving devices for residential, commercial, agricultural, or industrial uses or which issues permits to companies engaged in the leasing of this equipment.

(n) Except for purposes of subdivision (h) of Section 17052.4, the provisions of this section shall not apply to any solar energy system which continues to qualify for the tax credit authorized by former Section 17052.5 (as amended by Chapter 1200 of the Statutes of 1986) by meeting the eligibility requirements of subdivision (*l*) of that section.

(o) This section shall remain in effect only until December 1, 1989, and as of that date is repealed. However, any unused credit may continue to be carried forward, as provided in subdivision (h), until the credit has been exhausted.

SEC. 2. Section 17054 of the Revenue and Taxation Code, as amended by Chapter 11 of the Statutes of 1988, is amended to read:

17054. In the case of individuals, the following credits for personal exemption may be deducted from the tax imposed under either Section 17041 or 17048, plus the tax imposed under Section 17504 (relating to the separate tax on lump-sum distributions).

(a) In the case of a single individual, or a married individual making a separate return, a credit of fifty-one dollars ($51) for taxable years beginning on or after January 1, 1987, and before January 1, 1988, and fifty-two dollars ($52) for taxable years beginning on or after January 1, 1988.

(b) In the case of a head of household, a surviving spouse (as defined in Section 17046), or a husband and wife making a joint return, a credit of one hundred two dollars ($102) for taxable years beginning on or after January 1, 1987, and before January 1, 1988, and one hundred four dollars ($104) for taxable years beginning on or after January 1, 1988. If one spouse was a resident for the entire taxable year and the other spouse was a nonresident for all or any portion of the taxable year, the personal exemption shall be divided equally.

(c) In addition to any other credit provided in this section, in the case of an individual who is 65 years of age or over by the end of the taxable year a credit of fifty-one dollars ($51) for taxable years beginning on or after January 1, 1987, and before January 1, 1988, and fifty-two dollars ($52) for taxable years beginning on or after January 1, 1988.

(d) Except as provided in paragraph (2) or (3), a credit of fifty-one dollars ($51) for taxable years beginning on or after January 1, 1987, and before January 1, 1988, and fifty-two dollars ($52) for taxable years beginning on or after January 1, 1988, for each dependent (as defined in Section 17056)—

(1) For whom an exemption is allowable under Section 151 (c) of

the Internal Revenue Code (relating to additional exemption for dependents).

(2) If the taxpayer is entitled to the status of head of household, no credit shall be allowed under this subdivision for the person (or one of the persons) for whom the household is maintained, as required by Section 2(b)(1) of the Internal Revenue Code.

(3) No credit for a dependent shall be allowed to a noncustodial parent if both of the following apply:

(A) A credit for the dependent would not be allowed except for the provisions of Section 152(e)(2) or 152(e)(4) of the Internal Revenue Code, relating to exemptions claimed by noncustodial parents.

(B) The custodial parent files a return as head of household for the same taxable year.

(e) A credit for personal exemption of fifty-one dollars ($51) for taxable years beginning on or after January 1, 1987, and before January 1, 1988, and fifty-two dollars ($52) for taxable years beginning on or after January 1, 1988, for the taxpayer if he or she is blind at the end of his or her taxable year.

(f) A credit for personal exemption of fifty-one dollars ($51) for taxable years beginning on or after January 1, 1987, and before January 1, 1988, and fifty-two dollars ($52) for taxable years beginning on or after January 1, 1988, for the spouse of the taxpayer if a separate return is made by the taxpayer, and if the spouse is blind and, for the calendar year in which the taxable year of the taxpayer begins, has no gross income and is not the dependent of another taxpayer.

(g) For the purposes of this section, an individual is blind only if either: his or her central visual acuity does not exceed 20/200 in the better eye with correcting lenses, or his or her visual acuity is greater than 20/200 but is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees.

(h) In the case of an individual with respect to whom a credit under this section is allowable to another taxpayer for a taxable year beginning in the calendar year in which the individual's taxable year begins, the credit amount applicable to that individual for that individual's taxable year shall be zero.

(i) For each taxable year beginning on or after January 1, 1989, the Franchise Tax Board shall compute the credits prescribed in this section. That computation shall be made as follows:

(1) The California Department of Industrial Relations shall transmit annually to the Franchise Tax Board the percentage change in the California Consumer Price Index as modified for rental equivalent homeownership for all items from June of 1988 to June of the current calendar year, no later than August 1 of the current calendar year.

(2) The Franchise Tax Board shall add 100 percent to the percentage change figure which is furnished to them pursuant to

paragraph (1), and divide the result by 100.

(3) The Franchise Tax Board shall multiply the 1988 taxable year credits by the inflation adjustment factor provided in paragraph (2), rounded off to the nearest one dollar ($1).

(4) In computing the credits pursuant to this subdivision, the credit provided in subdivision (a).

SEC. 3. Section 17061.5 of the Revenue and Taxation Code, as amended by Chapter 11 of the Statutes of 1988, is amended to read:

17061.5. (a) There shall be allowed as a credit against the "net tax" (as defined in Section 17039) an amount equal to the amount determined under subdivision (b).

(b) (1) In the case of qualified assets held for more than one year, but not more than five years, the amount of the credit shall be equal to 3 percent of the net capital gain, if any, from the sale or exchange of those assets.

(2) In the case of qualified assets held for more than five years, the amount of the credit shall be equal to 4½ percent of the net capital gain, if any, from the sale or exchange of those assets.

(3) If gain or loss from more than one sale or exchange of capital assets is taken into account in computing taxable income for the taxable year, each of the following shall apply:

(A) The amount of the credit allowable under paragraph (1) shall not exceed 3 percent of the net capital gain, if any, from all sales and exchanges of capital assets taken into account in computing taxable income for the taxable year.

(B) The amount of the credit allowable under paragraph (2) shall not exceed 4½ percent of the excess of the net capital gain, if any, from all sales and exchanges of capital assets taken into account in computing taxable income for the taxable year over the amount of any gain for which a credit was allowed under paragraph (1).

(c) For purposes of this section, "qualified asset" means either or both of the following:

(1) Residential rental property which meets each of the following requirements:

(A) Is real property located in this state.

(B) Complies with the requirements for residential rental property specified in Section 167(j)(2)(B) of the Internal Revenue Code.

(2) Farm property which meets each of the following requirements:

(A) Is land or Section 1250 property (as defined by Section 1250(c) of the Internal Revenue Code) located in this state.

(B) Is property used for farming, as defined in clauses (i) and (ii).

(i) The term "farming" includes activities relating to stock, dairy, poultry, fruit, furbearing animal, and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards.

(ii) The term "farming" also includes activities relating to each of

the following:

(I) Cultivating the soil or raising or harvesting any agricultural or horticultural commodity (including the raising, shearing, feeding, caring for, training, and management of animals) on a farm.

(II) Handling, drying, packing, grading, or storing on a farm any agricultural or horticultural commodity in its unmanufactured state, but only if the owner, tenant, or operator of the farm regularly produces more than one-half of the commodity so treated.

(d) In the case where the credit allowed under this section exceeds the net tax for the taxable year, that portion of the credit which exceeds the net tax may be carried over to the net tax in succeeding taxable years. The credit shall be applied first to the earliest taxable years possible.

(e) This section shall remain in effect only until January 1, 1992, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1992, deletes or extends that date.

SEC. 3.5. Section 17063 of the Revenue and Taxation Code, as amended by Chapter 11 of the Statutes of 1988, is amended to read:

17063. (a) There shall be allowed as a credit against the net tax (as defined by Section 17039) for any taxable year an amount equal to the minimum tax credit for that taxable year.

(b) For purposes of subdivision (a), the minimum tax credit shall be determined in accordance with Section 53 of the Internal Revenue Code, except as otherwise provided in this part.

(c) For purposes of this chapter, the amount determined under Section 53(c)(1) of the Internal Revenue Code shall be the regular tax as defined by paragraph (2) of subdivision (b) of Section 17062, reduced by the sum of the credits allowable under this part, other than the credits described in paragraph (7) of subdivision (a) of Section 17039.

SEC. 4. Section 17073.5 of the Revenue and Taxation Code, as amended by Chapter 11 of the Statutes of 1988, is amended to read:

17073.5. (a) A taxpayer may elect to take a standard deduction as follows:

(1) In the case of a taxpayer, other than a head of a household or a surviving spouse (as defined in Section 17046) or a married couple filing a joint return, the standard deduction shall be one thousand eight hundred eighty dollars ($1,880).

(2) In the case of a head of household or a surviving spouse (as defined in Section 17046) or a married couple filing a joint return, the standard deduction shall be three thousand seven hundred sixty dollars ($3,760).

(b) The standard deduction provided for in subdivision (a) shall be in lieu of all deductions other than those which are to be subtracted from gross income in computing adjusted gross income under Section 17072.

(c) (1) The provisions of this section shall be applied in lieu of the provisions of Sections 63(c), 63(f), and 63(h) of the Internal Revenue Code, relating to standard deductions.

(2) Notwithstanding paragraph (1), Section 63(c)(5) of the Internal Revenue Code, relating to limitations on the standard deduction of certain dependents, and Section 63(c)(6)of the Internal Revenue Code, relating to certain individuals not eligible for the standard deduction, shall apply. For purposes of this paragraph, the amount specified in Section 63(c)(5)(A) of the Internal Revenue Code shall be adjusted for inflation in accordance with the provisions of Section 63(c)(4) of the Internal Revenue Code.

(d) For each taxable year beginning on or after January 1, 1988, the Franchise Tax Board shall recompute the standard deduction amounts prescribed in subdivision (a). That computation shall be made as follows:

(1) The California Department of Industrial Relations shall transmit annually to the Franchise Tax Board the percentage change in the California Consumer Price Index for all items from June of the prior calendar year to June of the current calendar year, no later than August 1 of the current calendar year.

(2) The Franchise Tax Board shall compute an inflation adjustment factor by adding 100 percent to that portion of the percentage change figure which is furnished pursuant to paragraph (1) and dividing the result by 100.

(3) The Franchise Tax Board shall multiply the standard deduction amounts in the preceding taxable year by the inflation adjustment factor provided in paragraph (2), rounded off to the nearest one dollar ($1).

SEC. 5. Section 17142 is added to the Revenue and Taxation Code, to read:

17142. Sections 111(b) and 111(c) of the Internal Revenue Code, relating to credits and treatment of credit carryovers, shall be applicable with respect to credits allowable under this part.

SEC. 6. Section 17252.5 of the Revenue and Taxation Code, as added by Chapter 32 of the Statutes of 1988, is amended to read:

17252.5. (a) A taxpayer may elect to treat the cost of any Section 17252.5 property as an expense which is not chargeable to capital account. Any cost so treated shall be allowed as a deduction for the taxable year in which Section 17252.5 property is placed in service.

(b) In the case of a husband or wife filing separate returns for a taxable year in which a spouse is entitled to the deduction under subdivision (a), the applicable amount shall be equal to 50 percent of the amount otherwise determined under subdivision (a).

(c) (1) An election under this section for any taxable year shall—

(A) Specify the items of Section 17252.5 property to which the election applies and the portion of the cost of each of those items which is to be taken into account under subdivision (a), and

(B) Be made on the taxpayer's return of the tax imposed by this part for the taxable year.

(2) Any election made under this section, and any specification contained in that election, may not be revoked except with the

consent of the Franchise Tax Board.

(d) (1) For purposes of this section, "Section 17252.5 property" means any recovery property which is Section 38 property under the terms of the Internal Revenue Code and which is acquired by purchase for exclusive use in a trade or business conducted within an enterprise zone designated pursuant to Section 7073 of the Government Code.

(2) For purposes of paragraph (1), "purchase" means any acquisition of property, but only if—

(A) The property is not acquired from a person whose relationship to the person acquiring it would result in the disallowance of losses under Section 267 or 707(b) of the Internal Revenue Code (but, in applying subsections (b) and (c) of Section 267 of the Internal Revenue Code for purposes of this section, Section 267(c)(4) of the Internal Revenue Code shall be treated as providing that the family of an individual shall include only his or her spouse, ancestors, and lineal descendants),

(B) The basis of the property in the hands of the person acquiring it is not determined—

(i) In whole or in part by reference to the adjusted basis of such property in the hands of the person from whom acquired, or

(ii) Under Section 1014 of the Internal Revenue Code, relating to basis of property acquired from a decedent.

(3) For purposes of this section, the cost of property does not include so much of the basis of the property as is determined by reference to the basis of other property held at any time by the person acquiring the property.

(4) This section shall not apply to estates and trusts.

(5) This section shall not apply to any Section 17252.5 property purchased by any person described in Section 46(e)(3) of the Internal Revenue Code unless the credit under Section 38 of the Internal Revenue Code is allowable with respect to that person from that property (determined without regard to this section).

(6) In the case of a partnership, the dollar limitation contained in subdivision (f) shall apply with respect to the partnership and with respect to each partner.

(e) For purposes of this section, "taxpayer" means a taxpayer who conducts a trade or business within an enterprise zone designated pursuant to Section 7073 of the Government Code.

(f) The deduction allowable under subdivision (a) for any taxable year shall not exceed the following applicable amount for the taxable year of the designation of an enterprise zone and taxable years thereafter:

| | The applicable amount is: |
|---|---|
| Taxable year of designation | $ 5,000 |
| 1st taxable year thereafter | 5,000 |
| 2nd taxable year thereafter | 7,500 |
| 3rd taxable year thereafter | 7,500 |
| Each taxable year thereafter | 10,000 |

(g) This section shall apply only to property which is used exclusively in a trade or business conducted within an enterprise zone.

(h) Any amounts deducted under subdivision (a) with respect to property which ceases to be used in the trade or business within an enterprise zone at any time before the close of the second taxable year after the property was placed in service shall be included in income for that year.

(i) Any taxpayer who elects to be subject to this section shall not be entitled to claim for the same property the deduction under Section 179 of the Internal Revenue Code, relating to an election to expense certain depreciable business assets.

(j) This section shall remain in effect only until January 1, 1989, and as of that date is repealed, unless a later enacted statute which is enacted before January 1, 1989, deletes or extends that date.

SEC. 7. Section 17507 of the Revenue and Taxation Code is amended to read:

17507. The provisions of Section 408 of the Internal Revenue Code, relating to individual retirement accounts, shall be modified as follows:

(a) The following provisions shall be incorporated into Section 408(e) of the Internal Revenue Code:

(1) In the case of such a plan in existence in taxable year 1975 where contributions were made pursuant to, and in conformance with, Section 408 or 409 of the Internal Revenue Code of 1954, as amended by the Employee Retirement Income Security Act of 1974 (Public Law 93-406), any net income attributable to the 1975 contribution shall not be includable in the gross income, for taxable year 1977 or succeeding taxable years, of the individual for whose benefit the plan was established until distributed pursuant to the provisions of the plan or by operation of law.

(2) In the case of a simplified employee pension, where contributions are also made pursuant to, and in conformance with, the provisions of Section 408(k) of the Internal Revenue Code of 1954, the net income attributable to the nondeductible portion of such contributions shall not be includable in the gross income of the individual for whose benefit the plan was established for the taxable year or for succeeding taxable years until distributed pursuant to the provisions of the plan or by operation of law.

(3) Notwithstanding the limitations provided in former Section 17272 (as amended by Chapter 1461 of the Statutes of 1985) with respect to the amount of deductible contributions and individuals eligible for the deduction, any income attributable to contributions made to a plan in existence in taxable years beginning on or after January 1, 1982, in conformance with Sections 219, 220, 408, and 409 of the Internal Revenue Code of 1954, shall not be includable in the gross income of the individual for whose benefit the plan was established until distributed pursuant to the provisions of the plan or by operation of law.

(b) The provisions of Section 408(d) of the Internal Revenue Code are modified as follows:

(1) For taxable years beginning on or after January 1, 1982, and before January 1, 1987, the basis of any person in such an account or annuity is the amount of contributions not allowed as a deduction under former subdivision (a), (e), or (g) of Section 17272 (as amended by Chapter 1461 of the Statutes of 1985) on account of the purchase of the account or annuity.

(2) For purposes of paragraph (1), the rules for recovery of basis shall be governed by Section 17085.

(c) A copy of the report, which is required to be filed with the Secretary of the Treasury under Section 408(i) or 408(*l*) of the Internal Revenue Code, shall be filed with the Franchise Tax Board at the same time and in the same manner as specified in those sections.

SEC. 8. Section 17551 of the Revenue and Taxation Code, as amended by Chapter 11 of the Statutes of 1988, is amended to read:

17551. (a) Accounting periods and methods of accounting shall be determined in accordance with Subchapter E of Chapter 1 of Subtitle A of the Internal Revenue Code, except as otherwise provided in this chapter.

(b) For taxable years beginning on or after January 1, 1987, Section 444 of the Internal Revenue Code, as added by Public Law 100-203, relating to election of taxable years other than required taxable years, shall be applicable, except that Section 444(c), relating to effect of election, shall not apply.

SEC. 9. Section 17551.5 of the Revenue and Taxation Code, as amended by Chapter 11 of the Statutes of 1988, is amended to read:

17551.5. (a) In the case of any taxpayer, S corporation, or partnership required to change its accounting period by the federal Tax Reform Act of 1986 (Public Law 99-514) as modified by Section 10206 of Public Law 100-203, that change shall be treated as initiated by the taxpayer, S corporation, or partnership with the consent of the Franchise Tax Board.

(b) With respect to any beneficiary, partner, or shareholder of an S corporation which is required to include the items from more than one taxable year of the trust, partnership, or S corporation in any one taxable year, any income in excess of expenses for the short taxable year resulting from the change described in subdivision (a) shall be

taken into account ratably in each of the first four taxable years (including the short year) beginning after December 31, 1986, unless the beneficiary, partner, or shareholder elects to include all that income in the short taxable year.

(c) The spreading of income over four years, as allowed by subdivision (b), shall not apply unless the taxpayer receives similar treatment for federal income tax purposes.

SEC. 10. Section 17561 of the Revenue and Taxation Code, as amended by Chapter 31 of the Statutes of 1988, is amended to read:

17561. (a) For purposes of this part, the provisions of Section 469(d)(2) of the Internal Revenue Code, relating to passive activity credits, are modified to refer to the following credits:

(1) The credit for research expenses allowed by Section 17052.12.

(2) The credit for certain wages paid (targeted jobs) allowed by Section 17053.7.

(3) The credit for clinical testing expenses allowed by Section 17057.

(4) The credit for low-income housing allowed by Section 17058.

(b) For purposes of applying the provisions of Section 469(i) of the Internal Revenue Code, relating to the twenty-five thousand dollars ($25,000) offset for rental real estate activities:

(1) The dollar limitation for the credit allowed under Section 17058 (relating to low-income housing) shall be equal to seventy-five thousand dollars ($75,000) in lieu of the amount specified in Section 469(i)(2) of the Internal Revenue Code.

(2) The term "adjusted gross income," as defined in Section 469(i)(3)(D), shall mean the amount required to be shown as adjusted gross income on the federal tax return for the same taxable year determined without regard to --

(A) Any amount includible in gross income on the federal tax return under Section 86 of the Internal Revenue Code.

(B) Any amount allowed as a deduction on the federal tax return under Section 219 of the Internal Revenue Code.

(C) Any passive activity loss.

(c) Section 502 of the Tax Reform Act of 1986 (Public Law 99-514) shall apply.

(d) For taxable years beginning on or after January 1, 1987, the provisions of Section 10212 of Public Law 100-203, relating to treatment of publicly traded partnerships under Section 469 of the Internal Revenue Code, shall be applicable.

SEC. 10.5. Section 17683 of the Revenue and Taxation Code is amended to read:

17683. The provisions of Section 613 of the Internal Revenue Code, relating to percentage depletion, shall be modified as follows:

(a) In the case of oil, gas, and geothermal wells the allowance for depletion under this part shall be 22 percent of the gross income from the property during the taxable year, excluding from such gross income an amount equal to any rents or royalties paid or incurred by the taxpayer in respect of the property. The allowance shall not

exceed 50 percent of the taxable income of the taxpayer (computed without allowance for depletion) from the property, except that in no case shall the depletion allowance be less than it would be if computed without reference to this section. For purposes of the preceding sentence, the allowable deductions taken into account with respect to expenses of oil, gas, and geothermal wells in computing the taxable income from the property shall be decreased by an amount equal to so much of any gain which (1) is treated under Section 1245 of the Internal Revenue Code (relating to gain from disposition of certain depreciable property) as gain from the sale or exchange of property which is neither a capital asset nor property described in Section 1231 of the Internal Revenue Code, and (2) is properly allocable to the property.

(b) Where the total accumulated amount of deduction allowed or allowable for depletion exceeds an amount equal to the adjusted cost of the taxpayer's interest in any property which is subject to recovery through depletion under subdivision (a), percentage depletion shall be allowed in respect to those interests in that property, subject to the limitations and adjustments of subdivisions (c) and (d).

(c) Where the total depletion allowance for all properties in subdivision (b) exceeds one million five hundred thousand dollars ($1,500,000), the allowance in subdivision (b) shall be reduced by 125 percent of the excess.

(d) In any case where husband and wife file separate returns, the amount specified in subdivision (c) shall be seven hundred fifty thousand dollars ($750,000) in lieu of one million five hundred thousand dollars ($1,500,000).

(e) For purposes of this section, a "geothermal deposit" means a geothermal reservoir consisting of natural heat which is stored in rocks or in an aqueous liquid or vapor (whether or not under pressure).

(f) For purposes of this section, "gross income from the property" shall not include any lease bonus, advance royalty, or other amount payable without regard to production from the property.

SEC. 11. Section 18001 of the Revenue and Taxation Code, as amended by Chapter 11 of the Statutes of 1988, is amended to read:

18001. (a) Subject to the following conditions, residents shall be allowed a credit against the "net tax" (as defined by Section 17039) for net income taxes imposed by and paid to another state (not including any preference, alternative, or minimum tax comparable to the tax imposed by Section 17062) on income taxable under this part:

(1) The credit shall be allowed only for taxes paid to the other state (not including any preference, alternative, or minimum tax comparable to the tax imposed by Section 17062) on income derived from sources within that state which is taxable under its laws irrespective of the residence or domicile of the recipient.

This paragraph shall not apply to residents to whom subdivision (b) of Section 17014 applies.

(2) The credit shall not be allowed if the other state allows residents of this state a credit against the taxes imposed by that state (not including any preference, alternative, or minimum tax comparable to the tax imposed by Section 17062) for "net tax" (as defined by Section 17039) paid or payable under this part.

(3) The credit shall not exceed such proportion of the "net tax" (as defined by Section 17039) payable under this part as the income subject to tax in the other state (not including any preference, alternative, or minimum tax comparable to the tax imposed by Section 17062) and also taxable under this part bears to the taxpayer's entire income upon which the "net tax" (as defined by Section 17039) is imposed by this part.

(4) No credit shall be allowed under this section for any tax imposed by Section 17062.

(b) For purposes of determining the tentative minimum tax under subparagraph (A) of paragraph (3) of subdivision (b) of Section 17062, the credit shall be computed under subdivision (a) except that the provisions of paragraph (3) of subdivision (a) shall be modified to provide that the credit shall not exceed such proportion of the tentative minimum tax as the income subject to tax in the other state (recomputed in accordance with Section 17062) and also included in alternative minimum taxable income under this part bears to the total alternative minimum taxable income under this part. In any case, the amount determined under this subdivision shall not be less than the amount determined under subdivision (a).

SEC. 12. Section 18002 of the Revenue and Taxation Code is amended to read:

18002. (a) Subject to the following conditions, nonresidents shall be allowed a credit against the "net tax" (as defined by Section 17039) for net income taxes imposed by and paid to the state of residence (not including any preference, alternative, or minimum tax comparable to the tax imposed by Section 17062) on income taxable under this part:

(1) The credit shall be allowed only if the state of residence either does not tax income of residents of this state derived from sources within that state or allows residents of this state a credit against the taxes imposed by that state on such income for "net tax" (as defined by Section 17039) paid or payable thereon under this part.

(2) The credit shall not be allowed for taxes paid to a state which allows its residents a credit against the taxes imposed by that state for "net tax" (as defined by Section 17039) paid or payable under this part irrespective of whether its residents are allowed a credit against the taxes imposed by this part for income taxes paid to that state.

(3) Credit shall be allowed only for such proportion of the taxes paid to the state of residence (not including any preference, alternative, or minimum tax comparable to the tax imposed by Section 17062) as the income taxable under this part and also subject to tax in the state of residence bears to the entire income upon which the taxes paid to the state of residence are imposed.

(4) The credit shall not exceed such proportion of the "net tax" (as defined by Section 17039) payable under this part as the income subject to tax in the state of residence and also taxable under this part bears to the entire income taxable under this part.

(5) No credit shall be allowed under this section for any tax imposed by Section 17062.

(b) For purposes of determining the tentative minimum tax under subparagraph (A) of paragraph (3) of subdivision (b) of Section 17062, the credit shall be computed under subdivision (a) except that the provisions of paragraph (3) of subdivision (a) shall be modified to provide that the credit shall not exceed such proportion of the tentative minimum tax as the income subject to tax in the other state (recomputed in accordance with Section 17062) and also included in alternative minimum taxable income under this part bears to the total alternative minimum taxable income under this part. In any case, the amount determined under this subdivision shall not be less than the amount determined under subdivision (a).

SEC. 13. Section 18402 of the Revenue and Taxation Code, as amended by Chapter 11 of the Statutes of 1988, is amended to read:

18402. If a husband and wife have for the taxable year an aggregate adjusted gross income of over twelve thousand dollars ($12,000), or an aggregate gross income of over sixteen thousand dollars ($16,000)—

(a) Each shall make such a return, or

(b) If a joint federal income tax return for the same taxable year is filed, the income of each shall be included in a single joint return, in which case the tax shall be computed on the aggregate income, as provided in Section 17045.

(1) A nonresident joint return shall be made if one spouse was a resident for the entire year and the other spouse was a nonresident for all or any portion of the taxable year except that this paragraph shall not apply if either of the following apply:

(A) Either spouse was an active member of the armed forces of the United States or any auxiliary branch thereof during the taxable year.

(B) The nonresident spouse has no income from California sources for the taxable year.

(2) A joint return may not be filed if the husband and wife have different taxable years; except that if their taxable years begin on the same day and end on different days because of the death of either or of both, then a joint return may be made with respect to the taxable year of each. The above exception shall not apply if the surviving spouse remarries before the close of his or her taxable year, nor if the taxable year of either spouse is a fractional part of a year under Section 443(a) of the Internal Revenue Code.

(c) In the case of the death of one spouse or both spouses the joint return with respect to the decedent may be made only by the decedent's executor or administrator; except that in the case of the death of one spouse the joint return may be made by the surviving

spouse if (1) no return for the taxable year has been made by the decedent, (2) no executor or administrator has been appointed, and (3) no executor or administrator is appointed before the last day prescribed by law for filing the return of the surviving spouse. If an executor or administrator of the decedent is appointed after the making of the joint return by the surviving spouse, the executor or administrator may disaffirm such joint return by making, within one year after the last day prescribed by law for filing the return of the surviving spouse, a separate return for the taxable year of the decedent with respect to which the joint return was made, in which case the return made by the survivor shall constitute his or her separate return.

(d) In the case of a married couple described in subparagraph (A) or (B) of paragraph (1) of subdivision (b), that couple may either file separate returns or a single joint return on such forms and in such manner as the Franchise Tax Board may prescribe.

SEC. 14. Section 18410.6 of the Revenue and Taxation Code is amended to read:

18410.6. For the purposes of Sections 18586 to 18589, inclusive (relating to period of limitations upon assessment and collection), and for the purposes of Section 18681 (relating to delinquent returns), a joint return made under Section 18410 shall be deemed to have been filed:

(a) Where both spouses filed separate returns prior to making the joint return, on the date the last separate return was filed (but not earlier than the last date prescribed by this part for filing the return of either spouse).

(b) Where one spouse filed a separate return prior to the making of the joint return, and the other spouse had six thousand dollars ($6,000) or less of adjusted gross income and eight thousand dollars ($8,000) or less of gross income for such taxable year, on the date of the filing of such separate return (but not earlier than the last date prescribed by law for the filing of such separate return).

(c) Where only one spouse filed a separate return prior to the making of a joint return and the other spouse had an adjusted gross income of more than six thousand dollars ($6,000) or a gross income of more than eight thousand dollars ($8,000) for such taxable year, on the date of the filing of such joint return.

SEC. 15. Section 18551 of the Revenue and Taxation Code is amended to read:

18551. The tax imposed under this part shall be paid at the time and place fixed for filing the return (determined without regard to any extension of time for filing the return).

SEC. 16. Section 19062.13 of the Revenue and Taxation Code is amended to read:

19062.13. Any action of the Franchise Tax Board in refunding the excess of tax withheld under Section 18805 or estimated tax paid pursuant to Section 18682 or any action of the Employment Development Department in refunding to the employer the excess

tax withheld under Section 13020 of the Unemployment Insurance Code shall not constitute a determination of the correctness of the return of the taxpayer for purposes of this part.

SEC. 17. Section 23036 of the Revenue and Taxation Code is amended to read:

23036. (a) The term "tax" means:

(1) The tax imposed under Chapter 2 (commencing with Section 23101).

(2) The tax imposed under Chapter 3 (commencing with Section 23501).

(3) The tax on unrelated business taxable income, imposed under Section 23731.

(4) The tax on S corporations imposed under Section 23802.

(b) For purposes of Chapter 20 (commencing with Section 25661), Chapter 21 (commencing with Section 25901), Chapter 23 (commencing with Section 26131), and Chapter 24 (commencing with Section 26422), and for purposes of Sections 25401, 25551, and 25555, "tax" shall also include all of the following:

(1) The tax on limited partnerships, imposed under Section 23081.

(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 26131.

(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—

(A) The credit allowed by former Section 23601 (relating to solar energy).

(B) The credit allowed by Section 23601.4 (relating to solar energy).

(C) The credit allowed by Section 23610.5 (relating to low-income housing).

(D) Credits for taxes withheld under Section 26131.

(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.

SEC. 17.1. Section 23036 of the Revenue and Taxation Code is amended to read:

23036. (a) The term "tax" means:

(1) The tax imposed under Chapter 2 (commencing with Section 23101).

(2) The tax imposed under Chapter 3 (commencing with Section 23501).

(3) The tax on unrelated business taxable income, imposed under Section 23731.

(4) The tax on S corporations imposed under Section 23802.

(b) For purposes of Chapter 20 (commencing with Section 25661), Chapter 21 (commencing with Section 25901), Chapter 23 (commencing with Section 26131), and Chapter 24 (commencing with Section 26422), and for purposes of Sections 25401, 25551, and 25555, "tax" shall also include all of the following:

(1) The tax on limited partnerships, imposed under Section 23081.

(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 26131.

(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—

(A) The credit allowed by former Section 23601 (relating to solar energy).

(B) The credit allowed by Section 23601.4 (relating to solar energy).

(C) The credit allowed by Section 23605 (relating to ridesharing

vehicles which are part of an employer-sponsored ridesharing incentive program for employees conducted principally in this state).

(D) The credit allowed by Section 23610.5 (relating to low-income housing).

(E) Credits for taxes withheld under Section 26131.

(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.

SEC. 17.2. Section 23036 of the Revenue and Taxation Code is amended to read:

23036. (a) The term "tax" means:

(1) The tax imposed under Chapter 2 (commencing with Section 23101).

(2) The tax imposed under Chapter 3 (commencing with Section 23501).

(3) The tax on unrelated business taxable income, imposed under Section 23731.

(4) The tax on S corporations imposed under Section 23802.

(b) For purposes of Chapter 20 (commencing with Section 25661), Chapter 21 (commencing with Section 25901), Chapter 23 (commencing with Section 26131), and Chapter 24 (commencing with Section 26422), and for purposes of Sections 25401, 25551, and 25555, "tax" shall also include all of the following:

(1) The tax on limited partnerships, imposed under Section 23081.

(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 26131.

(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—

(A) The credit allowed by former Section 23601 (relating to solar energy).

(B) The credit allowed by Section 23601.4 (relating to solar energy).

(C) The credit allowed by Section 23609 (relating to research expenses).

(D) The credit allowed by Section 23609.5 (relating to clinical testing expenses).

(E) The credit allowed by Section 23610.5 (relating to low-income housing).

(F) Credits for taxes withheld under Section 26131.

(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.

SEC. 17.3. Section 23036 of the Revenue and Taxation Code is amended to read:

23036. (a) The term "tax" means:

(1) The tax imposed under Chapter 2 (commencing with Section 23101).

(2) The tax imposed under Chapter 3 (commencing with Section 23501).

(3) The tax on unrelated business taxable income, imposed under Section 23731.

(4) The tax on S corporations imposed under Section 23802.

(b) For purposes of Chapter 20 (commencing with Section 25661), Chapter 21 (commencing with Section 25901), Chapter 23 (commencing with Section 26131), and Chapter 24 (commencing with Section 26422), and for purposes of Sections 25401, 25551, and 25555, "tax" shall also include all of the following:

(1) The tax on limited partnerships, imposed under Section 23081.

(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 26131.

(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—

(A) The credit allowed by former Section 23601 (relating to solar energy).

(B) The credit allowed by Section 23601.4 (relating to solar energy).

(C) The credit allowed by Section 23605 (relating to ridesharing vehicles which are part of an employer-sponsored ridesharing incentive program for employees conducted principally in this state).

(D) The credit allowed by Section 23609 (relating to research expenses).

(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) Credits for taxes withheld under Section 26131.

(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.

SEC. 18. Section 23151 of the Revenue and Taxation Code is amended to read:

23151. (a) With the exception of financial corporations, every corporation doing business within the limits of this state and not expressly exempted from taxation by the provisions of the Constitution of this state or by this part, shall annually pay to the state, for the privilege of exercising its corporate franchises within this state, a tax according to or measured by its net income, to be computed at the rate of 7.6 percent upon the basis of its net income for the next preceding income year. In any event, each such

corporation shall pay annually to the state, for the said privilege, a minimum tax determined in accordance with Section 23153.

(b) For calendar or fiscal years ending after June 30, 1973, the rate of tax shall be 9 percent instead of 7.6 percent as provided by subdivision (a).

(c) For calendar or fiscal years ending in 1980, the rate of tax shall be 9.6 percent.

(d) For calendar or fiscal years ending in 1981 the rate shall be determined as follows:

If the net cash collections under the Bank and Corporation Tax Law for 1979–80, as determined by the Controller, are:

Less than $2,950,000,000, the tax rate shall be 9.6 percent.

If $2,950,000,000 or greater, but less than $3,025,000,000, the tax rate shall be 9.50 percent.

If $3,025,000,000 or greater, but less than $3,100,000,000, the tax rate shall be 9.45 percent.

If $3,100,000,000 or greater, the tax rate shall be 9.40 percent.

(e) For calendar or fiscal years ending in 1982 the rate shall be determined as follows:

If the net cash collections under the Bank and Corporation Tax Law for 1979–80 and 1980–81, as determined by the Controller, are:

Less than $6,000,000,000, the tax rate shall be 9.6 percent.

If $6,000,000,000 or greater, but less than $6,075,000,000, the tax rate shall be 9.50 percent.

If $6,075,000,000 or greater, but less than $6,150,000,000, the tax rate shall be 9.45 percent.

If $6,150,000,000 or greater, but less than $6,225,000,000, the tax rate shall be 9.40 percent.

If $6,225,000,000 or greater, the tax rate shall be 9.35 percent.

(f) For calendar or fiscal years ending in 1983 and thereafter the rate shall be determined as follows:

If the net cash collections under the Bank and Corporation Tax Law for 1979–80, 1980–81, and 1981–82, as determined by the Controller, are:

Less than $9,450,000,000, the tax rate shall be 9.6 percent.

If $9,450,000,000 or greater, but less than $9,525,000,000, the tax rate shall be 9.50 percent.

If $9,525,000,000 or greater, but less than $9,600,000,000, the tax rate shall be 9.45 percent.

If $9,600,000,000 or greater, but less than $9,675,000,000, the tax rate shall be 9.40 percent.

If $9,675,000,000 or greater, but less than $9,750,000,000, the tax rate shall be 9.35 percent.

If $9,750,000,000 or greater, the tax rate shall be 9.30 percent.

(g) For calendar or fiscal years ending in 1987 and thereafter, the tax rate shall be 9.3 percent.

SEC. 19. Section 23153 of the Revenue and Taxation Code is amended to read:

23153. (a) Every bank and corporation subject to tax under this chapter and not expressly exempted by the provisions of this part or the Constitution of this state shall pay annually to the state a minimum tax of not less than one hundred dollars ($100), except that the following corporations shall pay annually to the state a minimum tax of not less than twenty-five dollars ($25):

(1) A credit union whose gross income is twenty thousand dollars ($20,000) or less.

(2) A corporation formed under the laws of this state whose principal business when formed was gold mining, which is inactive and has not done business within the limits of the state since 1950.

(3) A corporation formed under the laws of this state whose principal business when formed was quicksilver mining, which is inactive and has not done business within the limits of the state since 1971, or has been inactive for a period of 24 consecutive months or more.

Every domestic bank and corporation subject to tax under this chapter shall be subject to the minimum tax specified in this section from the date of incorporation until the effective date of dissolution as provided in Section 23331.

For the purpose of paragraphs (2) and (3) a corporation shall not be considered to have done business if it engages in other than mining.

(b) For income years beginning after December 31, 1971, the one hundred dollars ($100) specified in subdivision (a) shall be two hundred dollars ($200) instead of one hundred dollars ($100).

(c) For income years beginning after December 31, 1986, the one hundred dollars ($100) specified in subdivision (a) shall be three hundred dollars ($300) instead of one hundred dollars ($100).

(d) For income years beginning after December 31, 1988, the one hundred dollars ($100) specified in subdivision (a) shall be six hundred dollars ($600) instead of one hundred dollars ($100).

(e) For income years beginning after December 31, 1989, the one hundred dollars ($100) specified in subdivision (a) shall be eight hundred dollars ($800) instead of one hundred dollars ($100).

SEC. 20. Section 23181 of the Revenue and Taxation Code, as amended by Chapter 11 of the Statutes of 1988, is amended to read:

23181. (a) Except as otherwise provided herein, an annual tax is hereby imposed upon every bank doing business within the limits of this state according to or measured by its net income, upon the basis of its net income for the next preceding income year at the rate provided under Section 23186.

(b) If a bank commences to do business and ceases doing business in the same taxable year, the tax for such taxable year shall be according to or measured by its net income for such year, at the rate

provided under Section 23186.

(c) With respect to a bank, other than a bank described in subdivision (b), which ceases doing business after December 31, 1972, the tax for the taxable year of cessation shall be:

(1) According to or measured by its net income for the next preceding income year, to be computed at the rate prescribed in Section 23186, plus

(2) According to or measured by its net income for the income year during which the bank ceased doing business, to be computed at the rate prescribed in Section 23186.

(d) In the case of a bank which ceased doing business before January 1, 1973, but dissolves or withdraws on such date or thereafter, the tax for the taxable year of dissolution or withdrawal shall be according to or measured by its net income for the income year during which the bank ceased doing business, unless such income has previously been included in the measure of tax for any taxable year, to be computed at the rate prescribed under Section 23186 for the taxable year of dissolution or withdrawal.

(e) Commencing with income years ending in 1980, every bank shall pay to the state a minimum tax (determined in accordance with Section 23153) or the measured tax imposed on its income, whichever is greater.

SEC. 21. Section 23184 of the Revenue and Taxation Code is amended to read:

23184. (a) Financial corporations may offset against the franchise tax the amounts paid during the income year to this state or to any county, city, town, or other political subdivisions of the state as personal property taxes, or as license fees or excise taxes for the following privileges:

(1) Operating as personal property brokers or brokers as defined in the Personal Property Brokers Law provided for in Division 9 (commencing with Section 22000) of the Financial Code, or as consumer finance lenders or brokers as defined in the Consumer Finance Lenders Law provided for in Division 10 (commencing with Section 24000) of the Financial Code, or as commercial finance lenders as defined in the Commercial Finance Lenders Law provided for in Division 11 (commencing with Section 26000) of the Financial Code. Fees paid pursuant to Sections 22202, 24202, and 26202 of the Financial Code may not be offset against the franchise tax.

(2) Engaging in the business of loaning money, advancing credit, or loaning credit or arranging for the loan of money or advancing of credit or loaning of credit.

(3) Storing, using or otherwise consuming in this state of tangible personal property by savings and loan associations. This paragraph does not apply to amounts incurred and paid beginning on and after January 1, 1980.

(b) The offset allowed to any financial corporation for any income year as provided in this section may, at the election of that financial

corporation, be offset, in whole or in part, against its franchise tax for that income year or offset in whole or in part against its franchise tax in one or more of the next four succeeding years of its selection, until such time as the total amount of such offset is so utilized; provided, however, that for such purposes, offsets elected to be utilized against the franchise tax of a succeeding year shall be applied in the order of their respective years of origin and prior to the application of the offset which might otherwise be allowable for amounts paid during that income year.

(c) Notwithstanding anything to the contrary contained in this section, the tax on financial corporations after the allowance of all offsets provided for herein shall not be less than 7.6 percent of its net income for the preceding income year nor less than the minimum tax determined in accordance with Section 23153.

(d) For purposes of this section, with respect to calendar or fiscal years ending after June 30, 1973, the tax on financial corporations after the allowance of all offsets shall not be less than 9 percent of its net income nor less than the minimum tax as provided by subdivision (c).

(e) Any offset which a financial corporation was entitled to apply against its franchise tax for the 1980 income year but which could not be applied during such income year because of the limitations otherwise set forth or because such amounts were not paid because they were contested or not timely assessed, shall be applied, in whole or in part, against its franchise tax for the 1981 income year, and any unused offset shall be applied in like manner against its franchise tax for the next six succeeding income years.

(f) Notwithstanding anything to the contrary contained in this section, the tax on financial corporations after the allowance of all offsets provided for herein shall not be less than the tax on net income provided by Section 23151, or the minimum franchise tax, whichever is greater.

SEC. 22. Section 23453 of the Revenue and Taxation Code, as added by Chapter 11 of the Statutes of 1988, is amended to read:

23453. (a) There shall be allowed as a credit against the regular tax (as defined by subdivision (c) of Section 23455), for any taxable year, an amount equal to the minimum tax credit for that taxable year.

(b) For purposes of subdivision (a), the minimum tax credit shall be determined in accordance with Section 53 of the Internal Revenue Code, except as otherwise provided in this part.

(c) For purposes of this chapter, the amount determined under Section 53(c)(1) of the Internal Revenue Code shall be the regular tax as defined by subdivision (c) of Section 23455, reduced by the sum of the credits allowable under this part other than the credits described in paragraph (4) of subdivision (c) of Section 23036.

SEC. 23. Section 23601.4 of the Revenue and Taxation Code, as amended by Chapter 11 of the Statutes of 1988, is amended to read:

23601.4. (a) For income years beginning on or after January 1,

1987, and before January 1, 1989, there shall be allowed as a credit against the "tax" (as defined by Section 23036) and the tax imposed by Section 23400, relating to the alternative minimum tax, an amount equal to 12 percent of the cost of a solar energy system installed on premises, used for commercial purposes, which are located in California and which are owned by the taxpayer during the income year. For purposes of taxpayers who lease a solar energy system pursuant to subdivision (*l*), the tax credit shall apply only to the principal recovery portion of lease payments for the term of the lease not to exceed 10 years, as defined in subdivision (n), which are made during the income year, and to the amounts expended on the purchased portion of the solar energy system, including installation charges, during the income year. For income years beginning on or after January 1, 1988, and before January 1, 1989, the credit percentage allowed by this section shall be reduced to 10 percent.

(b) The solar energy tax credit shall be claimed on the state income tax return for the income year in which the solar energy system was installed.

(c) A taxpayer who claimed the solar energy tax credit on the state income tax return for the income year in which the solar energy system was installed may claim the credit in subsequent years for additions to the system or additional systems by the amount prescribed in subdivision (a).

(d) For purposes of computing the credit provided by this section, the cost of any solar energy system eligible for the credit provided by this section shall be reduced by any grant provided by a public entity for that system.

(e) The basis of any system for which a credit is allowed shall be reduced by the amount of the credit and the amount of any grant provided by a utility or public agency for the solar energy system. The basis adjustment shall be made for the income year for which the credit is allowed.

(f) In the case of a partnership, the solar energy tax credit may be divided between the partners pursuant to a written partnership agreement.

(g) In the case where the credit allowed under this section exceeds the "tax," and the tax imposed by Section 23400, relating to the alternative minimum tax, the excess may be carried over to reduce the "tax" and the tax imposed by Section 23400, relating to the alternative minimum tax, in the following year, and succeeding years if necessary, until the credit is exhausted. This subdivision shall also apply to the credit allowed under former Section 23601 within the limitations of subdivision (c) of that section (except that "net tax" shall include the tax imposed under Section 23400).

(h) No tax credit may be claimed under this section for any expenditures which have been otherwise claimed as a tax credit for the current or any prior income year as energy conservation measures under this part.

(i) Energy conservation measures applied in conjunction with

solar energy systems to reduce the total cost or backup energy requirement of those systems shall be considered part of the systems, and shall be eligible for the tax credit. Qualified energy conservation measures installed within six months of the date of installation of the solar energy system are considered to be installed "in conjunction with" the solar energy system, even if the period spans two income years. In cases involving more than six months between the dates of installation of the energy conservation measures and the solar energy system, the taxpayer must be able to provide persuasive evidence that the energy conservation measures were in fact installed in conjunction with a solar energy system. Eligible conservation measures applied in conjunction with solar space heating include, but are not limited to, ceiling, wall, and floor insulating above that required by law at the time of original construction. Eligible conservation measures applied in conjunction with solar water heating include, but are not limited to, water heater insulation jackets, and shower and faucet flow reducing devices. Energy conservation measures which shall be eligible for the tax credit when applied in conjunction with solar energy systems shall be defined by the Energy Resources Conservation and Development Commission as part of the solar energy system eligibility criteria.

(j) Taxpayers who lease a solar energy system installed on premises in California shall receive a tax credit as provided in subdivision (a), if the lessee can confirm, if necessary, by a written document signed by the lessor that (1) the lessor irrevocably elects not to claim a state tax credit for the solar energy system, and (2) if the system is installed in a locality served by a municipal solar utility, that the lessor holds a valid permit from the municipal solar utility. Leasing requirements may be established by the State Energy Resources Conservation and Development Commission as part of the solar energy system eligibility criteria.

(k) The State Energy Resources Conservation and Development Commission shall, after one or more public hearings, establish guidelines and criteria for solar energy systems which shall be eligible for the credit provided by this section. These guidelines and criteria may include, but are not limited to, minimum requirements for safety, reliability, and durability of solar energy systems. The Franchise Tax Board shall prescribe such regulations as may be necessary to carry out the purposes of this section.

(*l*) For purposes of this section, the following definitions shall apply:

(1) "Installed" means placed in a functionally operative state.

(2) "Cost" includes equipment, installation charges, and compensation paid to the owner of burdened property in connection with the acquisition of a solar easement, as defined in Section 801.5 of the Civil Code, and the fees for the recording of the easement. In the case of a system which is leased, "cost" means the principal recovery portion of lease payments, which is the cost incurred by the taxpayer in acquiring the solar energy system, excluding interest

charges and maintenance expenses.

"Cost" does not include interest charges and costs associated with the acquisition of an easement other than a solar easement.

(3) "Owner" includes duly recorded holders of legal title, lessees with at least three years remaining on their lease or easement granting use of the premises, a person purchasing premises under a contract of sale, or who holds shares or membership in a cooperative housing corporation, which holding is a requisite to the exclusive right of occupancy to the premises, a person who is a member of a nonprofit corporation or association which is a duly recorded holder of legal title, or a person who is a member of a nonprofit corporation or association which is a lessee with at least three years remaining on its lease.

(4) "Premises" means the principal stationary location in California where the system is installed for direct use or for purposes of sale of energy, and includes land, easements, and buildings or portions thereof.

(5) "Commercial purposes" means the installation of solar energy systems on premises other than single-family dwellings.

(6) "Single-family dwelling" means single-family residences, mobilehomes, and the individual units of condominiums.

"Single-family dwelling" does not include cooperatives, apartment buildings, or other similar multiple dwellings, including buildings and any other common areas of a condominium maintained by a homeowners association.

(7) (A) "Solar energy system" means the use of solar devices for the individual function of:

(i) Domestic or service water heating.

(ii) Space conditioning.

(iii) Production of electricity.

(iv) Process heat.

(v) Solar mechanical energy.

"Solar energy system" includes, but is not limited to, passive thermal systems, semipassive thermal systems, active thermal systems, and photovoltaic systems.

For purposes of this section, "solar energy system" does not include solar devices for the individual function of wind energy for the production of electricity or mechanical work.

(B) Eligible solar energy systems shall have a useful life of not less than three years.

(8) "Solar device" means the equipment associated with the collection, conversion, transfer, distribution, storage, or control of solar energy. In the case of a solar device associated with two or more solar energy systems, the credit allowed for the solar device may be taken for any one of the systems, or divided equally between them.

(9) "Passive thermal system" means a system which utilizes the structural elements of the building, and is not augmented by mechanical components, to provide for collection, storage, or distribution of solar energy for heating or cooling.

(10) "Active thermal system" means a system which utilizes solar devices thermally isolated from the commercial space to provide for collection, storage, or distribution of solar energy for heating or cooling.

(11) "Semipassive thermal system" means a system which utilizes the structural elements of a building and is augmented by mechanical components to provide for collection, storage, or distribution of solar energy for heating or cooling.

(12) "Municipal solar utility" means a city, county, or municipal utility district, or agency thereof, which sells or leases solar or other energy generating equipment or energy saving devices for residential, commercial, agricultural, or industrial uses or which issues permits to companies engaged in the leasing of this equipment.

(m) Except for purposes of subdivision (g) of Section 23601.4, the provisions of this section shall not apply to any solar energy system which continues to qualify for the tax credit authorized by former Section 23601 (as amended by Chapter 1200 of the Statutes of 1986) by meeting the eligibility requirements of subdivision (j) of that section.

(n) This section shall remain in effect only until December 1, 1989, and as of that date is repealed. However, any unused credit may continue to be carried forward, as provided in subdivision (g), until the credit has been exhausted.

SEC. 24. Section 23603 of the Revenue and Taxation Code is amended to read:

23603. (a) For income years beginning before January 1, 1991, there shall be allowed as a credit against the "tax" (as defined by Section 23036) an amount equal to 55 percent of the cost (including installation charges but excluding interest charges), of a device designed and installed to convert a car or truck, which is registered in this state, to the use of an alcohol fuel consisting of at least 85 percent methanol or ethanol. The credit allowed by this section shall be claimed in the income year the device is installed and shall not exceed one thousand dollars ($1,000) per vehicle.

(b) For purposes of this section, "device" is any apparatus for installation on a used motor vehicle or truck that requires modification of the engine or pollution control device, or both, so that methanol or ethanol may be used as fuel for the motor vehicle or truck.

(c) The Department of Motor Vehicles shall, upon request, cooperate with the Franchise Tax Board in determining vehicle eligibility under this section.

(d) If a federal income tax credit is enacted for costs incurred by a taxpayer for the purchase and installation of a device described in this section, then to the extent such credit is allowed or allowable, the state credit provided in subdivision (a) shall be reduced by the amount of the federal credit.

(e) In the case where the credit allowed by this section exceeds

*the "tax," the* excess may not be carried over for application to subsequent years.

(f) This section shall remain in effect only until December 1, 1991, and as of that date is repealed.

SEC. 25. Section 23609 of the Revenue and Taxation Code, as amended by Chapter 11 of the Statutes of 1988, is amended to read:

23609. 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) The applicable percentage shall be 8 percent of the excess of the qualified research expenses for the income year over the base period research expenses and 12 percent of the basic research payments.

(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) (1) This section shall apply only to amounts incurred on or after January 1, 1988, and paid or incurred before January 1, 1993.

(2) In the case of any income year which begins before January 1, 1988, and ends after December 31, 1987, any amount for any base period with respect to that income year shall be the amount which bears the same ratio to that amount for that base period as the number of days in that income year after December 31, 1987, bears to the total number of days in that income year.

(3) In the case of any income year which begins before January 1, 1993, and ends after December 31, 1992, any amount for any base period with respect to that income year shall be the amount which bears the same ratio to that amount for that base period as the number of days in that income year before January 1, 1993, bears to the total number of days in that income year.

(f) This section shall remain in effect only until January 1, 1994,

and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1994, deletes or extends that date.

SEC. 26. Section 23609.5 of the Revenue and Taxation Code is amended to read:

23609.5. For income years beginning before January 1, 1993, there shall be allowed as a credit against the "tax," (as defined by Section 23036) an amount determined in accordance with Section 28 of the Internal Revenue Code, except as follows:

(a) The applicable percentage shall be 15 percent of the qualified clinical testing expenses for the income year.

(b) Qualified clinical testing expenses include only those expenses paid or incurred by the taxpayer for such testing conducted in California.

(c) In the case where the credit allowed under this section exceeds the "tax," the excess may be carried over to reduce the tax in the following year, and succeeding income years if necessary, until the credit has been exhausted.

(d) This section shall remain in effect only until December 1, 1993, and as of that date is repealed. However, any unused credit may continue to be carried forward, as provided in subdivision (c), until the credit has been exhausted.

SEC. 27. Section 23610.5 of the Revenue and Taxation Code, as amended by Chapter 258 of the Statutes of 1988, is amended to read:

23610.5. (a) For income years beginning before January 1, 1990, 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, except as otherwise provided in this section.

(b) (1) The amount of the credit allocated to any project shall be authorized by the Mortgage Bond and Tax Credit Allocation Committee, or any successor thereof, based on a project's need for the credit for economic feasibility.

(A) The low-income housing project shall be located in California and shall meet either of the following requirements:

(i) It shall have been allocated by the Mortgage Bond and 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 Mortgage Bond and 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.

(2) (A) The Mortgage Bond and Tax Credit Allocation Committee shall certify to the taxpayer the amount of tax credit under this section to which the taxpayer is entitled for each year in the credit period.

(B) The taxpayer shall attach a copy of the certification to any

return upon which a tax credit is claimed under this section.

(C) 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.

(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 taxpayer 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 placed in service by the taxpayer after 1987 (for new buildings whether or not the building is federally subsidized and for existing buildings), the term "applicable percentage" means either of the following:

(A) For each of the first three years, the highest percentage prescribed under Section 42(b)(2) of the Internal Revenue Code, for the month in which the building is placed in service, 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.

(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 cumulative cash distribution on the taxpayer's cash invested in the qualified low-income housing project in an amount not to exceed 8 percent per annum. For purposes of this paragraph, if the taxpayer is a partnership or an S corporation, the limitation on return shall apply to each of the partners or the shareholders, respectively.

(2) The taxpayer 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 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 the 1988 or 1989 taxable year, the qualified basis of any building exceeds the qualified basis of such building as

approved for the initial allocation of credits pursuant to this section, the taxpayer shall be eligible to apply for an allocation of the credit on the excess in an amount equal to the applicable percentage determined pursuant to subdivision (c) above for the four-year period beginning with the later of the taxable year in which the increase in qualified basis occurs or the taxable year in which the credit allocation is received.

(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 Mortgage Bond and Tax Credit Allocation Committee for the calendar year in which the allocation is made.

(2) Paragraphs (3), (4), (6), and (7) of Section 42(h) of the Internal Revenue Code shall not be applicable.

(g) (1) Except as provided in paragraph (2), the aggregate housing credit dollar amount which may be allocated annually by the Mortgage Bond and Tax Credit Allocation Committee for the 1987, 1988, and 1989 calendar years pursuant to this section and Section 17058 shall be an amount equal to one dollar and twenty-five cents ($1.25) multiplied by the state population in that year, as established by the Department of Finance.

(2) The portion of the aggregate housing credit dollar amount of the Mortgage Bond and Tax Credit Allocation Committee which is not allocated for each of the calendar years may be carried over to any subsequent calendar years through 1989. Thereafter, Section 42(n)(2) of the Internal Revenue Code shall apply.

(h) (1) 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, subject to the limitation in paragraph (2).

(2) If, after the first 15 years of the compliance period, a qualified low-income housing project is not economically feasible, the taxpayer shall be entitled to remove one or more low-income units from the set-aside and rent requirements of Section 42(g) of the Internal Revenue Code as is necessary for the project to become economically feasible, provided that once a project is again economically feasible, the taxpayer designates the next available units as low-income units subject to the set-aside and rent requirements, up to the original number of low-income units, while keeping the project economically feasible.

(3) For purposes of paragraph (2), "economically feasible" means that project revenue equals or exceeds project operating expenses excluding any return on investment.

(4) For purposes of paragraph (3), "operating expenses" means

the reasonable expenses necessary to operate and maintain the project in habitable condition, debt service, taxes, and reasonable reserves. For purposes of this paragraph, debt service shall not include that portion of payments of principal and interest attributable to any excess refinanced principal over the outstanding principal of the loan that was refinanced.

(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 Mortgage Bond and Tax Credit Allocation Committee and the taxpayer.

(2) The regulatory agreement shall include, but not be limited to, the following:

(A) A term equal to 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 taxpayer 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.

(E) A provision incorporating the requirements of Section 42 of the Internal Revenue Code as modified by this section.

(F) A requirement that the taxpayer provide the Mortgage Bond and Tax Credit Allocation Committee or its designee and the local agency that can enforce the regulatory agreement with advance notice if the taxpayer intends to reduce the number of low-income units to make a project economically feasible.

(G) A requirement that the taxpayer notify the Mortgage Bond and 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.

(H) A requirement that the taxpayer, as security for the performance of taxpayer's obligations under the regulatory agreement, assign the taxpayer's interest in rents which it receives from the project, provided that until there is a default under the regulatory agreement, the taxpayer is entitled to collect and retain the rents.

(I) 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 operate the project in accordance with the regulatory agreement until the enforcer determines the taxpayer 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) In allocating the housing credit, the Mortgage Bond and Tax Credit Allocation Committee shall give priority to qualified low-income housing projects that satisfy the following criteria, which are weighted according to the numerical order of the paragraphs listed below:

(1) Projects that have received government financing or mortgage assistance and are eligible and likely to convert to market-rate rental units.

(2) (A) Projects that commit to providing low-income units for a significantly longer period than the compliance period under this section.

(B) Projects that commit to providing a greater percentage of low-income units than is required under Section 42(g)(1) of the Internal Revenue Code.

(3) Projects that commit to charging rent for low-income units that is less than the rent requirements under Section 42(g)(2) of the Internal Revenue Code.

(4) (A) Projects for which the rate of return on cash investment is less than the rate allowed under this section.

(B) Projects targeted to those groups identified in the California Statewide Housing Plan as having special needs, including projects that ensure that rural areas receive a proportionate share of the housing credits.

(k) Section 42(*l*) of the Internal Revenue Code shall be modified as follows:

The term "secretary" shall be replaced by the term "Mortgage Bond and Tax Credit Allocation Committee."

(*l*) In the case where the state credit allowed 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 aggregate amount of tax credits granted pursuant to this section and Section 17058 shall not exceed thirty-five million dollars ($35,000,000) per year. The Mortgage Bond and Tax Credit Allocation Committee shall not authorize any credit if the total amount of credits authorized in any year under the Personal Income Tax Law and the Bank and Corporation Tax Law exceeds thirty-five million dollars ($35,000,000).

(n) This section shall remain in effect only until January 1, 1990, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1990, deletes or extends the date. However, any unused credit may be used beyond that date on the same basis and to the same extent as permitted under the law immediately prior to January 1, 1990.

SEC. 28. Section 23612 of the Revenue and Taxation Code is amended to read:

23612. (a) For income years beginning before January 1, 1993, there shall be allowed as a credit against the "tax" (as defined by Section 23036) an amount equal to the sales or use tax paid or incurred by the taxpayer in connection with the purchase of qualified property.

(b) For purposes of this section:

(1) "Taxpayer" means either of the following:

(A) A qualified business as defined in Section 7082 of the Government Code.

(B) A bank or corporation engaged in a trade or business within an enterprise zone designated pursuant to Section 7073 of the Government Code.

(2) "Qualified property" means machinery and machinery parts used for fabricating, processing, assembling, and manufacturing and machinery and machinery parts used for the production of renewable energy resources or air or water pollution control mechanisms, up to a value of twenty million dollars ($20,000,000), which, in the case of a taxpayer described in subparagraph (A) of paragraph (1), is used exclusively in a program area, and, in the case of a taxpayer described in subparagraph (B) of paragraph (1), is used exclusively in an enterprise zone.

(c) If the taxpayer has purchased property upon which a use tax has been paid or incurred, the credit provided under subdivision (a) shall be allowed only if qualified property of a comparable quality and price is not timely available for purchase in this state.

(d) In the case where the 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.

(e) Any taxpayer who elects to be subject to this section shall not be entitled to increase the basis of the property as otherwise required by Section 164(a) of the Internal Revenue Code with respect to sales or use tax paid or incurred in connection with the purchase of qualified property.

(f) In the case of a taxpayer described in subparagraph (A) of paragraph (1) of subdivision (b), the amount of the credit provided by this section shall not in any year exceed the amount of tax which would be imposed on the income attributed to business activities of the taxpayer within the program area (as defined in Section 7082 of the Government Code). The amount of that attributed income shall be determined in accordance with the provisions of Article 2 (commencing with Section 25120) of Chapter 17.

(g) In the case of a taxpayer described in subparagraph (B) of paragraph (1) of subdivision (b), the amount of the credit provided by this section in any year shall not exceed the amount of tax which would be imposed on the income attributed to business activities of the taxpayer within the enterprise zone (designated pursuant to Section 7073 of the Government Code). The amount of that attributed income shall be determined in accordance with the

provisions of Article 2 (commencing with Section 25120) of Chapter 17.

(h) This section shall remain in effect only until December 1, 1993, and as of that date is repealed. However, any unused credit may continue to be carried forward, as provided in subdivision (d), until the credit has been exhausted.

SEC. 28.1. Section 23612 of the Revenue and Taxation Code is amended to read:

23612. (a) For income years beginning before January 1, 1993, there shall be allowed as a credit against the "tax" (as defined by Section 23036) an amount equal to the sales or use tax paid or incurred by the taxpayer in connection with the purchase of qualified property.

(b) For purposes of this section:

(1) "Taxpayer" means either of the following:

(A) A qualified business as defined in Section 7082 of the Government Code.

(B) A bank or corporation engaged in a trade or business within an enterprise zone designated pursuant to Section 7073 of the Government Code or a harbor revitalization zone designated pursuant to Section 7103 of that code.

(2) "Qualified property" means machinery and machinery parts used for fabricating, processing, assembling, manufacturing, *shipbuilding, repair, and machinery and machinery parts used for* the production of renewable energy resources or air or water pollution control mechanisms, up to a value of twenty million dollars ($20,000,000), which, in the case of a taxpayer described in subparagraph (A) of paragraph (1), is used exclusively in a program area, and, in the case of a taxpayer described in subparagraph (B) of paragraph (1), is used exclusively in an enterprise zone or harbor revitalization zone.

(c) If the taxpayer has purchased property upon which a use tax has been paid or incurred, the credit provided under subdivision (a) shall be allowed only if qualified property of a comparable quality and price is not timely available for purchase in this state.

(d) In the case where the 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.

(e) Any taxpayer who elects to be subject to this section shall not be entitled to increase the basis of the property as otherwise required by Section 164(a) of the Internal Revenue Code with respect to sales or use tax paid or incurred in connection with the purchase of qualified property.

(f) In the case of a taxpayer described in subparagraph (A) of paragraph (1) of subdivision (b), the amount of the credit provided by this section shall not in any year exceed the amount of tax which would be imposed on the income attributed to business activities of the taxpayer within the program area (as defined in Section 7082 of

the Government Code). The amount of that attributed income shall be determined in accordance with the provisions of Article 2 (commencing with Section 25120) of Chapter 17.

(g) In the case of a taxpayer described in subparagraph (B) of paragraph (1) of subdivision (b), the amount of the credit provided by this section in any year shall not exceed the amount of tax which would be imposed on the income attributed to business activities of the taxpayer within the enterprise zone (designated pursuant to Section 7073 of the Government Code) or harbor revitalization zone (designated pursuant to Section 7103 of that code). The amount of that attributed income shall be determined in accordance with the provisions of Article 2 (commencing with Section 25120) of Chapter 17.

(h) This section shall remain in effect only until December 1, 1993, and as of that date is repealed. However, any unused credit may continue to be carried forward, as provided in subdivision (d), until the credit has been exhausted.

SEC. 28.2. Section 23612 of the Revenue and Taxation Code is amended to read:

23612. (a) For income years beginning before January 1, 1993, there shall be allowed as a credit against the "tax" (as defined by Section 23036) an amount equal to the sales or use tax paid or incurred by the taxpayer in connection with the purchase of qualified property.

(b) For purposes of this section:

(1) "Taxpayer" means either of the following:

(A) A qualified business as defined in Section 7082 of the Government Code.

(B) A bank or corporation engaged in a trade or business within an enterprise zone designated pursuant to Section 7073 of the Government Code.

(2) "Qualified property" means machinery and machinery parts used for fabricating, processing, assembling, and manufacturing and machinery and machinery parts used for the production of renewable energy resources or air or water pollution control mechanisms, up to a value of twenty million dollars ($20,000,000), which, in the case of a taxpayer described in subparagraph (A) of paragraph (1), is used exclusively in a program area, and, in the case of a taxpayer described in subparagraph (B) of paragraph (1), is used exclusively in an enterprise zone.

(c) If the taxpayer has purchased property upon which a use tax has been paid or incurred, the credit provided under subdivision (a) shall be allowed only if qualified property of a comparable quality and price is not timely available for purchase in this state.

(d) In the case where the 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.

(e) Any taxpayer who elects to be subject to this section shall not

be entitled to increase the basis of the property as otherwise required by Section 164(a) of the Internal Revenue Code with respect to sales or use tax paid or incurred in connection with the purchase of qualified property.

(f) In the case of a taxpayer described in subparagraph (A) of paragraph (1) of subdivision (b), the amount of the credit provided by this section shall not in any year exceed the amount of tax which would be imposed on the income attributed to business activities of the taxpayer within the program area (as defined in Section 7082 of the Government Code). The amount of that attributed income shall be determined in accordance with the provisions of Article 2 (commencing with Section 25120) of Chapter 17.

(g) In the case of a taxpayer described in subparagraph (B) of paragraph (1) of subdivision (b), the amount of the credit provided by this section in any year shall not exceed the amount of tax which would be imposed on the income attributed to business activities of the taxpayer within the enterprise zone (designated pursuant to Section 7073 of the Government Code). The amount of that attributed income shall be determined in accordance with the provisions of Article 2 (commencing with Section 25120) of Chapter 17.

SEC. 28.3. Section 23612 of the Revenue and Taxation Code is amended to read:

23612. (a) For income years beginning before January 1, 1993, there shall be allowed as a credit against the "tax" (as defined by Section 23036) an amount equal to the sales or use tax paid or incurred by the taxpayer in connection with the purchase of qualified property.

(b) For purposes of this section:

(1) "Taxpayer" means either of the following:

(A) A qualified business as defined in Section 7082 of the Government Code.

(B) A bank or corporation engaged in a trade or business within an enterprise zone designated pursuant to Section 7073 of the Government Code or a harbor revitalization zone designated pursuant to Section 7103 of that code.

(2) "Qualified property" means machinery and machinery parts used for fabricating, processing, assembling, manufacturing, shipbuilding, repair, and machinery and machinery parts used for the production of renewable energy resources or air or water pollution control mechanisms, up to a value of twenty million dollars ($20,000,000), which, in the case of a taxpayer described in subparagraph (A) of paragraph (1), is used exclusively in a program area, and, in the case of a taxpayer described in subparagraph (B) of paragraph (1), is used exclusively in an enterprise zone or harbor revitalization zone.

(c) If the taxpayer has purchased property upon which a use tax has been paid or incurred, the credit provided under subdivision (a) shall be allowed only if qualified property of a comparable quality

and price is not timely available for purchase in this state.

(d) In the case where the 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.

(e) Any taxpayer who elects to be subject to this section shall not be entitled to increase the basis of the property as otherwise required by Section 164(a) of the Internal Revenue Code with respect to sales or use tax paid or incurred in connection with the purchase of qualified property.

(f) In the case of a taxpayer described in subparagraph (A) of paragraph (1) of subdivision (b), the amount of the credit provided by this section shall not in any year exceed the amount of tax which would be imposed on the income attributed to business activities of the taxpayer within the program area (as defined in Section 7082 of the Government Code). The amount of that attributed income shall be determined in accordance with the provisions of Article 2 (commencing with Section 25120) of Chapter 17.

(g) In the case of a taxpayer described in subparagraph (B) of paragraph (1) of subdivision (b), the amount of the credit provided by this section in any year shall not exceed the amount of tax which would be imposed on the income attributed to business activities of the taxpayer within the enterprise zone (designated pursuant to Section 7073 of the Government Code) or harbor revitalization zone (designated pursuant to Section 7103 of that code. The amount of that attributed income shall be determined in accordance with the provisions of Article 2 (commencing with Section 25120) of Chapter 17.

SEC. 29. Section 23630 of the Revenue and Taxation Code, as amended by Chapter 31 of the Statutes of 1988, is repealed.

SEC. 30. Section 23800 of the Revenue and Taxation Code is amended to read:

23800. (a) For any income year beginning on or after January 1, 1987, the tax treatment of "S corporations" and their shareholders shall be determined in accordance with Subchapter S of Chapter 1 of Subtitle A of the Internal Revenue Code, except as otherwise provided in this chapter.

(b) For income years beginning in 1987 and 1988, reasonable extensions of time may be granted, as appropriate for implementation of this chapter, in the form and the manner as the Franchise Tax Board may prescribe.

SEC. 31. Section 23802 of the Revenue and Taxation Code, as amended by Chapter 11 of the Statutes of 1988, is amended to read:

23802. (a) Section 1363(a) of the Internal Revenue Code, relating to the taxability of an S corporation, shall not be applicable.

(b) Corporations qualifying under this chapter shall continue to be subject to the taxes imposed under Chapter 2 (commencing with Section 23101) and Chapter 3 (commencing with Section 23501), except as follows:

(1) The tax imposed under Section 23151 or 23501 shall be imposed at a rate of 2½ percent rather than the rate specified in those sections.

(2) In the case of an "S corporation" which is also a financial corporation, the rate of tax specified in paragraph (1) shall be increased by the excess of the rate imposed under Section 23183 over the rate imposed under Section 23151 and Section 23184 shall be applicable.

(3) An "S corporation" shall not be subject to the alternative minimum tax (or preference tax) imposed under Section 23400.

(c) An "S corporation" shall be subject to the minimum tax imposed under Section 23153.

(d) (1) For purposes of subdivision (b), an "S corporation" shall be allowed a deduction under Section 24416 (relating to net operating loss deductions), but only with respect to losses incurred during periods in which the corporation had in effect a valid election to be treated as an "S corporation" for purposes of this part.

(2) Section 1371(b) of the Internal Revenue Code, relating to denial of carryovers between "C years" and "S years", shall apply for purposes of the tax imposed under subdivision (b), except as provided in paragraph (1) of this subdivision.

(3) The provisions of this subdivision shall not affect the amount of any item of income or loss computed in accordance with the provisions of Section 1366 of the Internal Revenue Code, relating to pass-thru items to shareholders.

(4) For purposes of subdivision (b) of Section 17276, relating to limitations on loss carryovers, losses passed through to shareholders of an "S corporation," to the extent otherwise allowable without application of that subdivision, shall be fully included in the net operating loss of that shareholder and then that subdivision shall be applied to the entire net operating loss.

(e) For purposes of computing the taxes specified in subdivision (b), an "S corporation" shall be allowed a deduction from income for built-in gains and passive investment income for which a tax has been imposed under this part in accordance with the provisions of Section 1374 of the Internal Revenue Code, relating to tax imposed on certain built-in gains, or Section 1375 of the Internal Revenue Code, relating to tax imposed on passive investment income.

(f) For purposes of computing taxes imposed under this part, as provided in subdivision (b)—

(1) An "S corporation" shall compute its deductions for amortization and depreciation in accordance with the provisions of Part 10 (commencing with Section 17001) of Division 2.

(2) The provisions of Section 465 of the Internal Revenue Code, relating to limitation of deductions to the amount at risk, shall be applied in the same manner as in the case of an individual.

(3) The provisions of Section 469 of the Internal Revenue Code, relating to limitations on passive activity losses and credits, shall be applied in the same manner as in the case of an individual.

SEC. 32. The heading of Article 4 (commencing with Section 24330) of Chapter 6 of Part 11 of Division 2 of the Revenue and Taxation Code is repealed.

SEC. 33. Section 24330 of the Revenue and Taxation Code is amended and renumbered to read:

23621. (a) There shall be allowed as a credit against the "tax" (as defined by Section 23036) an amount equal to 10 percent of the amount of wages paid to each employee who is certified by the Employment Development Department to meet the requirements of Section 328 of the Unemployment Insurance Code.

The credit under this section shall not apply to an individual unless, on or before the day on which that individual begins work for the employer, the employer:

(1) Has received a certification from the Employment Development Department, or

(2) Has requested in writing that certification from the Employment Development Department.

For purposes of this subdivision, if on or before the day on which the individual begins work for the employer, the individual has received from the Employment Development Department a written preliminary determination that he or she is a member of a targeted group, then the requirement of paragraph (1) or (2) shall be applicable on or before the fifth day on which the individual begins work for the employer.

(b) The credit under this section shall not apply to wages paid in excess of three thousand dollars ($3,000) during an income year by a taxpayer to the same individual. With respect to each qualified employee, the aggregate credit under this section shall not exceed six hundred dollars ($600).

(c) The credit under this section shall not apply to wages paid to an individual:

(1) Who is a dependent, as described in paragraphs (1) to (8), inclusive, of Section 152(a) of the Internal Revenue Code, of an individual who owns, directly or indirectly, more than 50 percent in value of the outstanding stock of the taxpayer (determined with the application of Section 267(c) of the Internal Revenue Code); or

(2) Who is a dependent (as described in paragraph (9) of Section 152(a) of the Internal Revenue Code) of an individual described in paragraph (1).

(d) The credit under this section shall not apply to wages paid to an individual if, prior to the hiring date of that individual, that individual had been employed by the employer at any time during which he or she was not certified by the Employment Development Department to meet the requirements of Section 328 of the Unemployment Insurance Code.

(e) If the certification of an employee has been revoked pursuant to subdivision (c) of Section 328 of the Unemployment Insurance Code, the credit under this section shall not apply to wages paid by the employer after the date on which notice of revocation is received

by the employer.

(f) The credit under this section shall be in addition to any deduction under this part to which the taxpayer may be entitled, if any.

(g) The credit provided by this section shall be applied to wages paid to each qualifying employee during the 24-month period beginning on the date the employee begins working for the taxpayer.

(h) (1) A taxpayer may elect to have this section not apply for any income year.

(2) An election under paragraph (1) for any income year may be made (or revoked) at any time before the expiration of the four-year period beginning on the last date prescribed by law for filing the return for that income year (determined without regard to extensions).

(3) An election under paragraph (1) (or revocation thereof) shall be made in any manner which the Franchise Tax Board may prescribe.

(i) (1) In the case of a successor employer referred to in Section 3306(b)(1) of the Internal Revenue Code, the determination of the amount of the credit under this section with respect to wages paid by that successor employer shall be made in the same manner as if those wages were paid by the predecessor employer referred to in that section.

(2) No credit shall be determined under this section with respect to remuneration paid by an employer to an employee for services performed by that employee for another person unless the amount reasonably expected to be received by the employer for those services from that other person exceeds the remuneration paid by the employer to that employee for those services.

(j) The term "wages" shall not include any amounts paid or incurred to an individual who begins work for an employer after December 31, 1989.

SEC. 34. Section 24330 of the Revenue and Taxation Code is amended and renumbered to read:

23621. (a) There shall be allowed as a credit against the "tax" (as defined by Section 23036) an amount equal to 10 percent of the amount of wages paid to each employee who is certified by the Employment Development Department to meet the requirements of Section 328 of the Unemployment Insurance Code.

The credit under this section shall not apply to an individual unless, on or before the day on which that individual begins work for the employer, the employer:

(1) Has received a certification from the Employment Development Department, or

(2) Has requested in writing that certification from the Employment Development Department.

For purposes of this subdivision, if on or before the day on which the individual begins work for the employer, the individual has received from the Employment Development Department a

written preliminary determination that he or she is a member of a targeted group, then the requirement of paragraph (1) or (2) shall be applicable on or before the fifth day on which the individual begins work for the employer.

(b) The credit under this section shall not apply to wages paid in excess of three thousand dollars ($3,000) during an income year by a taxpayer to the same individual. With respect to each qualified employee, the aggregate credit under this section shall not exceed six hundred dollars ($600).

(c) The credit under this section shall not apply to wages paid to an individual:

(1) Who is a dependent, as described in paragraphs (1) to (8), inclusive, of Section 152(a) of the Internal Revenue Code, of an individual who owns, directly or indirectly, more than 50 percent in value of the outstanding stock of the taxpayer (determined with the application of Section 267(c) of the Internal Revenue Code); or

(2) Who is a dependent (as described in paragraph (9) of Section 152(a) of the Internal Revenue Code) of an individual described in paragraph (1).

(d) The credit under this section shall not apply to wages paid to an individual if, prior to the hiring date of that individual, that individual had been employed by the employer at any time during which he or she was not certified by the Employment Development Department to meet the requirements of Section 328 of the Unemployment Insurance Code.

(e) If the certification of an employee has been revoked pursuant to subdivision (c) of Section 328 of the Unemployment Insurance Code, the credit under this section shall not apply to wages paid by the employer after the date on which notice of revocation is received by the employer.

(f) The credit under this section shall be in addition to any deduction under this part to which the taxpayer may be entitled, if any.

(g) The credit provided by this section shall be applied to wages paid to each qualifying employee during the 24-month period beginning on the date the employee begins working for the taxpayer.

(h) (1) A taxpayer may elect to have this section not apply for any income year.

(2) An election under paragraph (1) for any income year may be made (or revoked) at any time before the expiration of the four-year period beginning on the last date prescribed by law for filing the return for that income year (determined without regard to extensions).

(3) An election under paragraph (1) (or revocation thereof) shall be made in any manner which the Franchise Tax Board may prescribe.

(i) (1) In the case of a successor employer referred to in Section 3306(b)(1) of the Internal Revenue Code, the determination of the amount of the credit under this section with respect to wages paid

by that successor employer shall be made in the same manner as if those wages were paid by the predecessor employer referred to in that section.

(2) No credit shall be determined under this section with respect to remuneration paid by an employer to an employee for services performed by that employee for another person unless the amount reasonably expected to be received by the employer for those services from that other person exceeds the remuneration paid by the employer to that employee for those services.

(j) (1) Section 51 (c) (3) of the Internal Revenue Code, relating to payments for services during labor disputes, shall apply to wages paid in income years beginning on or after January 1, 1988, for services rendered on or after January 1, 1988.

(2) The term "wages" shall not include any amounts paid or incurred to an individual who begins work for an employer after December 31, 1989.

SEC. 35. Section 24331 of the Revenue and Taxation Code is amended and renumbered to read:

23622. (a) There shall be allowed as a credit against the "tax" (as defined by Section 23036) an amount equal to the sum of each of the following:

(1) Fifty percent for qualified wages in the first year of employment.

(2) Forty percent for qualified wages in the second year of employment.

(3) Thirty percent for qualified wages in the third year of employment.

(4) Twenty percent for qualified wages in the fourth year of employment.

(5) Ten percent for qualified wages in the fifth year of employment.

(b) For purposes of this section:

(1) "Qualified wages" means the wages paid or incurred by the employer during the income year to qualified disadvantaged individuals. "Qualified wages" means that portion of hourly wages which does not exceed 150 percent of the minimum wage.

(2) "Qualified years one through five wages" means, with respect to any individual, qualified wages received during the 60-month period beginning with the day the individual commences employment within an enterprise zone.

(3) "Minimum wage" means the wage established by the Industrial Welfare Commission as provided for in Chapter 1 (commencing with Section 1171) of Part 4 of Division 2 of the Labor Code.

(c) For purposes of this section:

(1) "Qualified disadvantaged individual" means an individual—

(A) Who is a qualified employee within the meaning of subdivision (d).

(B) Who is hired by the employer after the designation of the area

in which services were performed as an enterprise zone (under Section 7073 of the Government Code).

(C) Who is any of the following:

(i) An individual who has been determined eligible by the administrative entity of a service delivery area for services under the federal Job Training Partnership Act (29 U.S.C. Sec. 1501 et seq.) and who is receiving subsidized employment, training, or services funded by the federal Job Training Partnership Act, except for an individual who only receives outreach, intake, or assessment services or a combination thereof.

(ii) Any voluntary or mandatory registrant under the Greater Avenues for Independence Act of 1985 provided for pursuant to Article 3.2 (commencing with Section 11320) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code.

(iii) Any voluntary or mandatory registrant for the Work Incentive Demonstration Program provided for pursuant to Section 11347 of the Welfare and Institutions Code.

(iv) Any voluntary or mandatory registrant for the Employment Preparation Program provided for pursuant to Article 3.5 (commencing with Section 11325) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code.

(v) Any individual who has been certified eligible by the California Employment Development Department under the federal Targeted Jobs Tax Credit Program as long as that program is in effect.

(d) For purposes of this section, "qualified employee" means an individual—

(1) At least 90 percent of whose services for the taxpayer during the income year are directly related to the conduct of the taxpayer's trade or business located in an enterprise zone.

(2) Who performs at least 50 percent of his or her services for the taxpayer during the income year in an enterprise zone.

(e) (1) For purposes of this section, all employees of all corporations which are members of the same controlled group of corporations shall be treated as employed by a single employer. In any such case, the credit (if any) allowable by this section to each member shall be determined by reference to its proportionate share of the qualified wages giving rise to the credit. For purposes of this subdivision, "controlled group of corporations" has the meaning given to that term by Section 1563(a) of the Internal Revenue Code, except that—

(A) "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.

(B) The determination shall be made without regard to subsections (a)(4) and (e)(3)(C) of Section 1563 of the Internal Revenue Code.

(2) If an employer acquires the major portion of a trade or business of another employer (hereinafter in this paragraph referred

to as the "predecessor") or the major portion of a separate unit of a trade or business of a predecessor, then, for purposes of applying this section (other than subdivision (f)) for any calendar year ending after that acquisition, the employment relationship between an employee and an employer shall not be treated as terminated if the employee continues to be employed in that trade or business.

(f) (1) If the employment of any employee with respect to whom qualified wages are taken into account under subdivision (a) is terminated by the taxpayer at any time during the first 270 days of that employment (whether or not consecutive) or before the close of the 270th calendar day after the day in which that employee completes 90 days of employment with the taxpayer, the tax imposed by this part for the income year in which that employment is terminated shall be increased by an amount equal to the credit allowed under subdivision (a) for that income year and all prior income years attributable to qualified wages paid or incurred with respect to that employee.

(2) (A) Paragraph (1) shall not apply to any of the following:

(i) A termination of employment of an employee who voluntarily leaves the employment of the taxpayer.

(ii) A termination of employment of an individual who, before the close of the period referred to in paragraph (1), becomes disabled to perform the services of that employment, unless that disability is removed before the close of that period and the taxpayer fails to offer reemployment to that individual.

(iii) A termination of employment of an individual, if it is determined under the applicable unemployment compensation provisions that the termination was due to the misconduct of that individual.

(iv) A termination of employment of an individual due to a substantial reduction in the trade or business operations of the taxpayer.

(v) A termination of employment of an individual, if that individual is replaced by other qualified employees so as to create a net increase in both the number of employees and the hours of employment.

(B) For purposes of paragraph (1), the employment relationship between the taxpayer and an employee shall not be treated as terminated—

(i) By a transaction to which Section 381(a) of the Internal Revenue Code applies, if the employee continues to be employed by the acquiring corporation, or

(ii) By reason of a mere change in the form of conducting the trade or business of the taxpayer, if the employee continues to be employed in that trade or business and the taxpayer retains a substantial interest in that trade or business.

(3) Any increase in tax under paragraph (1) shall not be treated as tax imposed by this part for purposes of determining the amount of any credit allowable under this part.

(g) In the case of—

(1) An organization to which Section 593 of the Internal Revenue Code applies, and

(2) A regulated investment company or a real estate investment trust subject to taxation under this part rules similar to the rules provided in subsections (e) and (h) of Section 46 of the Internal Revenue Code shall apply.

(h) For purposes of this section, "enterprise zone" means an area for which designation as an enterprise zone is in effect under Section 7073 of the Government Code.

(i) The credit shall be reduced by the credit allowed under Section 24330. The credit shall also be reduced by the credit allowed under Section 51 of the Internal Revenue Code.

In addition, no deduction shall be allowed under Section 24343 for that portion of the wages or salaries paid or incurred for the income year upon which the credit allowable under this section is based.

(j) In the case where the 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, for the number of years in which the designation of an enterprise zone under Section 7073 of the Government Code is operative, or 15 income years, if longer, until the credit has been exhausted.

(k) The amount of the credit provided by this section shall not in any year exceed the amount of tax which would be imposed on the income attributed to business activities of the taxpayer within the enterprise zone (as defined in Section 7073 of the Government Code). The amount of that attributed income shall be determined in accordance with the provisions of Article 2 (commencing with Section 25120) of Chapter 17.

SEC. 35.1. Section 24331 of the Revenue and Taxation Code is amended and renumbered to read:

23622. (a) There shall be allowed as a credit against the "tax" (as defined by Section 23036) an amount equal to the sum of each of the following:

(1) Fifty percent for qualified wages in the first year of employment.

(2) Forty percent for qualified wages in the second year of employment.

(3) Thirty percent for qualified wages in the third year of employment.

(4) Twenty percent for qualified wages in the fourth year of employment.

(5) Ten percent for qualified wages in the fifth year of employment.

(b) For purposes of this section:

(1) "Qualified wages" means the wages paid or incurred by the employer during the income year to qualified disadvantaged individuals. "Qualified wages" means that portion of hourly wages which does not exceed 150 percent of the minimum wage.

(2) "Qualified years one through five wages" means, with respect to any individual, qualified wages received during the 60-month period beginning with the day the individual commences employment within an enterprise zone or harbor revitalization zone.

(3) "Minimum wage" means the wage established by the Industrial Welfare Commission as provided for in Chapter 1 (commencing with Section 1171) of Part 4 of Division 2 of the Labor Code.

(c) For purposes of this section:

(1) "Qualified disadvantaged individual" means an individual—

(A) Who is a qualified employee within the meaning of subdivision (d).

(B) Who is hired by the employer after the designation of the area in which services were performed as an enterprise zone (under Section 7073 of the Government Code) or a harbor revitalization zone (under Section 7103 of that code).

(C) Who is any of the following:

(i) An individual who has been determined eligible by the administrative entity of a service delivery area for services under the federal Job Training Partnership Act (29 U.S.C. Sec. 1501 et seq.) and who is receiving subsidized employment, training, or services funded by the federal Job Training Partnership Act, except for an individual who only receives outreach, intake, or assessment services or a combination thereof.

(ii) Any voluntary or mandatory registrant under the Greater Avenues for Independence Act of 1985 provided for pursuant to Article 3.2 (commencing with Section 11320) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code.

(iii) Any voluntary or mandatory registrant for the Work Incentive Demonstration Program provided for pursuant to Section 11347 of the Welfare and Institutions Code.

(iv) Any voluntary or mandatory registrant for the Employment Preparation Program provided for pursuant to Article 3.5 (commencing with Section 11325) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code.

(v) Any individual who has been certified eligible by the California Employment Development Department under the federal Targeted Jobs Tax Credit Program as long as that program is in effect.

(d) For purposes of this section, "qualified employee" means an individual—

(1) At least 90 percent of whose services for the taxpayer during the income year are directly related to the conduct of the taxpayer's trade or business located in an enterprise zone or harbor revitalization zone.

(2) Who performs at least 50 percent of his or her services for the taxpayer during the income year in an enterprise zone or harbor revitalization zone.

(e) (1) For purposes of this section, all employees of all

corporations which are members of the same controlled group of corporations shall be treated as employed by a single employer. In any such case, the credit (if any) allowable by this section to each member shall be determined by reference to its proportionate share of the qualified wages giving rise to the credit. For purposes of this subdivision, "controlled group of corporations" has the meaning given to that term by Section 1563(a) of the Internal Revenue Code, except that—

(A) "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.

(B) The determination shall be made without regard to subsections (a)(4) and (e)(3)(C) of Section 1563 of the Internal Revenue Code.

(2) If an employer acquires the major portion of a trade or business of another employer (hereinafter in this paragraph referred to as the "predecessor") or the major portion of a separate unit of a trade or business of a predecessor, then, for purposes of applying this section (other than subdivision (f)) for any calendar year ending after that acquisition, the employment relationship between an employee and an employer shall not be treated as terminated if the employee continues to be employed in that trade or business.

(f) (1) If the employment of any employee with respect to whom qualified wages are taken into account under subdivision (a) is terminated by the taxpayer at any time during the first 270 days of that employment (whether or not consecutive) or before the close of the 270th calendar day after the day in which that employee completes 90 days of employment with the taxpayer, the tax imposed by this part for the income year in which that employment is terminated shall be increased by an amount equal to the credit allowed under subdivision (a) for that income year and all prior income years attributable to qualified wages paid or incurred with respect to that employee.

(2) (A) Paragraph (1) shall not apply to any of the following:

(i) A termination of employment of an employee who voluntarily leaves the employment of the taxpayer.

(ii) A termination of employment of an individual who, before the close of the period referred to in paragraph (1), becomes disabled to perform the services of that employment, unless that disability is removed before the close of that period and the taxpayer fails to offer reemployment to that individual.

(iii) A termination of employment of an individual, if it is determined under the applicable unemployment compensation provisions that the termination was due to the misconduct of that individual.

(iv) A termination of employment of an individual due to a substantial reduction in the trade or business operations of the taxpayer.

(v) A termination of employment of an individual, if that

individual is replaced by other qualified employees so as to create a net increase in both the number of employees and the hours of employment.

(B) For purposes of paragraph (1), the employment relationship between the taxpayer and an employee shall not be treated as terminated—

(i) By a transaction to which Section 381(a) of the Internal Revenue Code applies, if the employee continues to be employed by the acquiring corporation, or

(ii) By reason of a mere change in the form of conducting the trade or business of the taxpayer, if the employee continues to be employed in that trade or business and the taxpayer retains a substantial interest in that trade or business.

(3) Any increase in tax under paragraph (1) shall not be treated as tax imposed by this part for purposes of determining the amount of any credit allowable under this part.

(g) In the case of—

(1) An organization to which Section 593 of the Internal Revenue Code applies, and

(2) A regulated investment company or a real estate investment trust subject to taxation under this part rules similar to the rules provided in subsections (e) and (h) of Section 46 of the Internal Revenue Code shall apply.

(h) For purposes of this section, "enterprise zone" means an area for which designation as an enterprise zone is in effect under Section 7073 of the Government Code. "Harbor revitalization zone" means an area for which designation as a harbor revitalization zone is in effect under Section 7103 of the Government Code.

(i) The credit shall be reduced by the credit allowed under Section 24330. The credit shall also be reduced by the credit allowed under Section 51 of the Internal Revenue Code.

In addition, no deduction shall be allowed under Section 24343 for that portion of the wages or salaries paid or incurred for the income year upon which the credit allowable under this section is based.

(j) In the case where the 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, for the number of years in which the designation of an enterprise zone under Section 7073 of the Government Code or a harbor revitalization zone under Section 7103 of that code is operative, or 15 income years, if longer, until the credit is exhausted.

(k) The amount of the credit provided by this section shall not in any year exceed the amount of tax which would be imposed on the income attributed to business activities of the taxpayer within the enterprise zone (as defined in Section 7073 of the Government Code) or harbor revitalization zone (as defined in Section 7103 of that code). The amount of that attributed income shall be determined in accordance with the provisions of Article 2 (commencing with Section 25120) of Chapter 17.

SEC. 36. Section 24333 of the Revenue and Taxation Code is amended and renumbered to read:

23623. (a) There shall be allowed as a credit against the "tax" (as defined by Section 23036) the amount determined in subdivisions (c) and (d) for a qualified business which hires a qualified employee.

(b) For purposes of this section:

(1) "Qualified business" means either (A) a qualified business, as defined in Section 7082 of the Government Code, or (B) a qualified business, as defined in Section 7082 of the Government Code, except that the percentage requirements with respect to employment of residents of a high-density unemployment area shall be applicable only to those employees hired within the 12 months immediately preceding the date that the business seeks certification from the Department of Commerce and not to the entire workforce of the business. A business that qualifies under clause (B) shall be a qualified business only for the purposes of this section, provided that the Department of Commerce certifies that the business meets the standards set forth in this paragraph.

(2) "Qualified employee" means an employee who has been an unemployed resident of a high-density unemployment area (as defined in Section 7082 of the Government Code) prior to being employed by the qualified business. For the purposes of this section, participation by a prospective employee in a state or federally funded job training or work demonstration program shall not constitute employment, or effect the eligibility of an otherwise qualified employee. Qualified employee includes an otherwise qualified employee who is employed by a qualified business in the 90 days prior to its certification by the Department of Commerce as a qualified business for the purpose of becoming eligible for that certification.

(c) The credit provided for each qualified employee who has been unemployed for at least six months prior to being employed pursuant to subdivision (a) shall be as follows:

(1) Twelve percent of qualified wages for the first six months of employment.

(2) Twelve percent of qualified wages for the second six months of employment.

(3) Seven percent of qualified wages for the second year of employment.

(d) The credit provided for each qualified employee who has been unemployed for at least three months but less than six months prior to being employed shall be 5 percent of qualified wages for the first year of employment; however, the credit for the second year of employment shall be that provided in paragraph (3) of subdivision (c).

(e) For purposes of this section, "qualified wages" means that portion of wages not in excess of 150 percent of the minimum hourly wage paid or incurred by the qualified business during the income year to the qualified employee.

(f) (1) If the employment of any employee with respect to whom qualified wages are taken into account under subdivision (c) is terminated by the taxpayer at any time during the first 270 days of that employment (whether or not consecutive) or before the close of the 270th calendar day after the day in which that employee completes 90 days of employment with the taxpayer, the tax imposed by this part for the income year in which that employment is terminated shall be increased by an amount equal to the credit allowed under subdivision (a) for that income year and all prior income years attributable to qualified wages paid or incurred with respect to that employee.

(2) Paragraph (1) shall not apply to any of the following:

(A) A termination of employment of an employee who voluntarily leaves the employment of the taxpayer.

(B) A termination of employment of an individual who, before the close of the period referred to in paragraph (1), becomes disabled to perform the services of that employment, unless that disability is removed before the close of that period and the taxpayer fails to offer reemployment to that individual.

(C) A termination of employment of an individual, if it is determined under the applicable unemployment compensation provisions that the termination was due to the misconduct of that individual.

(D) A termination of employment of an individual due to a substantial reduction in the trade or business operations of the taxpayer.

(E) A termination of employment of an individual, if that individual is replaced by other qualified employees so as to create a net increase in both number of employees and hours of employment.

(g) In the case where the 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.

(h) The amount of the credit allowed by this section for any year shall not exceed the amount of tax which would be imposed on the income attributed to business activities of the taxpayer within the program area (as defined in Section 7082 of the Government Code) as if that attributed income represented all of the net income of the taxpayer subject to tax under this part. The amount of that attributed income shall be determined in accordance with the provisions of Article 2 (commencing with Section 25120) of Chapter 17.

SEC. 36.5. Section 24333 of the Revenue and Taxation Code is amended and renumbered to read:

23623. (a) There shall be allowed as a credit against the "tax" (as defined by Section 23036) the amount determined in subdivisions (c) and (d) for a qualified business which hires a qualified employee.

(b) For purposes of this section:

(1) "Qualified business" means either (A) a qualified business, as defined in Section 7082 of the Government Code, or (B) a qualified

business, as defined in Section 7082 of the Government Code, except that the percentage requirements with respect to employment of residents of a high-density unemployment area shall be applicable only to those employees hired within the 12 months immediately preceding the date that the business seeks certification from the Department of Commerce and not to the entire workforce of the business. A business that qualifies under clause (B) shall be a qualified business only for the purposes of this section, provided that the Department of Commerce certifies that the business meets the standards set forth in this paragraph.

(2) "Qualified employee" means an employee who has been an unemployed resident of a high-density unemployment area (as defined in Section 7082 of the Government Code) prior to being employed by the qualified business. For the purposes of this section, participation by a prospective employee in a state or federally funded job training or work demonstration program shall not constitute employment, or effect the eligibility of an otherwise qualified employee. Qualified employee includes an otherwise qualified employee who is employed by a qualified business in the 90 days prior to its certification by the Department of Commerce as a qualified business for the purpose of becoming eligible for that certification.

(c) The credit provided for each qualified employee who has been unemployed for at least six months prior to being employed pursuant to subdivision (a) shall be an amount equal to the sum of each of the following:

(1) Fifty percent for qualified wages in the first year of employment.

(2) Forty percent for qualified wages in the second year of employment.

(3) Thirty percent for qualified wages in the third year of employment.

(4) Twenty percent for qualified wages in the fourth year of employment.

(5) Ten percent for qualified wages in the fifth year of employment.

(d) The credit provided for each qualified employee who has been unemployed for at least three months but less than six months prior to being employed shall be 25 percent of qualified wages for the first year of employment; however, the credit for the second year of employment shall be that provided in paragraph (2) of subdivision (c), the credit for the third year of employment shall be that provided in paragraph (3) of subdivision (c), the credit for the fourth year of employment shall be that provided in paragraph (4) of subdivision (c), and the credit for the fifth year of employment shall be that provided in paragraph (5) of subdivision (c).

(e) For purposes of this section, "qualified wages" means that portion of wages not in excess of 150 percent of the minimum hourly wage paid or incurred by the qualified business during the income

year to the qualified employee.

(f) (1) If the employment of any employee with respect to whom qualified wages are taken into account under subdivision (c) is terminated by the taxpayer at any time during the first 270 days of that employment (whether or not consecutive) or before the close of the 270th calendar day after the day in which that employee completes 90 days of employment with the taxpayer, the tax imposed by this part for the income year in which that employment is terminated shall be increased by an amount equal to the credit allowed under subdivision (a) for that income year and all prior income years attributable to qualified wages paid or incurred with respect to that employee.

(2) Paragraph (1) shall not apply to any of the following:

(A) A termination of employment of an employee who voluntarily leaves the employment of the taxpayer.

(B) A termination of employment of an individual who, before the close of the period referred to in paragraph (1), becomes disabled to perform the services of that employment, unless that disability is removed before the close of that period and the taxpayer fails to offer reemployment to that individual.

(C) A termination of employment of an individual, if it is determined under the applicable unemployment compensation provisions that the termination was due to the misconduct of that individual.

(D) A termination of employment of an individual due to a substantial reduction in the trade or business operations of the taxpayer.

(E) A termination of employment of an individual, if that individual is replaced by other qualified employees so as to create a net increase in both number of employees and hours of employment.

(g) In the case where the 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.

(h) The amount of the credit allowed by this section for any year shall not exceed the amount of tax which would be imposed on the income attributed to business activities of the taxpayer within the program area (as defined in Section 7082 of the Government Code) as if that attributed income represented all of the net income of the taxpayer subject to tax under this part. The amount of that attributed income shall be determined in accordance with the provisions of Article 2 (commencing with Section 25120) of Chapter 17.

SEC. 37. Section 24378 of the Revenue and Taxation Code is repealed.

SEC. 38. Section 24379 of the Revenue and Taxation Code is repealed.

SEC. 39. Section 24379 is added to the Revenue and Taxation Code, to read:

24379. The provisions of Section 83 of the Internal Revenue Code,

relating to property transferred in connection with performance of services, shall apply.

SEC. 40. Section 24416 of the Revenue and Taxation Code, as amended by Chapter 11 of the Statutes of 1988, is amended to read:

24416. A net operating loss deduction shall be allowed in computing net income under Section 24341 and shall be determined in accordance with Section 172 of the Internal Revenue Code, except as otherwise provided.

(a) (1) Except as provided in subdivision (e), net operating losses attributable to income years beginning before January 1, 1985, and beginning on or after January 1, 1992, shall not be allowed, except for losses allowed by this section (as amended by Chapter 159 of the Statutes of 1985) and former Section 24417 (as amended by Chapter 158 of the Statutes of 1986).

(2) A net operating loss shall not be carried forward to any income year beginning before January 1, 1987.

(b) The provisions of Section 172(b) (2) of the Internal Revenue Code, relating to the amount of carryovers, shall be modified so that 50 percent of the entire amount of the net operating loss for any income year shall not be eligible for carryover to any subsequent income year.

(c) For any income year in which the taxpayer has in effect a water's edge election under Section 25110, the deduction of a net operating loss carryover shall be denied to the extent that such net operating loss carryover was determined by taking into account the income and factors of an affiliated bank or corporation in a combined report whose income and apportionment factors would not have been taken into account if a water's edge election under Section 25110 had been in effect for the income year in which the loss was incurred.

(d) Net operating loss carrybacks shall not be allowed.

(e) Notwithstanding the provisions of Section 172(b) (1) of the Internal Revenue Code—

(1) A net operating loss attributable to an income year beginning in 1985 or 1986, shall be a net operating loss carryover to the first income year beginning in 1987, and for each of the two succeeding income years.

(2) A net operating loss attributable to an income year ending on or after January 1, 1985, and before December 31, 1985, shall be a net operating loss carryover to the first income year beginning in 1987, and for each of the two succeeding income years.

(3) For purposes of paragraph (2), the amount of the carryover shall be reduced so that the amount of carryover, after application of this paragraph and subdivision (b), shall be equal to the following percentage of the entire amount of the net operating loss for the income year:

(A) For income years ending in January 1985, 4 percent.

(B) For income years ending in February 1985, 8 percent.

(C) For income years ending in March 1985, 12 percent.

(D) For income years ending in April 1985, 17 percent.
(E) For income years ending in May 1985, 21 percent.
(F) For income years ending in June 1985, 25 percent.
(G) For income years ending in July 1985, 29 percent.
(H) For income years ending in August 1985, 33 percent.
(I) For income years ending in September 1985, 37 percent.
(J) For income years ending in October 1985, 42 percent.
(K) For income years ending in November 1985, 46 percent.
(L) For income years ending in December 1985, 50 percent.

(f) For income years beginning on or after January 1, 1987, net operating carryover losses shall be applied in accordance with Section 172 of the Internal Revenue Code (earliest year first)—

(1) First, from losses which were allowable under prior law, incurred in income years beginning prior to January 1, 1985.

(2) Second, from losses, other than losses allowed under prior law, incurred in income years ending in 1985.

(3) Third, from losses, other than losses allowed under prior law, incurred in income years beginning in 1985.

(4) Fourth, from losses which were allowable under prior law, incurred in income years beginning in 1985.

(5) Fifth, from losses, other than losses allowed under prior law, incurred in income years beginning in 1986.

(6) Sixth, from losses which were allowable under prior law, incurred in income years beginning in 1986.

(7) Seventh, from losses incurred in income years beginning on or after January 1, 1987.

(g) For purposes of corporations whose net income is determined under Chapter 17 (commencing with Section 25101)—

(1) The amount of net operating loss incurred in any income year which may be carried forward to another income year, and

(2) The amount of any loss carryforward which may be deducted in any income year,

shall be determined in accordance with the provisions of Section 25108.

(h) The provisions of Section 172(b)(1)(K) of the Internal Revenue Code, relating to bad debt losses of commercial banks, shall not be applicable.

SEC. 41. Section 24416.2 of the Revenue and Taxation Code, as added by Chapter 32 of the Statutes of 1988, is amended to read:

24416.2. The term "qualified taxpayer" as used in Section 24416.1 means either of the following:

(a) A taxpayer engaged in the conduct of a qualified business within a program area (as defined in Section 7082 of the Government Code).

(1) A net operating loss shall not be a net operating loss carryback for any income year and a net operating loss for any income year beginning on or after the date that the taxpayer becomes a qualified business shall be a net operating loss carryover to each of the 15 income years following the income year of loss.

(2) For purposes of this subdivision:

(A) "Net operating loss" means the loss determined under Section 172 of the Internal Revenue Code, as modified by Section 24416.1, attributable to the business activities of the taxpayer within the program area (as defined in Section 7082 of the Government Code). That attributed loss shall be determined in accordance with the provisions of Article 2 (commencing with Section 25120) of Chapter 17.

(B) A net operating loss carryover shall be a deduction only with respect to income attributed to the business activities of the taxpayer within the program area (as defined in Section 7082 of the Government Code) determined in accordance with the provisions of Article 2 (commencing with Section 25120) of Chapter 17.

(3) No net operating loss deduction shall be allowed for any loss which occurs prior to January 1, 1984, or for any loss which occurs in any income year beginning prior to January 1, 1984.

(b) A taxpayer who is engaged in the conduct of a trade or business within an enterprise zone designated pursuant to Section 7073 of the Government Code on or after that designation.

(1) (A) A net operating loss shall not be a net operating loss carryback to any income year and, except as provided in subparagraph (B), a net operating loss for any income year beginning on or after the date that the area in which the taxpayer conducts a trade or business is designated an enterprise zone shall be a net operating loss carryover to each following income year that ends before the expiration or revocation of the designation of the enterprise zone under Section 7073 of the Government Code or to each of 15 income years following the income year of loss, if longer.

(B) In the case of a financial institution to which Section 585, 586, or 593 of the Internal Revenue Code applies, a net operating loss for any income year beginning on or after January 1, 1984, shall be a net operating loss carryover to each of the five income years following the income year of the loss. Subdivision (b) of Section 24416.1 and Section 172 (b) (1) (F) and (G) of the Internal Revenue Code shall not apply.

(2) For purposes of this subdivision:

(A) "Net operating loss" means the loss determined under Section 172 of the Internal Revenue Code, as modified by Section 24416.1, attributable to the business activities of the taxpayer within the enterprise zone (as defined in Section 7073 of the Government Code). The attributed loss shall be determined in accordance with the provisions of Article 2 (commencing with Section 25120) of Chapter 17.

(B) A net operating loss carryover shall be a deduction only with respect to income attributed to the business activities of the taxpayer within the enterprise zone (as defined in Section 7073 of the Government Code) determined in accordance with the provisions of Article 2 (commencing with Section 25120) of Chapter 17.

(3) No net operating loss deduction shall be allowed for any loss

which occurs prior to January 1, 1984, or for any loss which occurs in any income year beginning prior to January 1, 1984.

(c) A taxpayer who qualifies as a "qualified taxpayer" shall, for the income year of the net operating loss and any income year to which that net operating loss may be carried, designate on the return filed for each year the subdivision of this section which applies to that taxpayer with respect to that net operating loss. If the taxpayer is eligible to qualify under more than one subdivision of this section, the designation is to be made after taking into account the election required by subdivision (d) and shall be consistent with that election.

(d) If a taxpayer is eligible to qualify under more than one subdivision of this section as a "qualified taxpayer," with respect to a net operating loss in an income year, the taxpayer shall elect which subdivision of this section is to apply to the taxpayer. The election is to be made in a statement attached to the original return, timely filed, for the year the net operating loss is incurred and shall be irrevocable.

(e) This section shall remain in effect only until January 1, 1989, and as of that date is repealed, unless a later enacted statute which is enacted before January 1, 1989, deletes or extends that date.

SEC. 41.3. Section 24416.2 of the Revenue and Taxation Code, as added by Chapter 32 of the Statutes of 1988, is amended to read:

24416.2. The term "qualified taxpayer" as used in Section 24416.1 means either of the following:

(a) A taxpayer engaged in the conduct of a qualified business within a program area (as defined in Section 7082 of the Government Code).

(1) A net operating loss shall not be a net operating loss carryback for any income year and a net operating loss for any income year beginning on or after the date that the taxpayer becomes a qualified business shall be a net operating loss carryover to each of the 15 income years following the income year of loss.

(2) For purposes of this subdivision:

(A) "Net operating loss" means the loss determined under Section 172 of the Internal Revenue Code, as modified by Section 24416.1, attributable to the business activities of the taxpayer within the program area (as defined in Section 7082 of the Government Code). That attributed loss shall be determined in accordance with the provisions of Article 2 (commencing with Section 25120) of Chapter 17.

(B) A net operating loss carryover shall be a deduction only with respect to income attributed to the business activities of the taxpayer within the program area (as defined in Section 7082 of the Government Code) determined in accordance with the provisions of Article 2 (commencing with Section 25120) of Chapter 17.

(3) No net operating loss deduction shall be allowed for any loss which occurs prior to January 1, 1984, or for any loss which occurs in any income year beginning prior to January 1, 1984.

(b) A taxpayer who is engaged in the conduct of a trade or

business within an enterprise zone designated pursuant to Section 7073 of the Government Code or a harbor revitalization zone designated pursuant to Section 7103 of that code, on or after that designation.

(1) (A) A net operating loss shall not be a net operating loss carryback to any income year and, except as provided in subparagraph (B), a net operating loss for any income year beginning on or after the date that the area in which the taxpayer conducts a trade or business is designated an enterprise zone or harbor revitalization zone shall be a net operating loss carryover to each following income year that ends before the expiration or revocation of the designation of the enterprise zone under Section 7073 of the Government Code or a harbor revitalization zone designated pursuant to Section 7103 of that code, or to each of 15 income years following the income year of loss, if longer.

(B) In the case of a financial institution to which Section 585, 586, or 593 of the Internal Revenue Code applies, a net operating loss for any income year beginning on or after January 1, 1984, shall be a net operating loss carryover to each of the five income years following the income year of the loss. Subdivision (b) of Section 24416.1 and Section 172 (b) (1) (F) and (G) of the Internal Revenue Code shall not apply.

(2) For purposes of this subdivision:

(A) "Net operating loss" means the loss determined under Section 172 of the Internal Revenue Code, as modified by Section 24416.1, attributable to the business activities of the taxpayer within the enterprise zone (as defined in Section 7073 of the Government Code) or a harbor revitalization zone (as defined in Section 7103 of that code). The attributed loss shall be determined in accordance with the provisions of Article 2 (commencing with Section 25120) of Chapter 17.

(B) A net operating loss carryover shall be a deduction only with respect to income attributed to the business activities of the taxpayer within the enterprise zone (as defined in Section 7073 of the Government Code) or harbor revitalization zone (as defined in Section 7103 of that code), determined in accordance with the provisions of Article 2 (commencing with Section 25120) of Chapter 17.

(3) No net operating loss deduction shall be allowed for any loss which occurs prior to January 1, 1984, or for any loss which occurs in any income year beginning prior to January 1, 1984.

(c) A taxpayer who qualifies as a "qualified taxpayer" shall, for the income year of the net operating loss and any income year to which that net operating loss may be carried, designate on the return filed for each year the subdivision of this section which applies to that taxpayer with respect to that net operating loss. If the taxpayer is eligible to qualify under more than one subdivision of this section, the designation is to be made after taking into account the election required by subdivision (d) and shall be consistent with that election.

(d) If a taxpayer is eligible to qualify under more than one subdivision of this section as a "qualified taxpayer," with respect to a net operating loss in an income year, the taxpayer shall elect which subdivision of this section is to apply to the taxpayer. The election is to be made in a statement attached to the original return, timely filed, for the year the net operating loss is incurred and shall be irrevocable.

SEC. 42. Section 24637 of the Revenue and Taxation Code, as added by Chapter 11 of the Statutes of 1988, is amended to read:

24637. For income years beginning on or after January 1, 1987, Section 444 of the Internal Revenue Code, as added by Public Law 200-103, relating to election of taxable year other than required taxable year, shall be applicable, except that Section 444(c), relating to effect of election, shall not apply.

SEC. 43. Section 24721 of the Revenue and Taxation Code is repealed.

SEC. 44. Section 24721 is added to the Revenue and Taxation Code, to read:

24721. The provisions of Section 481 of the Internal Revenue Code, relating to adjustments required by changes in method of accounting, shall be applicable.

SEC. 45. Section 24722 of the Revenue and Taxation Code is repealed.

SEC. 46. Section 24722.1 of the Revenue and Taxation Code is repealed.

SEC. 47. Section 24722.2 of the Revenue and Taxation Code is repealed.

SEC. 48. Section 24722.3 of the Revenue and Taxation Code is repealed.

SEC. 49. Section 24723 of the Revenue and Taxation Code is repealed.

SEC. 49.5. Section 24833 of the Revenue and Taxation Code is amended to read:

24833. The provisions of Section 613 of the Internal Revenue Code, relating to percentage depletion, shall be modified as follows:

(a) In the case of oil, gas, and geothermal wells the allowance for depletion under this part shall be 22 percent of the gross income from the property during the income year, excluding from that gross income an amount equal to any rents or royalties paid or incurred by the taxpayer in respect of the property. That allowance shall not exceed 50 percent of the net income of the taxpayer (computed without allowance for depletion) from the property, except that in no case shall the depletion allowance under Section 24835 be less than it would be if computed without reference to this section.

(b) Where the total accumulated amount of deduction allowed or allowable for depletion exceeds an amount equal to the adjusted cost of the taxpayer's interest in any property which is subject to recovery through depletion under subdivision (a), percentage depletion shall be allowed in respect to those interests in that property, subject to

the limitations and adjustments of subdivisions (c) and (d).

(c) Where the total depletion allowance for all properties in subdivision (b) exceeds one million five hundred thousand dollars ($1,500,000), the allowance in subdivision (b) shall be reduced by 125 percent of the excess.

(d) When either (1) the income from sources within this state of two or more corporations which are commonly owned or controlled is determined in accordance with Chapter 17 (commencing with Section 25101) or Part 18 (commencing with Section 38001), or (2) two or more commonly owned or controlled corporations derive income from sources solely within this state, whose business activities are such that if conducted within and without this state, the income derived from sources within this state would be determined in accordance with Chapter 17 (commencing with Section 25101) or Part 18 (commencing with Section 38001) (hereinafter referred to as "wholly intrastate corporations"), then those corporations shall determine the percentage depletion prescribed in subdivision (b) as if those corporations were one corporation. As to "wholly intrastate corporations," if subdivision (c) applies, then the amount of percentage depletion (as adjusted and limited by subdivision (c)) shall be prorated among them in the ratio to which the percentage depletion of each prescribed in subdivision (b) (before the application of subdivision (c)) bears to the total percentage depletion prescribed in subdivision (b) for all corporations (before the application of subdivision (c)).

(e) For purposes of this section, a "geothermal deposit" means a geothermal reservoir consisting of natural heat which is stored in rocks or in an aqueous liquid or vapor (whether or not under pressure).

(f) For purposes of this section, "gross income from the property" shall not include any lease bonus, advance royalty, or other amount payable without regard to production from the property.

SEC. 50. Section 24903 of the Revenue and Taxation Code is repealed.

SEC. 51. Section 24905 is added to the Revenue and Taxation Code, to read:

24905. The provisions of Section 988 of the Internal Revenue Code, relating to treatment of certain foreign currency transactions, shall apply.

SEC. 52. Section 24941 of the Revenue and Taxation Code is amended to read:

24941. (a) No gain or loss shall be recognized on the exchange of property held for productive use in trade or business or for investment if that property is exchanged solely for property of a like kind which is to be held either for productive use in trade or business or for investment.

(b) This section shall not apply to any exchange of any of the following:

(1) Stock in trade or other property held primarily for sale.

(2) Stocks, bonds, or notes.
(3) Other securities or evidence of indebtedness or interest.
(4) Interests in a partnership.
(5) Certificates of trust or beneficial interest.
(6) Choses in action.

(c) For purposes of this section, any property received by the taxpayer shall be treated as property which is not like-kind property if—

(1) That property is not identified as property to be received in the exchange before the day which is 45 days after the date on which the taxpayer transfers the property relinquished in the exchange, or

(2) That property is received after the earlier of—

(A) The day which is 180 days after the date on which the taxpayer transfers the property relinquished in the exchange, or

(B) The due date (determined with regard to extension) for the transferor's return of the tax imposed by this part for the income year in which the transfer of the relinquished property occurs.

(d) If an exchange would be within subdivision (a) of Section 24950, or of Section 24951, if it were not for the fact that the property received in exchange consists not only of property permitted by these provisions to be received without the recognition of gain, but also of other property or money, then the gain, if any, to the recipient shall be recognized, but in an amount not in excess of the sum of the money and the fair market value of the other property.

(e) If an exchange would be within subdivision (a) of Section 24950, or of Section 24951, if it were not for the fact that the property received in exchange consists not only of property permitted by these provisions to be received without the recognition of gain or loss, but also of other property or money, then no loss from the exchange shall be recognized.

(f) If property was acquired on an exchange described in this section, Section 24950, or Section 24951, then the basis shall be the same as that of the property exchanged decreased in the amount of any money received by the taxpayer and increased in the amount of gain or decreased in the amount of loss to the taxpayer that was recognized on the exchange. If the property so acquired consisted in part of the type of property permitted by this section, Section 24950, or Section 24951, to be received without the recognition of gain or loss, and in part of other property, the basis provided in this subdivision shall be allocated between the properties (other than money) received, and for the purpose of the allocation there shall be assigned to the other property an amount equivalent to its fair market value at the date of the exchange. For purposes of this section, Section 24950, and Section 24951, where as part of the consideration to the taxpayer another party to the exchange assumed a liability of the taxpayer or acquired from the taxpayer property subject to a liability, the assumption or acquisition (in the amount of the liability) shall be considered as money received by the taxpayer on the exchange.

(g) For the purposes of this section, livestock of different sexes is not property of like kind.

(h) (1) Subdivision (c) shall be applied to any of the following:

(A) Transfers affected by this section after the effective date of the act amending this section during the first year of the 1985–86 Regular Session of the Legislature.

(B) Transfers on or before the effective date of the act amending this section during the first year of the 1985–86 Regular Session of the Legislature, provided the property to be received in exchange is not received before January 1, 1987.

(2) In the case of any transfer, on or before the effective date of the act amending this section during the first year of the 1985–86 Regular Session of the Legislature, which the taxpayer treated as part of a like-kind exchange, the period for assessing any deficiency of tax attributable to that amendment shall not expire before January 1, 1989.

(3) If property to be received in the exchange, which the taxpayer treated as part of like-kind exchange, is identified in a binding contract in effect on the effective date of the act amending this section during the first year of the 1985–86 Regular Session of the Legislature, and at all times thereafter before the transfer, this subdivision shall be applied—

(A) By substituting "January 1, 1989" for "January 1, 1987," and

(B) By substituting "January 1, 1991" for "January 1, 1989."

SEC. 53. The heading of Article 4.5 (commencing with Section 24990) of Chapter 15 of Part 11 of Division 2 of the Revenue and Taxation Code is amended to read:

Article 4.5. Capital Gains and Losses

SEC. 54. Section 24990 of the Revenue and Taxation Code is amended to read:

24990. The tax treatment of capital gains and losses shall be determined in accordance with Subchapter P of Chapter 1 of Subtitle A of the Internal Revenue Code, except as otherwise provided.

SEC. 55. Section 24990.5 is added to the Revenue and Taxation Code, to read:

24990.5. (a) Section 1201 of the Internal Revenue Code, relating to alternative tax for corporations, shall not be applicable.

(b) The provisions of Section 1211 of the Internal Revenue Code, relating to limitation on capital losses, shall not be applicable.

(c) The provisions of Section 1212 of the Internal Revenue Code, relating to capital loss carrybacks and carryovers, shall not be applicable.

SEC. 56. Section 24995 is added to the Revenue and Taxation Code, to read:

24995. The provisions of Part VI of Subchapter P of Chapter 1 of Subtitle A of the Internal Revenue Code, relating to treatment of certain passive foreign investment companies, shall not be

applicable.

SEC. 57. Section 25553 of the Revenue and Taxation Code is amended to read:

25553. Beginning with the calendar year 1965 and fiscal years beginning in 1965, in the case of taxpayers subject to the tax imposed by Article 3 of Chapter 2, there shall be due and payable on or before the 15th day of the third month following the close of the preceding year from each such taxpayer a percentage of its net income as disclosed by its return which is equal to the rate applicable to corporations subject to the tax imposed by Article 2 of Chapter 2 plus the personal property tax rate equivalent included in the bank and financial corporation tax rate determination by the Franchise Tax Board pursuant to Sections 23186 and 23186.1, less the credit allowable by Section 23184. The payment required by this section shall not be less than the minimum tax specified in Section 23153.

SEC. 58. Section 25562 of the Revenue and Taxation Code, as amended by Chapter 31 of the Statutes of 1988, is amended to read:

25562. (a) For purposes of this article, in the case of banks and financial corporations, the term "estimated tax" means the amount which the bank or financial corporation estimates as the amount of the tax imposed by this part at the rate determined by the Franchise Tax Board for the preceding year pursuant to Section 23186.1, less the offset allowable by Section 23184, but in no event shall the estimated tax of a financial corporation be less than the minimum tax prescribed in Section 23153.

(b) In case of an increase or decrease in the rate of tax imposed under Section 23151 (tax on general corporations), a bank or financial corporation shall be required to increase or decrease the rate determined by the Franchise Tax Board for the preceding year by the same amount as the change in the rate imposed under Section 23151 determined in accordance with Section 24251 (relating to computation of tax when law changed).

SEC. 59. Section 25563 of the Revenue and Taxation Code is amended to read:

25563. (a) If the amount of estimated tax does not exceed the minimum tax specified by Section 23153, the entire amount of the estimated tax shall, for income years beginning after December 31, 1971, be due and payable on or before the 15th day of the fourth month of the income year.

(b) If the amount of estimated tax exceeds the minimum tax specified by Section 23153, the amount payable shall for income years beginning after December 31, 1971, be paid in installments as follows:

| If the requirements of this subdivision are first met— | The following percentages of the estimated tax shall be paid on the 15th day of the— | | | |
|---|---|---|---|---|
| | 4th month | 6th month | 9th month | 12th month |
| Before the 1st day of the 4th month of the income year .. | 25 (but not less than the minimum tax provided in Section 23153) | 25 | 25 | 25 |
| After the last day of the 3rd month and before the 1st day of the 6th month of the income year ..... | ____ | 33⅓ | 33⅓ | 33⅓ |
| After the last day of the 5th month and before the 1st day of the 9th month of the income year ..... | ____ | ____ | 50 | 50 |
| After the last day of the 8th month and before the 1st day of the 12th month of the income year ..... | ____ | ____ | ____ | 100 |

SEC. 60. Section 25931.3 of the Revenue and Taxation Code is amended to read:

25931.3. (a) For purposes of Section 25931, the amount of tax required to be shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the date prescribed for payment of the tax and by the amount of any credit against the

tax which may be claimed upon the return.

(b) This section and Section 25931 shall not apply to any failure to pay any of the estimated tax required by Sections 25951 to 25954.3, inclusive.

SEC. 61. Sections 2, 3, 4, 8, 9, 10, 10.5, 37, 38, 39, 40, 42, 49.5, 51, 57, and 59 of this act are technical corrections to Chapters 1138 and 1139 of the Statutes 1987, and to Chapters 11 and 31 of the Statutes of 1988, are declaratory of existing law, and shall become operative on, and be applied to, income or taxable years, as appropriate, beginning on or after January 1, 1987. However, if one or more of these provisions were relied upon in preparing and filing a return, prior to August 1, 1988, for an income or taxable year beginning in 1987, then, in that event, no additional amount shall be assessed with respect to any item that is directly attributable to that reliance. The preceding sentence shall not be applied in the case of any return or claim for refund filed on or after August 1, 1988.

SEC. 62. Section 34 of this act shall become operative only if Assembly Bill 2305 is enacted, in which case Section 33 of this bill shall not become operative.

SEC. 63. Section 6 of this act shall not become operative if either Assembly Bill 2785 or Senate Bill 368 is enacted and either bill amends Section 17252.5 of the Revenue and Taxation Code.

SEC. 64. Section 17.1 of this act incorporates amendments to Section 23036 of the Revenue and Taxation Code proposed by this bill and amendments to Section 23630 of the Revenue and Taxation Code proposed by Senate Bill 1904 (repealed by this bill and incorporated, with modifications, into Section 23036). It shall become operative only if both bills are enacted, this bill repeals Section 23630 of the Revenue and Taxation Code, and Senate Bill 1904 amends Section 23630 of the Revenue and Taxation Code, in which case Sections 17, 17.2, and 17.3 of this bill shall not become operative.

SEC. 65. Section 17.2 of this act incorporates amendments to Section 23036 of the Revenue and Taxation Code proposed by this bill and amendments to Section 23630 of the Revenue and Taxation Code proposed by Assembly Bill 2305 (repealed by this bill and incorporated, with modifications, into Section 23036). It shall become operative only if both bills are enacted, this bill repeals Section 23630 of the Revenue and Taxation Code, and Assembly Bill 2305 amends Section 23630 of the Revenue and Taxation Code, in which case Sections 17, 17.1, and 17.3 of this bill shall not become operative.

SEC. 66. Section 17.3 of this act incorporates amendments to Section 23036 of the Revenue and Taxation Code proposed by this bill, and amendments to Section 23630 of the Revenue and Taxation Code proposed by Assembly Bill 2305 and Senate Bill 1904 (repealed by this bill and incorporated, with modifications, into Section 23036). It shall become operative only if all three bills are enacted, this bill repeals Section 23630 of the Revenue and Taxation Code, and both Assembly Bill 2305 and Senate Bill 1904 amend Section 23630 of the Revenue and Taxation Code, in which case Sections 17, 17.1, and 17.2

of this bill shall not become operative.

SEC. 67. Section 19 of this act shall not become operative if Assembly Bill 2305 is enacted and amends Section 23153 of the Revenue and Taxation Code.

SEC. 68. Section 27 of this act shall not become operative if Senate Bill 2405 is enacted and amends Section 23610.5 of the Revenue and Taxation Code.

SEC. 69. Section 28.1 of this act incorporates amendments to Section 23612 of the Revenue and Taxation Code proposed by both this bill and Senate Bill 368. It shall become operative only if both bills are enacted and each bill amends Section 23612 of the Revenue and Taxation Code, in which case Sections 28, 28.2, and 28.3 of this bill shall not become operative.

SEC. 70. Section 28.2 of this act incorporates amendments to Section 23612 of the Revenue and Taxation Code proposed by both this bill and Assembly Bill 2785. It shall become operative only if both bills are enacted and each bill amends Section 23612 of the Revenue and Taxation Code, in which case Sections 28, 28.1, and 28.3 of this bill shall not become operative.

SEC. 71. Section 28.3 of this act incorporates amendments to Section 23612 of the Revenue and Taxation Code proposed by this bill, Assembly Bill 2785, and Senate Bill 368. It shall become operative only if all three bills are enacted and each bill amends Section 23612 of the Revenue and Taxation Code, in which case Sections 28, 28.1, and 28.2 of this bill shall not become operative.

SEC. 72. Section 35.1 of this act renumbers Section 24331 of the Revenue and Taxation Code and incorporates amendments to that section proposed by both this bill and Senate Bill 368. It shall become operative only if both bills are enacted and each bill amends Section 24331 of the Revenue and Taxation Code, in which case Section 35 of this bill shall not become operative.

SEC. 73. Section 36.5 of this act renumbers Section 24333 of the Revenue and Taxation Code and incorporates amendments to that section proposed by both this bill and Assembly Bill 2785. It shall become operative only if both bills are enacted and each bill amends Section 24333 of the Revenue and Taxation Code, in which case Section 36 of this bill shall not become operative.

SEC. 74. Section 41.3 of this act incorporates amendments to Section 24416.2 of the Revenue and Taxation Code proposed by both this bill and Senate Bill 368. It shall become operative only if both bills are enacted and each bill amends Section 24416.2 of the Revenue and Taxation Code, in which case Section 41 of this bill shall not become operative.

SEC. 75. Section 55 of this act shall not become operative if Assembly Bill 2305 is enacted and adds Section 24990.5 to the Revenue and Taxation Code.

SEC. 76. Section 59 of this act shall not become operative if Assembly Bill 2778 is enacted and amends Section 25563 of the Revenue and Taxation Code.

SEC. 77. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect. However, unless otherwise specifically provided, the provisions of this act shall be applied in the computation of taxes for taxable or income years beginning on or after January 1, 1988.

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## CHAPTER 1466

An act to amend Sections 1100 and 11715 of, and to add Article 14.3 (commencing with Section 1064.1) to Chapter 1 of Part 2 of Division 1 of, and Section 1104.9 to, the Insurance Code, relating to insurance, and making an appropriation therefor.

[Approved by Governor September 27, 1988. Filed with Secretary of State September 28, 1988.]

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

SECTION 1. Article 14.3 (commencing with Section 1064.1) is added to Chapter 1 of Part 2 of Division 1 of the Insurance Code, to read:

### Article 14.3. Uniform Liquidation Act

1064.1. For the purposes of this act:

(a) "Insurer" means any person subject to the insurance supervisory authority of, or to liquidation, rehabilitation, reorganization, or conservation by the commissioner or the equivalent insurance supervisory official of another state.

(b) "Delinquency proceeding" means any proceeding commenced against an insurer for the purpose of liquidating, rehabilitating, reorganizing, or conserving that insurer.

(c) "Foreign country" means territory not in any state.

(d) "Domiciliary state" means the state in which an insurer is incorporated or organized, or, in the case of an insurer incorporated or organized in a foreign country, the state in which the insurer, having become authorized to do business in the state, has, at the commencement of delinquency proceedings, the largest amount of its assets held in trust and assets held on deposit for the benefit of its policyholders or policyholders and creditors in the United States; and any such insurer is deemed to be domiciled in such state.

(e) "Ancillary state" means any state other than a domiciliary state.

(f) "Reciprocal state" means any state other than this state in which in substance and effect the provisions of this act are in force, including the provisions requiring that the commissioner or equivalent insurance supervisory official be the receiver of a delinquent insurer. A "reciprocal state" includes any state also which

has, through its commissioner or equivalent supervisory official, entered into a binding and enforceable written agreement with the commissioner of this state which provides that (1) a commissioner or equivalent supervisory official is required to be the receiver of a delinquent insurer; (2) title to assets of the delinquent insurer shall vest in the domiciliary receiver, as of the date of any court order appointing him or her as receiver, and he or she shall have the same rights to recover those assets as provided under subdivision (b) of Section 1064.3; (3) nondomiciliary creditors may file and prove their claims before ancillary receivers; (4) the laws of the domiciliary state of the delinquent insurer shall be applied uniformly to residents and nonresidents in the allowance of preference of claims, except for claims to special deposits created under the laws of the domiciliary state; (5) preferences (including attachments, garnishments, and liens) for creditors with advance information shall be prevented; and (6) the domiciliary receiver may sue in the reciprocal state to recover any assets of a delinquent insurer to which he or she may be entitled under the law.

(g) "General assets" means all property, real, personal, or otherwise, not specifically mortgaged, pledged, deposited, or otherwise encumbered for the security or benefit of specified persons or limited class or classes of persons, and as to such specifically encumbered property the term includes all such property or its proceeds in excess of the amount necessary to discharge the sum or sums secured thereby. Assets held in trust and assets held on deposit for the security or benefit of all policyholders or all policyholders and creditors in the United States, shall be deemed general assets.

(h) "Preferred claim" means any claim with respect to which the law of a state accords priority of payment from the general assets of the insurer.

(i) "Special deposit claim" means any claim secured by a deposit made for the security or benefit of a limited class or classes of persons, but not including any general assets.

(j) "Secured claim" means any claim secured by mortgage, trust, deed, pledge, deposit as security, escrow, or otherwise, but not including special deposit claims or claims against general assets. The term also includes claims, which more than four months prior to the commencement of delinquency proceedings in the state of the insurer's domicile, have become liens upon specific assets by reason of judicial process.

(k) "Receiver" means receiver, liquidator, rehabilitator, or conservator as the context may require.

1064.2. (a) Whenever under the laws of this state a receiver is to be appointed in delinquency proceedings for an insurer domiciled in this state, the court shall appoint the commissioner as receiver. Upon the appointment, the court shall direct the receiver forthwith to take possession of the assets of the insurer and to administer them under the orders of the court.

(b) The domiciliary receiver and his or her successors in office shall be vested by operation of law with the title to all of the property, contracts, and rights of action, and all of the books and records of the insurer wherever located, as of the date of the order of his or her appointment, and he or she shall have the right to recover the same and reduce them to possession; except that ancillary receivers in reciprocal states shall have, as to assets located in their respective states, the rights and powers which are prescribed in this article for ancillary receivers appointed in this state as to assets located in this state. The filing or recording of the order appointing the receiver or certified copy thereof, in the office where instruments affecting title to property are required to be filed or recorded shall impart the same notice as would be imparted by a deed, bill of sale, or other evidence of title duly filed or recorded. The domiciliary receiver shall be responsible on his or her official bond for the proper administration of all assets coming into his or her possession or control.

(c) Upon taking possession of the assets of a delinquent insurer the domiciliary receiver shall, subject to the direction of the court, and in accordance with such procedures as the receiver may petition the court to establish, immediately proceed to conduct the business of the insurer or to take such steps as are authorized by the laws of this state for the purpose of liquidating, rehabilitating, reorganizing, or conserving the affairs of the insurer. In connection with delinquency proceedings, he or she may appoint one or more special deputy commissioners to act for him or her, and may employ such counsel, clerks, and assistants as he or she deems necessary. The compensation of the special deputies, counsel, clerks, or assistants and all expenses of taking possession of the delinquent insurer and of conducting the delinquency proceedings shall be fixed by the receiver, subject to the approval of the court, and shall be paid out of the funds or assets of the insurer. Within the limits of the duties imposed upon them, special deputies shall possess all the powers given to, and, in the exercise of those powers, shall be subject to all of the duties imposed upon the receiver with respect to delinquency proceedings.

1064.3. (a) Whenever under the laws of this state an ancillary receiver is to be appointed in delinquency proceedings for an insurer not domiciled in this state, the court shall appoint the commissioner as ancillary receiver. The commissioner shall file an application requesting the appointment (1) if he or she finds that there are sufficient assets of that insurer located in this state, or that there are sufficient persons residing in this state having claims against that insurer, to justify the appointment of an ancillary receiver, or (2) if 10 or more persons resident in this state having claims against that insurer file an application with the commissioner requesting the appointment of an ancillary receiver.

(b) The domiciliary receiver of an insurer domiciled in a reciprocal state, shall be vested by operation of law with the title to all of the property, contracts, and rights of action, and all of the books

and records of the insurer located in this state, and he or she shall have the immediate right to recover balances due from local agents and to obtain possession of any books and records of the insurer found in this state. He or she shall also be entitled to recover the other assets of the insurer located in this state except that upon the appointment of an ancillary receiver in this state, the ancillary receiver shall, during the ancillary receivership proceedings, have the sole right to recover such other assets. The ancillary receiver shall, as soon as practicable, liquidate from their respective securities those special deposit claims and secured claims which are proved and allowed in the ancillary proceedings in this state, and shall pay the necessary expenses of the proceedings. All remaining assets shall be promptly transferred to the domiciliary receiver. Subject to the foregoing provisions, the ancillary receiver and his or her deputies shall have the same powers and be subject to the same duties with respect to the administration of such assets, as a receiver of an insurer domiciled in this state.

(c) Notwithstanding any other provision of this article, in any ancillary receivership proceeding in this state against an insurer domiciled in a reciprocal state, assets located in this state which comprise all or part of any deposit by that insurer under the laws of that reciprocal state for the benefit and security of beneficiaries of awards of workers' compensation against insurers shall be returned promptly to the domiciliary receiver, if he or she so requests, without deduction of any amounts to satisfy claims of policyholders and creditors.

1064.4. (a) In a delinquency proceeding begun in this state against an insurer domiciled in this state, claimants residing in reciprocal states may file claims either with the ancillary receivers, if any in their respective states, or with the domiciliary receiver. All claims shall be filed on or before the last date fixed for the filing of claims in the domiciliary delinquency proceedings.

(b) Controverted claims belonging to claimants residing in reciprocal states may either (1) be proved in this state as provided by law, or (2), if ancillary proceedings have been commenced in those reciprocal states, be proved in those proceedings. In the event a claimant elects to prove his or her claim in ancillary proceedings, if notice of the claim and opportunity to appear and be heard is afforded the domiciliary receiver of this state as provided in Section 1064.5 with respect to ancillary proceedings in this state, the final allowance of such claim by the courts in the ancillary state shall be accepted in this state as conclusive as to its amount, and shall also be accepted as conclusive as to its priority, if any, against special deposits or other security located within the ancillary state.

1064.5. (a) In a delinquency proceeding in a reciprocal state against an insurer domiciled in that state, claimants against such insurer who reside within this state may file claims either with the ancillary receiver, if any, appointed in this state, or with the domiciliary receiver. All such claims shall be filed on or before the

last date fixed for the filing of claims in the domiciliary delinquency proceeding.

(b) Controverted claims belonging to claimants residing in this state may either (1) be proved in the domiciliary state as provided by the laws of that state, or (2), if ancillary proceedings have been commenced in this state, be proved in those proceedings. In the event that any such claimant elects to prove his or her claim in this state, he or she shall file his or her claim with the ancillary receiver in the manner provided by the law of this state for the proving of claims against insurers domiciled in this state, and he or she shall give notice in writing to the receiver in the domiciliary state, either by registered mail or by personal service at least 40 days prior to the date set for hearing. The notice shall contain a concise statement of the amount of the claim, the facts on which the claim is based, and the priorities asserted, if any. If the domiciliary receiver, within 30 days after the giving of notice, shall give notice in writing to the ancillary receiver and to the claimant, either by registered mail or by personal service, of his or her intention to contest that claim, he or she shall be entitled to appear or to be represented in any proceeding in this state involving the adjudication of the claim. The final allowance of the claim by the courts of this state shall be accepted as conclusive as to its amount, and shall also be accepted as conclusive as to its priority, if any, against special deposits or other security located within this state.

1064.6. (a) In a delinquency proceeding against an insurer domiciled in this state, claims owing to residents of ancillary states shall be preferred claims if like claims are preferred under the laws of this state. All such claims, whether owing to residents or nonresidents, shall be given equal priority of payment from general assets regardless of where such assets are located.

(b) In a delinquency proceeding against an insurer domiciled in a reciprocal state, claims owing to residents of this state shall be preferred if like claims are preferred by the laws of that state.

1064.7. The owners of special deposit claims against an insurer for which a receiver is appointed in this or any other state shall be given priority against their several special deposits in accordance with the provisions governing the creation and maintenance of such deposits. If there is a deficiency in any such deposit so that the claims secured thereby are not fully discharged therefrom, the claimants may share in the general assets, but, unless applicable law provides otherwise, the sharing shall be deferred until general creditors, and also claimants against other special deposits who have received smaller percentages from their respective special deposits, have been paid percentages of their claims equal to the percentage paid from the special deposit.

1064.8. The owner of a secured claim against an insurer for which a receiver has been appointed in this or any other state may surrender his or her security and file his or her claim as a general creditor, or the claim may be discharged by resort to the security, in

which case the deficiency, if any, shall be treated as a claim against the general assets of the insurer on the same basis as claims of unsecured creditors. If the amount of the deficiency has been adjudicated in ancillary proceedings as provided in this article, or if it has been adjudicated by a court of competent jurisdiction in proceedings in which the domiciliary receiver has had notice and opportunity to be heard, that amount shall be conclusive; otherwise the amount shall be determined in the delinquency proceeding in the domiciliary state.

1064.9. During the pendency of delinquency proceedings in this or any reciprocal state, no action or proceeding in the nature of an attachment, garnishment, or execution shall be commenced or maintained in the courts of this state against the delinquent insurer or its assets. Any lien obtained by any such action or proceeding within four months prior to the commencement of any such delinquency proceeding or at any time thereafter shall be void as against any rights arising in such delinquency proceeding.

1064.10. The domiciliary receiver of an insurer domiciled in a reciprocal state may sue in this state to recover any assets of that insurer to which he or she may be entitled under the laws of this state.

1064.11. 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 the article which can be given effect without the invalid provision or application, and to this end the provisions of this article are declared to be severable.

1064.12. (a) This article may be referred to as the "Uniform Insurers Rehabilitation Act."

(b) The Uniform Insurers Rehabilitation Act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states that enact it. To the extent that its provisions, when applicable, conflict with Article 14 (commencing with Section 1010), the provisions of this article shall control. The provisions of Article 14 (commencing with Section 1010) not in conflict with this article shall be unaffected by it.

(c) This article does not apply in regard to insurers domiciled in any state that is not a reciprocal state, and to any insurer domiciled in a reciprocal state before that state appoints a domiciliary receiver for the insurer. All those insurers shall be governed by Article 14 (commencing with Section 1010). If a domiciliary receiver is appointed in a reciprocal state while a receivership is proceeding under Article 14 (commencing with Section 1010), the receiver under that article shall thereafter act as ancillary receiver under Section 1064.3.

SEC. 1.5. Section 1100 of the Insurance Code is amended to read:

1100. In this state, all investments and deposits of the assets of an insurer, all purchases on behalf of an insurer, and all sales made of the property and effects of an insurer shall be made in its own name, or in that of a corporation authorized to act as a trustee under the

laws of this state, or in the name of a nominee of such a corporation in accordance with any law of this state permitting such a trustee to make use of nominees, or in the name of a qualified custodian, qualified subcustodian, or qualified depository (as defined in Section 1104.9) or in the name of a nominee of a qualified custodian, qualified subcustodian, or qualified depository, provided that the nominee is not a corporation and, as to any nominee which is a partnership, the partnership shall consist solely of the employees, officers, or directors of the qualified custodian, qualified subcustodian, or qualified depository or a corporation which is a member of the same holding company system as the nominee, or any combination thereof, or in the name of a nominee approved by the commissioner.

SEC. 2. Section 1104.9 is added to the Insurance Code, to read:

1104.9. (a) (1) As used in this section, the term "qualified custodian" means: (A) commercial banks (as defined in Section 105 of the Financial Code), savings and loan associations (as defined in Section 5102 of the Financial Code), and trust companies (other than trust departments of title insurance companies), or any entity approved by the commissioner as a qualified custodian; (B) which is domiciled and has a principal place of business in this state; and (C) which either has a net worth of at least one hundred million dollars ($100,000,000) or is able to demonstrate to the satisfaction of the commissioner that it is financially secure. The commissioner may consider, among other factors, evidence of the following in order to determine whether a custodian is financially secure for the purpose of this subdivision: (i) its obligations under an agreement approved by the commissioner pursuant to subdivision (c) are guaranteed by its parent holding company, (ii) its parent holding company has a net worth of at least one hundred million dollars ($100,000,000), or (iii) it is a member of a holding company system with a net worth of at least one hundred million dollars ($100,000,000).

(2) As used in this section, the term "qualified depository" means an entity which is located in this state or a reciprocal state and is (A) a depository that provides for the long-term immobilization of securities or a clearing corporation that is also a depository, and which in either case has been approved by or registered with the Securities and Exchange Commission, (B) a Federal Reserve Bank, or (C) an entity approved by the commissioner as a qualified depository. A "qualified depository" may also include an entity which is located outside the United States, which entity shall be a securities depository and clearing agency, incorporated or organized under the laws of a country other than the United States, which operates a transnational system for securities or equivalent book entries (specifically Euroclear and Cedel, or successors to all or substantially all of their operations).

(3) As used in this section, the term "qualified subcustodian" means an entity located in this state or a reciprocal state (A) which holds securities of the domestic insurer, and maintains an account through which such securities are held, in this state or a reciprocal

state and (B) which has a net worth of at least one hundred million dollars ($100,000,000) or is able to demonstrate to the satisfaction of the commissioner that it is financially secure. The qualified subcustodian shall be: (A) a commercial bank, a savings and loan association, or a trust company (other than trust departments of title insurance companies); (B) a subsidiary of a qualified custodian; or (C) any entity approved by the commissioner as a qualified subcustodian. The commissioner may consider, among other factors, evidence of the following in order to determine whether a subcustodian is financially secure for the purpose of this subdivision: (i) its obligations are guaranteed by its parent company, (ii) its parent holding company has a net worth of at least one hundred million dollars ($100,000,000), or (iii) it is a member of a holding company system with a net worth of at least one hundred million dollars ($100,000,000). A "qualified subcustodian" may also include an entity which is located outside the United States, which is used by the domestic insurer for the purpose of obtaining access to a qualified depository located outside the United States. The qualified foreign subcustodian shall have a net worth of at least one hundred million dollars ($100,000,000) or is able to demonstrate to the satisfaction of the commissioner that it is financially secure, and shall be: (A) a banking institution or trust company, incorporated or organized under the laws of a country other than the United States, that is regulated by that country's government or an agency thereof, and that has shareholders' equity in excess of two hundred million dollars ($200,000,000), whether in United States dollars or the equivalent of United States dollars, as of the close of its most recently completed fiscal year; (B) a majority-owned director indirect subsidiary of a qualified United States bank or bank holding company, which subsidiary is incorporated or organized under the laws of a country other than the United States and has shareholders' equity in excess of one hundred million dollars ($100,000,000), whether in United States dollars or the equivalent of United States dollars, as of the close of its most recently completed fiscal year.

(4) As used in this section, the term "subsidiary" means: (A) an entity all of whose voting securities (other than director qualifying shares, if any) are owned, directly or indirectly, by a qualified custodian; or (B) any affiliated entity approved by the commissioner as a subsidiary of a qualified custodian. For the purpose of this section, an affiliated entity means an entity that (A) controls or is controlled, either directly or indirectly or through one or more intermediaries by a qualified custodian or (B) is under the common control, directly or indirectly, as or with a qualified custodian.

(5) As used in this section, the terms "entity approved by the commissioner as a qualified custodian," "entity approved by the commissioner as a qualified depository," "entity approved by the commissioner as a qualified subcustodian," and "entity approved by the commissioner as a subsidiary of a qualified custodian" mean those entities which meet the conditions or standards established by the

commissioner. The commissioner shall charge and collect in advance a one-time fee of one thousand five hundred dollars ($1,500) to review an application for approval of any entity pursuant to this section.

(6) As used in this section, the term "reciprocal state" has the same meaning as in subdivision (f) of Section 1064.1.

(7) As used in this section, the term "moneys" means cash held incidental to securities transactions occurring in the ordinary course of business with respect to securities held pursuant to the custodial agreements under this section.

(8) (A) Except as provided in (B), as used in this section, the terms "insurer," "domestic insurer," and "domestic admitted insurer" mean any insurer, other than a domestic life insurer, which is incorporated or which has its principal place of business in this state. Except as provided in (B), no portion of this section shall be deemed to apply to domestic life insurers, nor shall this section affect the interpretation of any other portion of this code with respect to domestic life insurers, nor is it intended to create a precedent for the application of its provisions to those insurers. Provided, however, that the exclusion of domestic life insurers from this section shall not be construed to diminish the commissioner's existing authority over those insurers under any other provision of this code.

(B) Domestic life insurers which are wholly owned by any insurer other than a domestic life insurer or are part of an insurance holding company system whose other insurer affiliates are not domestic life insurers may elect to be subject to this section by affirmatively stating that election in the statement otherwise required to be filed by such system pursuant to Section 1215.4.

(b) Notwithstanding Section 1104.1, a domestic admitted insurer may maintain its securities and moneys in a reciprocal state, subject to the requirements of this section, through a custodian account located in California in or with a qualified custodian, and that qualified custodian may maintain those securities or moneys in a qualified depository or qualified subcustodian, either or both of which may be located in a reciprocal state. In addition, a domestic insurer which has foreign investments or any other investments which require delivery outside of the United States upon sale or maturity that qualify under Section 1240, 1241, 10506, or any other provision of this code may maintain those securities or moneys in or with a qualified depository located in a jurisdiction outside the United States; provided, however, that the aggregate amount of general account investments so deposited shall not exceed the lesser of 5 percent of the total admitted assets of the insurer or 25 percent of the excess of admitted assets over the sum of paidup capital, liabilities, and surplus required by Section 700.02. The percentage or dollar value of admitted assets and paid up capital and liabilities shall be determined by the insurer's last preceding annual statement of conditions and affairs made as of the preceding December 31 which has been filed with the commissioner pursuant to law. No broker or

agent, as defined in the Federal Securities Exchange Act of 1934 (15 U.S.C.A. Sec. 78c et seq.), may serve as a qualified custodian, qualified subcustodian, or qualified depository under this section; provided, however, no otherwise qualified custodian or subcustodian shall be disqualified on account of its activities as a broker or dealer, as so defined, when such activities are incidental to its custodial or other business.

(c) No securities shall be deposited in or with a qualified custodian, qualified depository, or qualified subcustodian except as authorized by an agreement between the insurer and the qualified custodian, which agreement is satisfactory to and has been approved by the commissioner. The agreement shall provide that the securities be held by the qualified custodian for the benefit of the insurer and that the books and records of the qualified custodian shall so designate. The agreement shall further provide that beneficial title to such securities shall remain in the insurer and shall provide that the qualified subcustodian and qualified depository be the agents of the qualified custodian. The agreement shall also specifically provide that the qualified custodian shall exercise the standard of care of a professional custodian engaged in the banking or trust company industry and having professional expertise in financial and securities processing transactions and custody would observe in such affairs. The provisions of this section shall not affect the burden of proof under applicable law with respect to the assertion of liability in any claim, action, or dispute alleging any breach of, or failure to observe, such standard of care.

(d) No agreement between the qualified custodian and the insurer shall be approved by the commissioner unless the qualified custodian agrees therein to comply with this section. Except when the agreement is submitted in conjunction with an application for an original certificate of authority or variable contract qualification, a fee of five hundred dollars ($500) shall be paid to the commissioner at the time of filing such agreement for approval. However, no fee shall be required if the form of the agreement has been previously submitted for approval and approved by the commissioner as certified by the insurer and qualified custodian submitting the agreement to the commissioner. The agreement shall be deemed approved unless, within 60 days after receipt by the commissioner of that agreement and any required filing fee, the commissioner has disapproved the agreement in writing citing specific reasons for disapproval.

(e) Notwithstanding the maintenance of securities with an out-of-state qualified depository or qualified subcustodian pursuant to agreement, if the commissioner has reasonable cause to believe that the domestic insurer (1) is conducting its business and affairs in such a manner as to threaten to render it insolvent, or (2) is in a hazardous condition or is conducting its business and affairs in a manner which is hazardous to its policyholders, creditors, or the public, or (3) has committed or is committing or has engaged or is

engaging in any act which would constitute grounds for rendering it subject to conservation or liquidation proceedings, or (4) the commissioner determines that irreparable loss and injury to the property and business of the domestic insurer has occurred or may occur unless the commissioner acts immediately, then the commissioner may, without hearing, order the insurer and the qualified custodian promptly to effect the transfer of the securities back to a qualified custodian, qualified subcustodian, or qualified depository located in this state from any qualified depository or qualified subcustodian located outside of this state (the transfer order). Upon receipt of the transfer order, the qualified custodian shall promptly effect the return of the securities. Notwithstanding the pendency of any hearing of action provided for in subdivision (f), the transfer order shall be complied with by those persons subject to that order. Any challenge to the validity of the transfer order shall be made in accordance with the provisions of subdivision (f). It shall be the responsibility of both the insurer and the qualified custodian to oversee that compliance with the transfer order is completed as expeditiously as possible. Upon receipt of a transfer order, there shall be no trading of securities without specific instructions from the commissioner until the securities are received in this state, except to the extent trading transactions are in process on the day the transfer order is received by the insurer and the failure to complete the trade may result in loss to the insurer's account. Issuance of a transfer order shall not affect the qualified custodian's liabilities with regard to the securities which are the subject of the order.

(f) At the same time the transfer order is served, the commissioner shall issue and also serve upon the insurer a notice of hearing to be held at a time and place fixed therein which shall not be less than 20 or more than 45 days after the service thereof. Upon request of the insurer and agreement of the department, the hearing may be held within a shorter time but in no event less than 10 days after the service of the notice of hearing. The transfer order and notice of hearing may be served by certified mail, express mail, messenger, telegram, or any other means calculated to give prompt actual notice to (1) the California office of the insurer designated in the agreement, its home office as shown on its most recently filed annual or quarterly statement, or its California agent for service of process; and (2) the California office of the qualified custodian designated in the agreement. If, as a result of the hearing, any of the statements as to conduct, conditions, or grounds for the transfer order are found to be true, or if other conditions or grounds are discovered or become known or become known at the hearing and are found to be true, the commissioner shall affirm the transfer order and may make additional order or orders, pertaining to the transfer order, as may be reasonably necessary.

The insurer subject to the transfer order, shall be entitled to judicial review in the state of the commissioner's order issued as a result of the hearing.

Alternatively, at any time prior to the commencement of the hearing on the transfer order, the insurer may waive the hearing and have judicial review in this state of the transfer order by petition for writ of mandate and declaratory relief without first exhausting administrative remedies or procedures. In that event the insurer shall not be entitled to any extraordinary remedies prior to trial.

No person other than the insurer shall have standing at the hearing by the commissioner or for any judicial review of the transfer order.

SEC. 3. Section 11715 of the Insurance Code is amended to read:

11715. (a) Any workers' compensation insurer may, in lieu of and for the same purpose as the bond required by Section 11690, and upon payment of the fee prescribed in this article, deposit cash instruments, approved letters of credit, or approved interest-bearing securities or approved stocks readily convertible into cash, or investment certificates or share accounts issued by a savings and loan association doing business in this state and insured by the Federal Savings and Loan Insurance Corporation or certificates of deposit or savings deposits in a bank licensed to do business in this state. The deposit shall be made from time to time as demanded by the commissioner and may be made with the State Treasurer, or a bank or savings and loan association authorized to engage in the trust business pursuant to Chapter 1 (commencing with Section 99) of Division 1 or Chapter 3 (commencing with Section 5500) of Division 2 of the Financial Code, or trust company pursuant to the approval of the commissioner under such rules and regulations as he shall promulgate. The deposit shall be maintained at a deposit value of not less than twenty-five thousand dollars ($25,000), nor less than the reserves required of such insurer to be maintained under any of the provisions of Article 1 (commencing with Section 11550) of Chapter 1 of Part 3 of Division 2, relating to loss reserves on workers' compensation business of the insurer in this state, nor less than the sum of the amounts specified in subdivision (a) of Section 11699.

(b) Any workers' compensation insurer electing to bring itself within the provisions of subdivision (a) by submitting securities, stock, investment certificates, or share deposits registered in a depositor's name, shall execute and deliver in duplicate to the commissioner a power of attorney in favor of the commissioner for the purposes specified in Section 11690, supported by a resolution of the depositor's board of directors. The power of attorney and directors' resolution shall be on forms approved by the commissioner, shall provide that the power of attorney cannot be revoked or withdrawn without the consent of the commissioner, and shall be acknowledged as required by law.

(c) The commissioner shall require payment of one hundred seventy-seven dollars ($177) in advance as a fee for the initial filing and the first semiannual review of each letter of credit specified in subdivision (a). In addition, each worker's compensation insurer depositing a letter of credit shall pay an annual fee of one hundred eighteen dollars ($118) in advance on account of such letter until its

expiration or revocation. Such fee shall be for annual periods commencing each January 1 and shall be due and payable on the following April 1.

(d) The commissioner shall require payment of one hundred eighteen dollars ($118) in advance as a fee for the initial filing of a deposit agreement with a bank, savings and loan association, or trust company on deposits made pursuant to subdivision (a). An additional fee of one hundred eighteen dollars ($118) shall be payable for each amendment, supplement, or other change to the deposit agreement. In addition, the commissioner shall require the payment of fifty-eight dollars ($58) in advance for receiving and processing deposit schedules pursuant to this section. An additional fee of twenty-nine dollars ($29) shall be payable for each withdrawal, substitution, or any other change in the deposit.

(e) In addition to the authority provided herein, admitted workers' compensation insurers may maintain these deposits in accordance with Section 1104.9, in states found by the commissioner to be reciprocal states, as that term is defined in subdivision (f) of Section 1064.1, if the laws of those states permit the commissioner of this state to promptly recover these deposits in a delinquency proceeding, as defined in subdivision (b) of Section 1064.1 without deduction of any amounts to satisfy claims of policyholders and creditors.

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## CHAPTER 1467

An act to amend Sections 2118 and 15600 of, and to add Sections 15602, 15603, 15604, and 15605 to, the Fish and Game Code, relating to wild animals, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 27, 1988. Filed with Secretary of State September 28, 1988.]

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

SECTION 1. Section 2118 of the Fish and Game Code is amended to read:

2118. It is unlawful to import, transport, possess, or release alive into this state, except under a revocable, nontransferable permit as provided in this chapter and the regulations pertaining thereto, any wild animal of the following species:

(a) Class Aves: (birds)

Family Cuculidae (cuckoos)
All species.
Family Alaudidae (larks)
Skylark, Alauda arvensis
Family Corvidae (crows, jays, magpies)
All species.

Family Turdidae (thrushes)
European blackbird, Turdus merula
Missel (or mistle), thrush, Turdus viscivorus
Family Sturnidae (starlings and mynas or mynahs)
All species of the family, except hill myna (or hill mynah),
Gracula religiosa (sometimes referred to as Eulabes religiosa)
Family Ploceidae (weavers)
The following species:
Spanish sparrow, Passer hispaniolensis
Italian sparrow, Passer italiae
European tree sparrow, Passer montanus
Cape sparrow, Passer capensis
Madagascar weaver, Foudia madagascariensis
Baya weaver, Ploceus baya
Hawaiian rice bird, Munia nisoria
Red-billed quelea, Quelea quelea
Red-headed quelea, Quelea erythrops
Family Fringillidae (sparrows, finches, buntings)
Yellowhammer, Emberiza citrinella

(b) Class Mammalia (mammals)
Order Primates
All species except those in family Homonidae
Order Edentata (sloths, anteaters, armadillos, etc.)
All species.
Order Marsupialia (marsupials or pouched mammals)
All species.
Order Insectivora (shrews, moles, hedgehogs, etc.)
All species.
Order Dermoptera (gliding lemurs)
All species.
Order Chiroptera (bats)
All species.
Order Monotremata (spiny anteaters, platypuses)
All species.
Order Pholidota (pangolins, scaly anteaters)
All species.
Order Lagomorpha (pikas, rabbits, hares)
All species, except domesticated races of rabbits.
Order Rodentia (rodents)
All species, except domesticated golden hamsters, also known as Syrian hamster, Mesocricetus auratus; domesticated races of rats or mice (white or albino; trained, dancing or spinning, laboratory-reared); and domestic strains of guinea pig (Cavia porcellus).
Order Carnivora (carnivores)
All species, except domestic dogs (Canis familiaris) and domestic cats (Felis catus).

Order Tubulidentata (aardvarks)
All species.
Order Proboscidea (elephants)
All species.
Order Hyracoidea (hyraxes)
All species.
Order Sirenia (dugongs, manatees)
All species.
Order Perissodactyla (horses, zebras, tapirs, rhinoceroses, etc.)
All species except those of the family Equidae.
Order Artiodactyla (swine, peccaries, camels, deer, elk, except elk (genus Cervus) which are subject to Section 2118.2, moose, antelopes, cattle, goats, sheep, etc.)
All species except: domestic swine of the family Suidae; American bison, and domestic cattle, sheep and goats of the family Bovidae; races of big-horned sheep (Ovis canadensis) now or formerly indigenous to this state.

Mammals of the orders Primates, Edentata, Dermoptera, Monotremata, Pholidota, Tubulidentata, Proboscidea, Perissodactyla, Hyracoidea, Sirenia and Carnivora are restricted for the welfare of the animals, except animals of the families Viverridae and Mustelidae in the order Carnivora are restricted because such animals are undesirable and a menace to native wildlife, the agricultural interests of the state, or to the public health or safety.

(c) Class amphibia (frogs, toads, salamanders)
Family Bufonidae (toads)
Giant toad or marine toad, Bufo marinus

(d) Class Monorhina (lampreys)
All species.

(e) Class Osteichthyes (bony fishes)
Family Serranidae (bass)
White perch, Morone or Roccus americana
Family Clupeidae (herring)
Gizzard shad, Dorosoma cepedianum
Family Sciaenidae (croakers)
Freshwater sheepshead, Aplodinotus grunniens
Family Characidae (characins)
Banded tetra, Astyanax fasciatus
All species of piranhas
Family Lepisosteidae (gars)
All species.
Family Amiidae (bowfins)
All species.

(f) Class Reptilia (snakes, lizards, turtles, alligators)
Family Crocodilidae
All species.

(g) Class Crustacea (crustaceans)

Genus Cambarus (crayfishes)
All species.
Genus Astacus (crayfishes)
All species.
Genus Astacopsis (crayfishes)
All species.

(h) Class Gastropoda (slugs, snails, clams)
All species of slugs.
All species of land snails.

(i) Other classes, orders, families, genera, and species of wild animals which may be designated by the commission in cooperation with the Department of Food and Agriculture, (1) when the class, order, family, genus, or species is proven to be undesirable and a menace to native wildlife or the agricultural interests of the state, or (2) to provide for the welfare of wild animals.

(j) Except as expressly authorized in this code, any live nonindigenous Atlantic salmon or the roe thereof into the Smith River watershed.

(k) Classes, families, genera, and species in addition to those listed in this section may be added to or deleted from the above lists from time to time by commission regulations in cooperation with the Department of Food and Agriculture.

SEC. 2. Section 15600 of the Fish and Game Code is amended to read:

15600. (a) No live aquatic plant or animal may be imported into this state by a registered aquaculturist without the prior written approval of the department pursuant to the regulations adopted by the commission.

(b) The department shall not approve the importation of, or renew a permit to import, any anadromous fish or roe thereof listed in Section 2118 or the regulations adopted under Section 2118 into the Smith River watershed by a person unless that person had a permit or authorization approved before February 22, 1988. However, the department may issue or renew a permit for the importation of any anadromous fish or roe thereof specifically for research purposes conducted at any university, college, governmental research agency, or other bona fide scientific institution, as determined by the department, engaging in scientific or public health research.

SEC. 3. Section 15602 is added to the Fish and Game Code, to read:

15602. Except persons operating under permits or authorizations approved before February 22, 1988, no person shall construct or expand existing or new facilities for the spawning, incubation, or raising of anadromous fish listed in Section 2118 in the Smith River watershed until the department has conducted the study required by Section 15603. However, this section does apply to any university, college, governmental research agency, or other bona fide scientific

institution, as determined by the department, engaging in scientific or public health research on anadromous fish.

SEC. 4. Section 15603 is added to the Fish and Game Code, to read:

15603. The department shall undertake a study and report to the Legislature on or before January 1, 1994, on the importation, spawning, incubation, rearing, and sale of anadromous fish listed in Section 2118. The study shall include all of the following:

(1) Findings and recommendations on the impact on diseases carried by anadromous fish.

(2) Findings and recommendations on the impact that the release of anadromous fish listed in Section 2118, either through a deliberate act or by accident, into the marine environment or into salmon, steelhead, and trout rivers would have on native California anadromous fish and trout resources.

(3) Findings and recommendations on the impact that the diversion of water to facilities engaged in the spawning, incubating, and reusing of anadromous fish listed in Section 2118, and the discharge of waste waters from those facilities, would have on anadromous fish and trout streams.

(4) Findings and recommendations on the impact that the importation, spawning, incubating, raising, and sales of anadromous fish listed in Section 2118 would have on California's anadromous salmon fisheries.

SEC. 5. Section 15604 is added to the Fish and Game Code, to read:

15604. No facility constructed for the purpose of spawning, incubating, or raising of anadromous fish listed in Section 2118 in the Smith River watershed is exempt from any provision of the California Environmental Quality Act.

SEC. 6. Section 15605 is added to the Fish and Game Code, to read:

15605. (a) Nothing in this chapter prohibits the importation of Atlantic Salmon or the roe thereof, or the continued possession of Atlantic salmon or the roe therefrom which were lawfully imported or possessed on or before February 22, 1988, in the Smith River watershed under a written approval of the department issued pursuant to Section 15600.

(b) Nothing in this chapter applies to the importation or possession of dead Atlantic salmon or nonviable roe therefrom imported for human consumption if the importer has the appropriate licenses issued by the department.

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.

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 prevent introduction of nonindigenous live species into the Smith River at the earliest possible time, it is necessary that this act take effect immediately.

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## CHAPTER 1468

An act to add Section 7501.5 to the Welfare and Institutions Code, relating to mental health.

[Approved by Governor September 27, 1988. Filed with Secretary of State September 28, 1988.]

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

SECTION 1. Section 7501.5 is added to the Welfare and Institutions Code, to read:

7501.5. (a) The Department of General Services, in cooperation with the State Department of Developmental Services and the State Department of Mental Health, may lease property within the boundaries of Camarillo State Hospital described in subdivision (c) to Ventura County which may sublet the property to a responsible bidder selected by Ventura County for the purpose of constructing housing and operating residential care programs designed to meet the identified treatment and rehabilitation needs of mentally disordered persons from Ventura County.

(b) In selecting a bidder pursuant to subdivision (a), Ventura County shall only consider bids from organizations which comply with subdivision (b) of Section 5705.2 and Section 523 of Title 9 of the California Code of Regulations.

(c) (1) The property consists of a 15 plus acre portion of a 58.5 acre parcel at Camarillo State Hospital which has previously been declared surplus by the State Department of Developmental Services. The acreage is on Lewis Road at the entrance to Camarillo State Hospital. Specific metes and bounds shall be established for the 15 plus acre parcel prior to the actual lease of the property.

(2) The Department of General Services may enter into a lease at less than fair market value. The department is authorized to lease the parcel for not less than 40, and not more than 99, years.

(d) If there is available space, mentally disordered persons from Los Angeles, San Luis Obispo, and Santa Barbara Counties may be eligible for placement at this center if an agreement to that effect is entered into between those counties and Ventura County. The agreement shall specify that Los Angeles, San Luis Obispo, and Santa Barbara Counties shall retain responsibility for monitoring and maintenance of mentally disordered persons placed through those

agreements and for payment of costs incurred or services rendered by Ventura County.

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## CHAPTER 1469

An act to amend Section 1.5 of Chapter 237 of the Statutes of 1985, relating to prisons, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 27, 1988. Filed with Secretary of State September 28, 1988 ]

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

SECTION 1. The Legislature finds and declares as follows:

(a) In order to control crime in the state the Legislature has found it necessary over the past eight years to toughen law enforcement and lengthen prison terms.

(b) These measures may well double California's existing prison population of approximately 59,000 to more than 100,000 by 1995.

(c) The state will be spending more than $2.36 billion on corrections and may find it necessary to build an additional 20 prisons besides the 14 already under construction.

(d) The good people of Del Norte County have assisted the state in providing a location for a state prison north of Crescent City at Pelican Bay, within one mile of the Pacific Ocean.

SEC. 2. Section 1.5 of Chapter 237 of the Statutes of 1985 is amended to read:

Sec. 1.5. (a) The Department of Corrections shall perform site suitability studies and evaluate the feasibility of constructing a prison in Del Norte County. These studies may address, but shall not be limited to, the following: hydrology, archeology, geology, biology, seismology, traffic analysis, and engineering. The studies shall identify the proposed custody level of inmates at the proposed prison, the size of the proposed facility, and the work programs to be used at the proposed facility.

(b) In performing the studies required by this section, the Department of Corrections shall hold public hearings regarding proposed sites.

(c) The Department of Corrections shall submit the results of the studies required by subdivision (a) to the Joint Legislative Prison Committee.

(d) The Department of Corrections is hereby authorized, depending on the results of a feasibility study, to construct a 2,000-bed Level IV facility together with a 200-bed service facility of lesser security in Del Norte County. The department may use up to 50 percent of the beds at the Del Norte facility for special cases.

(e) The necessary funding for construction of the 2,200-bed Del

Norte facility authorized by this section may be obtained through lease-purchase financing pursuant to Section 15819.20 of the Government Code.

(f) The facility in Del Norte County authorized by this section shall be known as the Pelican Bay State Prison.

SEC. 3. The Department of Corrections may contract with the County of Del Norte for the financing of the remodeling of existing court facilities, including the construction of an additional courtroom and related facilities. Under this contract, the Department of Corrections is authorized to make annual payments for the reimbursement of construction related costs to the County of Del Norte from the department's support budget from savings realized by the department due to a reduction in security costs which would result from a more secure courtroom facility.

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 prevent the unnecessary expenditure of funds for using the incorrect name for a prison, and in order to enable the Department of Corrections with Del Norte County for the financing of the remodeling of existing courtroom and related facilities at the earliest possible time, it is necessary for this act to take effect immediately.

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## CHAPTER 1470

An act to add Section 42247.4 to the Education Code, relating to desegregation costs.

[Approved by Governor September 27, 1988. Filed with Secretary of State September 28, 1988.]

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

SECTION 1. It is the intent of the Legislature that Section 42247.4 of the Education Code apply only to state reimbursement of the court-ordered voluntary pupil transfer program costs incurred by claimants that qualify for state reimbursement of costs under subdivision (a) of that section. It is also the intent of the Legislature that Section 42247.4 of the Education Code neither increase nor limit beyond the provisions of current law, state reimbursement of the costs of complying with other requirements of the court order, including the requirements referred to in the court order as "Ravenswood Improvement" and "Model Schools."

SEC. 2. Section 42247.4 is added to the Education Code, to read:

42247.4. (a) Notwithstanding any other provision of law, school districts and county offices of education that are subject to the same

initial court order shall be reimbursed for 100 percent of the costs incurred by them during the first year of full implementation of the court-ordered voluntary pupil transfer program and for 100 percent of the costs incurred by them for planning, startup, and implementation of the court-ordered voluntary pupil transfer program between the date of the initial court order and the first year of full implementation of the court order if the initial court order was issued in 1986.

(b) For claimants qualifying for state reimbursement of court-ordered voluntary pupil transfer costs under subdivision (a), the first year of full implementation of the court-ordered voluntary pupil transfer program shall serve as the base year for purposes of ongoing state reimbursement of court-ordered voluntary pupil transfer program costs and the first year of full implementation shall be defined as the 1991–92 fiscal year.

(c) (1) Base year costs shall be computed as 100 percent of recurring costs incurred in complying with the court-ordered voluntary pupil transfer program in the 1991–92 fiscal year plus, for purposes of computing 1992–93 and future years' reimbursement, the additional recurring costs of maintaining and operating buses in the 1992–93 fiscal year which were purchased for the purpose of transporting voluntary transfer program pupils during the 1991–92 base year but were not available for operation by the claimant during the entire base year.

(2) Nonrecurring startup costs, including, but not limited to, purchase of school buses, incurred during the 1991–92 base year shall be reimbursed at 100 percent but shall not be included in the base year computation for purposes of future years' reimbursement.

(d) Notwithstanding any other provision of law, the state reimbursable costs of court-ordered voluntary pupil transfer programs which qualify for reimbursement under subdivision (a) shall be defined as follows:

(1) For county offices:

(A) Administering the program including: planning, notifying, and implementing the assignment of students to school districts; and, developing, printing, and mailing forms.

(B) Processing transfers.

(C) Monitoring compliance with the court-ordered program.

(2) For school districts:

(A) Notifying parents or guardians of the students' right to transfer and notifying receiving districts of transfer requests.

(B) Planning and notification of student placement at school sites within the district.

(C) Planning the transportation of court-ordered voluntary transfer program pupils and notifying transferees of the transportation schedule.

(D) Transporting court-ordered voluntary transfer program pupils, including the costs of: purchasing or leasing buses; fuel; maintenance and repair; insurance; salaries and benefits; and, other

costs of operating buses necessary for the transportation of these pupils.

(E) Voluntary pupil transfer program orientation meetings for staff, students, and parents or guardians.

(F) Participation in and continued development of the Inter-district Interaction Committee.

(e) Notwithstanding any other provision of law, reimbursements authorized by subdivision (a) for court-ordered desegregation costs incurred after the first year of full implementation shall not exceed the sum of the following amounts:

(1) The audited costs approved by the Controller and incurred during the base year increased by the adjustment calculated pursuant to Section 42247.2.

(2) The amount in excess of one-fifth of the amount obtained by subtracting subparagraph (B) from subparagraph (A):

(A) The audited costs approved by the Controller for reimbursement pursuant to Section 42243.6 for the then current fiscal year.

(B) The amount computed pursuant to paragraph (1).

(f) School districts and county offices of education receiving state reimbursement of court-ordered voluntary pupil transfer program costs under this section shall make a reasonable effort to obtain reimbursement of court-ordered voluntary pupil transfer program costs from the federal government and other appropriate state programs and any funding which is received shall serve as an offset to the school district's or county office of education's court-ordered desegregation reimbursement claim in the year in which the funding is received.

(g) Costs specifically reimbursed by additions to school revenue limits may not be claimed for reimbursement as court-ordered desegregation costs, except to the extent that reasonable costs exceed the amount of the addition to the school district's or county office of education's revenue limit.

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## CHAPTER 1471

An act to amend Sections 11580.2 and 11580.26 of, and to add Section 11580.23 to, the Insurance Code, and to repeal Section 17203 of the Vehicle Code, relating to vehicles.

[Approved by Governor September 27, 1988. Filed with Secretary of State September 28, 1988.]

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

SECTION 1. Section 11580.2 of the Insurance Code, as amended by Chapter 158 of the Statutes of 1988, is amended to read:

11580.2. (a) (1) No policy of bodily injury liability insurance

covering liability arising out of the ownership, maintenance, or use of any motor vehicle, except for policies which provide insurance in the Republic of Mexico issued or delivered in this state by nonadmitted Mexican insurers, shall be issued or delivered in this state to the owner or operator of a motor vehicle, or shall be issued or delivered by any insurer licensed in this state upon any motor vehicle then principally used or principally garaged in this state, unless the policy contains, or has added to it by endorsement, a provision with coverage limits at least equal to the limits specified in subdivision (m) and in no case less than the financial responsibility requirements specified in Section 16056 of the Vehicle Code insuring the insured, the insured's heirs or legal representative for all sums within such limits which he, she, or they, as the case may be, shall be legally entitled to recover as damages for bodily injury or wrongful death from the owner or operator of an uninsured motor vehicle. The insurer and any named insured, prior to or subsequent to the issuance or renewal of a policy, may, by agreement in writing, in the form specified in paragraph (2) or paragraph (3), delete the provision covering damage caused by an uninsured motor vehicle (1) completely, or (2) delete such coverage when a motor vehicle is operated by a natural person or persons designated by name, or (3) agree to provide such coverage in an amount less than that required by subdivision (m) but not less than the financial responsibility requirements specified in Section 16056 of the Vehicle Code. Any such agreements by any named insured or agreement for the amount of coverage shall be binding upon every insured to whom the policy or endorsement provisions apply while the policy is in force, and shall continue to be so binding with respect to any continuation or renewal of the policy or with respect to any other policy which extends, changes, supersedes, or replaces the policy issued to the named insured by the same insurer, or with respect to reinstatement of the policy within 30 days of any lapse thereof. A policy shall be excluded from the application of this section if the only coverage with respect to the use of any motor vehicle is limited to the contingent liability arising out of the use of nonowned motor vehicles or if the automobile liability coverage is provided only on an excess or umbrella basis. Nothing in this section shall be construed to require that uninsured motorist coverage shall be offered or provided in any homeowner policy, personal and residents' liability policy, comprehensive personal liability policy, manufacturers' and contractors' policy, premises liability policy, special multiperil policy, or any other policy or endorsement where automobile liability coverage is offered as incidental to some other basic coverage, notwithstanding that the policy may provide automobile or motor vehicle liability coverage on insured premises or the ways immediately adjoining.

(2) The agreement specified in paragraph (1) to delete the provision covering damage caused by an uninsured motor vehicle completely or delete the coverage when a motor vehicle is operated

by a natural person or persons designated by name shall be in the following form:

"The California Insurance Code requires an insurer to provide uninsured motorists coverage in each bodily injury liability insurance policy it issues covering liability arising out of the ownership, maintenance, or use of a motor vehicle. Those provisions also permit the insurer and the applicant to delete the coverage completely or to delete the coverage when a motor vehicle is operated by a natural person or persons designated by name . Uninsured motorists coverage insures the insured, his or her heirs, or legal representatives for all sums within the limits established by law, which such person or persons are legally entitled to recover as damages for bodily injury, including any resulting sickness, disease, or death, to the insured from the owner or operator of an uninsured motor vehicle not owned or operated by the insured or a resident of the same household. An uninsured motor vehicle includes an underinsured motor vehicle as defined in subdivision (p) of Section 11580.2 of the Insurance Code."

The agreement may contain additional statements not in derogation of or in conflict with the foregoing. The execution of the agreement shall relieve the insurer of liability under this section while the agreement remains in effect.

(3) The agreement specified in paragraph (1) to provide coverage in an amount less than that required by subdivision (m) shall be in the following form:

"The California Insurance Code requires an insurer to provide uninsured motorists coverage in each bodily injury liability insurance policy it issues covering liability arising out of the ownership, maintenance, or use of a motor vehicle. Those provisions also permit the insurer and the applicant to agree to provide the coverage in an amount less then that required by subdivision (m) of Section 11580.2 of the Insurance Code but not less than the financial responsibility requirements. Uninsured motorists coverage insures the insured, his or her heirs, or legal representatives for all sums within the limits established by law, which the person or persons are legally entitled to recover as damages for bodily injury, including any resulting sickness, disease, or death, to the insured from the owner or operator of an uninsured motor vehicle not owned or operated by the insured or a resident of the same household. An uninsured motor vehicle includes an underinsured motor vehicle as defined in subdivision (p) of Section 11580.2 of the Insurance Code."

The agreement may contain additional statements not in derogation of or in conflict with this paragraph. However, it shall be presumed that an application for a policy of bodily injury liability insurance containing uninsured motorist coverage in an amount less than that required by subdivision (m), signed by the named insured and approved by the insurer, with a policy effective date after January 1, 1985, shall be a valid agreement as to the amount of uninsured motorist coverage to be provided.

(b) As used in (a) above, "bodily injury" includes sickness or disease, including death, resulting therefrom; the term "named insured" means only the individual or organization named in the declarations of the policy of motor vehicle bodily injury liability insurance referred to in (a) above; as used in (a) above if the named insured is an individual the term "insured" means the named insured and the spouse of the named insured and, while residents of the same household, relatives of either while occupants of a motor vehicle or otherwise, heirs and any other person while in or upon or entering into or alighting from an insured motor vehicle and any person with respect to damages he or she is entitled to recover for care or loss of services because of bodily injury to which the policy provisions or endorsement apply; as used in (a) above, if the named insured is an entity other than an individual, the term "insured" means any person while in or upon or entering into or alighting from an insured motor vehicle and any person with respect to damages he or she is entitled to recover for care or loss of services because of bodily injury to which the policy provisions or endorsement apply. As used in this subdivision, the word "individual" shall not include persons doing business as corporations, partnerships, or associations. The term "insured motor vehicle" means the motor vehicle described in the underlying insurance policy of which the uninsured motorist endorsement or coverage is a part, a temporary substitute automobile for which liability coverage is provided in the policy or a newly acquired automobile for which liability coverage is provided in the policy if the motor vehicle is used by the named insured or with his or her permission or consent, express or implied, and any other automobile not owned by or furnished for the regular use of the named insured or any resident of the same household, or by a natural person or persons for whom coverage has been deleted in accordance with subdivision (a) while being operated by the named insured or his or her spouse if a resident of the same household, but the term "insured motor vehicle" shall not include any automobile while used as a public or livery conveyance. As used in this section, the term "uninsured motor vehicle" means a motor vehicle with respect to the ownership, maintenance or use of which there is no bodily injury liability insurance or bond applicable at the time of the accident, or there is such applicable insurance or bond but the company writing the same denies coverage thereunder or refuses to admit coverage thereunder except conditionally or with reservation, or an "underinsured motor vehicle" as defined in subdivision (p), or a motor vehicle used without the permission of the owner thereof if there is no bodily injury liability insurance or bond applicable at the time of the accident with respect to the owner or operator thereof, or the owner or operator thereof be unknown, provided that, with respect to an "uninsured motor vehicle" whose owner or operator is unknown:

(1) The bodily injury has arisen out of physical contact of the automobile with the insured or with an automobile which the

insured is occupying.

(2) The insured or someone on his or her behalf shall have reported the accident within 24 hours to the police department of the city where the accident occurred or, if the accident occurred in unincorporated territory then either the sheriff of the county where the accident occurred or the local headquarters of the California Highway Patrol, and have filed with the insurer within 30 days thereafter a statement under oath that the insured or his or her legal representative has or the insured's heirs have a cause of action arising out of the accident for damages against a person or persons whose identity is unascertainable and set forth facts in support thereof. As used in this section, the term "uninsured motor vehicle" shall not include a motor vehicle owned or operated by the named insured or any resident of the same household or self-insured within the meaning of the Financial Responsibility Law of the state in which the motor vehicle is registered or which is owned by the United States of America, Canada, a state or political subdivision of any such government or an agency of any of the foregoing, or a land motor vehicle or trailer while located for use as a residence or premises and not as a vehicle, or any equipment or vehicle designed or modified for use primarily off public roads, except while actually upon public roads.

As used in this section, the term "uninsured motor vehicle" also means an insured motor vehicle where the liability insurer thereof is unable to make payment with respect to the legal liability of its insured within the limits specified therein because of insolvency. An insurer's solvency protection shall be applicable only to accidents occurring during a policy period in which its insured's motor vehicle coverage is in effect where the liability insurer of the tortfeasor becomes insolvent within one year of the accident. In the event of payment to any person under the coverage required by this section and subject to the terms and conditions of such coverage, the insurer making the payment, shall to the extent thereof, be entitled to any proceeds which may be recoverable from the assets of the insolvent insurer through any settlement or judgment of the person against the insolvent insurer.

Nothing in this section is intended to exclude from the definition of an uninsured motor vehicle any motorcycle or private passenger type four wheel drive motor vehicle if that vehicle was subject to and failed to comply with the Financial Responsibility Law of this state.

(c) The insurance coverage provided for in this section does not apply either as primary or as excess coverage to:

(1) To property damage sustained by the insured.

(2) To bodily injury of the insured while in or upon or while entering into or alighting from a motor vehicle other than the described motor vehicle if the owner thereof has insurance similar to that provided in this section.

(3) To bodily injury of the insured with respect to which the insured or his or her representative shall, without the written

consent of the insurer, make any settlement with or prosecute to judgment any action against any person who may be legally liable therefor.

(4) In any instance where it would inure directly or indirectly to the benefit of any workers' compensation carrier or to any person qualified as a self-insurer under any workers' compensation law, or directly to the benefit of the United States, or any state or any political subdivision thereof.

(5) To establish proof of financial responsibility as provided in subdivisions (a), (b), and (c) of Section 16054 of the Vehicle Code.

(6) To bodily injury of the insured while occupying a motor vehicle owned by an insured or leased to an insured under a written contract for a period of six months or longer, unless the occupied vehicle is an insured motor vehicle. "Motor vehicle" as used in this paragraph means any self-propelled vehicle.

(7) To bodily injury of the insured when struck by a vehicle owned by an insured.

(8) To bodily injury of the insured while occupying a motor vehicle rented or leased to the insured for public or livery purposes.

(d) Subject to paragraph (2) of subdivision (c), the policy or endorsement may provide that if the insured has insurance available to the insured under more than one uninsured motorist coverage provision, any damages shall not be deemed to exceed the higher of the applicable limits of the respective coverages, and such damages shall be prorated between the applicable coverages as the limits of each coverage bear to the total of such limits.

(e) The policy or endorsement added thereto may provide that if the insured has valid and collectible automobile medical payment insurance available to him or her, the damages which the insured shall be entitled to recover from the owner or operator of an uninsured motor vehicle shall be reduced for purposes of uninsured motorist coverage by the amounts paid or due to be paid under the automobile medical payment insurance. This subdivision shall become operative on January 1, 1971.

(f) The policy or an endorsement added thereto shall provide that the determination as to whether the insured shall be legally entitled to recover damages, and if so entitled, the amount thereof, shall be made by agreement between the insured and the insurer or, in the event of disagreement, by arbitration. The arbitration shall be conducted by a single neutral arbitrator. An award or a judgment confirming an award shall not be conclusive on any party in any action or proceeding between (i) the insured, his or her insurer, his or her legal representative, or his or her heirs and (ii) the uninsured motorist to recover damages arising out of the accident upon which the award is based. If the insured has or may have rights to benefits, other than nonoccupational disability benefits, under any workers' compensation law, the arbitrator shall not proceed with the arbitration until the insured's physical condition is stationary and ratable. In those cases in which the insured claims a permanent

disability, the claims shall, unless good cause be shown, be adjudicated by award or settled by compromise and release before the arbitration may proceed. Any demand or petition for arbitration shall contain a declaration, under penalty of perjury, stating whether (i) the insured has a workers' compensation claim; (ii) the claim has proceeded to findings and award or settlement on all issues reasonably contemplated to be determined in that claim; and (iii) if not, what reasons amounting to good cause are grounds for the arbitration to proceed immediately. The arbitration shall be deemed to be a proceeding and the hearing before the arbitrator shall be deemed to be the trial of an issue therein for purposes of issuance of a subpoena by an attorney of a party to the arbitration under Section 1985 of the Code of Civil Procedure. Article 3 (commencing with Section 2016) of Chapter 3 of Title 3 of Part 4 of the Code of Civil Procedure shall be applicable to these determinations, and all rights, remedies, obligations, liabilities and procedures set forth in Article 3 shall be available to both the insured and the insurer at any time after the accident, both before and after the commencement of arbitration, if any, with the following limitations:

(1) Whenever in Article 3, reference is made to the court in which the action is pending, or provision is made for application to the court or obtaining leave of court or approval by the court, the court which shall have jurisdiction for the purposes of this section shall be the superior court of the State of California, in and for any county which is a proper county for the filing of a suit for bodily injury arising out of the accident, against the uninsured motorist, or any county specified in the policy or an endorsement added thereto as a proper county for arbitration or action thereon.

(2) Any such proper court to which application is first made by either the insured or the insurer under the provisions of Article 3 for any discovery or other relief or remedy, shall thereafter be the only court to which either of the parties shall make any applications under Article 3 with respect to the same accident, subject, however, to the right of the court to grant a change of venue after a hearing upon notice, upon any of the grounds upon which change of venue might be granted in an action filed in the superior court.

(3) A deposition pursuant to the provisions of Section 2016 of the Code of Civil Procedure may be taken without leave of court, except that leave of court, granted with or without notice and for good cause shown, must be obtained if the notice of the taking of the deposition is served by either party within 20 days after the accident.

(4) Paragraph (4) of subdivision (a) of Section 2019 of the Code of Civil Procedure is not applicable to discovery under this section.

(5) For the purposes of discovery under this section, the insured and the insurer shall each be deemed to be "a party to the record of any civil action or proceedings," where that phrase is used in paragraph (2) of subdivision (b) of Section 2019 of the Code of Civil Procedure.

(6) Interrogatories under the provisions of Section 2030 of the

Code of Civil Procedure and requests for admission under Section 2033 of the Code of Civil Procedure may be served by either the insured or the insurer upon the other at any time more than 20 days after the accident without leave of court.

(7) Nothing in this section limits the rights of any party to discovery in any action pending or which may hereafter be pending in any court.

(g) The insurer paying a claim under an uninsured motorist endorsement or coverage shall be entitled to be subrogated to the rights of the insured to whom the claim was paid against any person legally liable for the injury or death to the extent that payment was made. The action may be brought within three years from the date that payment was made hereunder.

(h) An insured entitled to recovery under the uninsured motorist endorsement or coverage shall be reimbursed within the conditions stated herein without being required to sign any release or waiver of rights to which he or she may be entitled under any other insurance coverage applicable; nor shall payment under this section to such insured be delayed or made contingent upon the decisions as to liability or distribution of loss costs under other bodily injury liability insurance or any bond applicable to the accident. Any loss payable under the terms of the uninsured motorist endorsement or coverage to or for any person may be reduced:

(1) By the amount paid and the present value of all amounts payable to him or her, his or her executor, administrator, heirs, or legal representative under any workers' compensation law, exclusive of nonoccupational disability benefits.

(2) By the amount the insured is entitled to recover from any other person insured under the underlying liability insurance policy of which the uninsured motorist endorsement or coverage is a part, including any amounts tendered to the insured as advance payment on behalf of such other person by the insurer providing the underlying liability insurance.

(i) No cause of action shall accrue to the insured under any policy or endorsement provision issued pursuant to this section unless one of the following actions have been taken within one year from the date of the accident:

(1) Suit for bodily injury has been filed against the uninsured motorist, in a court of competent jurisdiction.

(2) Agreement as to the amount due under the policy has been concluded.

(3) The insured has formally instituted arbitration proceedings.

(j) Notwithstanding subdivisions (b) and (i), in the event the accident occurs in any other state or foreign jurisdiction to which coverage is extended under the policy and the insurer of the tortfeasor becomes insolvent, any action authorized pursuant to the provisions of this section may be maintained within three months of the insolvency of the tortfeasor's insurer, but in no event later than the pertinent period of limitation of the jurisdiction in which the

accident occurred.

(k) Notwithstanding subdivision (i), any insurer whose insured has made a claim under his or her uninsured motorist coverage, and the claim is pending, shall, at least 30 days before the expiration of the applicable statute of limitation, notify its insured in writing of the statute of limitation applicable to the injury or death. Failure of the insurer to provide the written notice shall operate to toll any applicable statute of limitation or other time limitation for a period of 30 days from the date the written notice is actually given. The notice shall not be required if the insurer has received notice that the insured is represented by an attorney.

(*l*) As used in subdivision (b), "public or livery conveyance," or terms of similar import, shall not include the operation or use of a motor vehicle by the named insured in the performance of volunteer services for a nonprofit charitable organization or governmental agency by providing social service transportation as defined in subdivision (f) of Section 11580.1. This subdivision shall apply only to policies of insurance issued, amended, or renewed on or after January 1, 1976.

(m) Coverage provided under an uninsured motorist endorsement or coverage shall be offered with coverage limits equal to the limits of liability for bodily injury in the underlying policy of insurance, but shall not be required to be offered with limits in excess of the following amounts:

(1) A limit of thirty thousand dollars ($30,000) because of bodily injury to or death of one person in any one accident.

(2) Subject to the limit for one person set forth in paragraph (1), a limit of sixty thousand dollars ($60,000) because of bodily injury to or death of two or more persons in any one accident.

(n) Underinsured motorist coverage shall be offered with limits equal to the limits of liability for the insured's uninsured motorist limits in the underlying policy, and may be offered with limits in excess of such uninsured motorist coverage. For the purposes of this section, uninsured and underinsured motorist coverage shall be offered as a single coverage. However, an insurer may offer coverage for damages for bodily injury or wrongful death from the owner or operator of an underinsured motor vehicle at greater limits than an uninsured motor vehicle.

(o) If an insured has failed to provide an insurer with wage loss information or medical treatment record releases within 15 days of the insurer's request or has failed to submit to a medical examination arranged by the insurer within 20 days of the insurer's request, the insurer may, at any time prior to 30 days before the actual arbitration proceedings commence, request, and the insured shall furnish, wage loss information or medical treatment record releases, and the insurer may require the insured, except during periods of hospitalization, to make himself or herself available for a medical examination. The wage loss information or medical treatment record releases shall be submitted by the insured within 10 days of request

and the medical examination shall be arranged by the insurer no sooner than 10 days after request, unless the insured agrees to an earlier examination date, and not later than 20 days after the request. If the insured fails to comply with the requirements of this subdivision, the actual arbitration proceedings shall be stayed for at least 30 days following compliance by the insured. The proceedings shall be scheduled as soon as practicable following expiration of the 30-day period.

(p) This subdivision applies only when bodily injury, as defined in subdivision (b), is caused by an underinsured motor vehicle. If the provisions of this subdivision conflict with subdivisions (a) through (o), the provisions of this subdivision shall prevail.

(1) As used in this subdivision, "an insured motor vehicle" is one that is insured under a motor vehicle liability policy, or automobile liability insurance policy, self-insured, or for which a cash deposit or bond has been posted to satisfy a financial responsibility law.

(2) "Underinsured motor vehicle" means a motor vehicle that is an insured motor vehicle but insured for an amount that is less than the uninsured motorist limits carried on the motor vehicle of the injured person.

(3) This coverage does not apply to any bodily injury until the limits of bodily injury liability policies applicable to all insured motor vehicles causing the injury have been exhausted by payment of judgments or settlements, and proof of such is submitted to the insurer providing the underinsured motorist coverage.

(4) When bodily injury is caused by one or more motor vehicles, whether insured, underinsured, or uninsured, the maximum liability of the insurer providing the underinsured motorist coverage shall not exceed the insured's underinsured motorist coverage limits, less the amount paid to the insured by or for any person or organization that may be held legally liable for the injury.

(5) The insurer paying a claim under this subdivision shall, to the extent of such payment, be entitled to reimbursement or credit in the amount received by the insured from the owner or operator of the underinsured motor vehicle or the insurer of such owner or operator.

(6) If the insured brings an action against the owner or operator of an underinsured motor vehicle, he or she shall forthwith give to the insurer providing the underinsured motorist coverage a copy of the complaint by personal service or certified mail. All pleadings and depositions shall be made available for copying or copies furnished the insurer, at the insurer's expense, within a reasonable time.

(7) Underinsured motorist coverage shall be included in all policies of bodily injury liability insurance providing uninsured motorist coverage issued or renewed on or after July 1, 1985. Notwithstanding this section, an agreement to delete uninsured motorist coverage completely, or with respect to a person or persons designated by name, executed prior to July 1, 1985, shall remain in full force and effect.

(q) Regardless of the number of vehicles involved whether insured or not, persons covered, claims made, premiums paid or the number of premiums shown on the policy, in no event shall the limit of liability for two or more motor vehicles or two or more policies be added together, combined, or stacked to determine the limit of insurance coverage available to injured persons.

SEC. 2. Section 11580.23 is added to the Insurance Code, to read:

11580.23. (a) If a suit for bodily injury has been filed against an uninsured motorist in a court of competent jurisdiction, notice in writing of the suit shall be provided the insurer of the insured plaintiff within a reasonable time after the insured knew or should have known of the uninsured status of the motorist, but in no event shall that notice be required before one year from the date of the accrual of the cause of action on which the claim is based. Failure of the insured or his or her representative to give notice shall not be a basis for denial of the uninsured motorist benefits in the absence of proof of prejudice by the insurer.

(b) The Legislature hereby finds that this section is declarative of existing law. It is the intent of the Legislature to abrogate the holdings in cases such as State Farm Mutual Auto. Ins. Co. v. Patton, 194 Cal. App. 3d 626, to the extent that they are inconsistent with this section. Those decisons are abrogated and shall not apply to any matters not final.

SEC. 3. Section 11580.26 of the Insurance Code is amended to read:

11580.26. (a) Except where a named insured has agreed pursuant to Section 11580.2 to delete the coverages provided by that section, no policy of bodily injury liability insurance covering liability arising out of the ownership, maintenance, or use of any motor vehicle, except where the policy provides insurance in the Republic of Mexico issued or delivered in this state by nonadmitted Mexican insurers, and except a policy insuring a commercial vehicle as defined in Section 260 of the Vehicle Code, shall be issued or delivered in this state to the owner or operator of a motor vehicle, or shall be issued or delivered by any insurer licensed in this state upon any motor vehicle then principally used or principally garaged in this state, unless a named insured has been offered the following coverage:

(1) Where the policy of motor vehicle liability insurance includes collision coverage as defined in subdivision (d) of Section 660, coverage which provides that the deductible amount, if any, to be paid by the named insured under the collision coverage shall be payable by the insurer in the event of collision involving a vehicle owned by the named insured and insured under the policy, and an uninsured motor vehicle.

(2) Where the policy of motor vehicle liability insurance does not include collision coverage as defined in subdivision (d) of Section 660, coverage for property damage to the insured motor vehicle, but not including personal property contained therein, caused by the

owner or operator of an uninsured motor vehicle. As used in this subdivision, "property damage" means payment for loss or damage to the insured motor vehicle resulting from collision, not to exceed its actual cash value or three thousand five hundred dollars ($3,500), whichever is less, for which loss or damage the insured is legally entitled to recover from the owner or operator of an uninsured motor vehicle. Property damage does not include compensation for loss of use of the motor vehicle. As used in this subdivision, the term "insured motor vehicle" means the motor vehicle described in the underlying insurance policy of which the uninsured motorist property damage coverage or endorsement applies.

(b) Every payment by an insurer under either coverage provided in paragraphs (1) and (2) of subdivision (a) shall be payable under the terms and conditions set forth in the policy, and shall be made only where the collision involves actual, direct physical contact between the insured and the uninsured motor vehicle and the owner or operator of the uninsured motor vehicle is identified or the uninsured motor vehicle is identified by its license number, provided that the insured or someone on his or her behalf shall have reported the accident within 10 business days to his or her insurer or their agent and, provided further, that it is also determined by the insured and insurer or, in the event of disagreement, by arbitration conducted by a single neutral arbitrator, when the insured has formally instituted arbitration proceedings within one year from the date of the accident, that the insured is legally entitled to recover the amount of the payments for property damage from the owner or operator of the uninsured motor vehicle. No cause of action shall exist against either an insured or insurer from exercising the right to request arbitration of a claim under this section or Section 11580.2.

(c) Any named insured, prior to or subsequent to the issuance or renewal of a policy, may elect not to accept the type of coverage provided by this section or the insurer and any named insured may agree in writing to waive this coverage when a motor vehicle is used or operated by a person or persons designated by name. That election shall be binding upon every insured to whom the policy or endorsement provisions apply while the policy is in force and shall continue to be so binding, with respect to any continuation or renewal of the policy, or with respect to any other policy which extends, changes, supersedes, or replaces the policy issued to the named insured by the same insurer or with respect to reinstatement of the policy within 30 days of any lapse thereof. A policy shall be excluded from the application of this section if the only coverage, with respect to the use of any motor vehicle, is limited to the contingent liability arising out of the use of nonowned motor vehicles or if the automobile liability coverage is provided only on an excess or umbrella basis.

(d) An insurer paying a claim under any coverage required by this section shall be entitled to be subrogated to the rights of the insured to whom the claim was paid against any person legally liable for the

damage to the insured motor vehicle to the extent that payment was made. The action may be brought within three years from the date that payment was made pursuant to this section.

In the event of a covered loss to a vehicle that is insured for the coverage described in paragraph (2) of subdivision (a) and also insured for collision coverage, the collision coverage shall pay for the covered loss and the insurance described in paragraph (2) of subdivision (a) shall only pay any deductible not covered by the collision coverage not to exceed three thousand five hundred dollars ($3,500).

(e) As used in this section, "uninsured motor vehicle" means any motor vehicle with respect to the ownership, maintenance, or use of which there is no property damage liability insurance or bond applicable at the time of the accident, or there is applicable insurance or bond but the company writing the insurance or bond denies coverage thereunder or refuses to admit coverage thereunder, except conditionally or with reservation, or a motor vehicle used without the permission of the owner thereof if there is no property damage liability insurance or bond applicable at the time of the accident with respect to the owner or operator thereof. A motor vehicle which has at least the minimum property damage liability limits required pursuant to Section 16056 of the Vehicle Code shall not be held to be an uninsured motor vehicle even when the property damage liability limits are not sufficient to compensate for all property damage caused by the owner or operator of the vehicle. As used in this section, "uninsured motor vehicle" shall not include a motor vehicle owned or operated by any insured or any resident of the named insured's household or self-insured within the meaning of the financial responsibility provisions of the state in which the motor vehicle is registered or which is owned by the United States of America, Canada, a state or political subdivision of any government, or an agency of any of the foregoing, or a land motor vehicle or trailer operated on rails or crawler treads or while located for use as a residence for premises and not as a vehicle, or a farm-type tractor or equipment designed for use principally off public roads, except while actually upon public roads. As used in this section, "uninsured motor vehicle" also means an insured motor vehicle where the liability insurer thereof is unable to make payment with respect to the legal liability of its insured within the limits specified therein because of insolvency. An insurer's solvency protection shall be applicable only to accidents occurring during a policy period in which its insured's motor vehicle coverage is in effect where the liability insurer of the tortfeasor becomes insolvent within one year of the accident. In the event of payment to any person under the coverage required by this section and subject to the terms and conditions of the coverage, the insurer making the payment shall, to the extent thereof, be entitled to any proceeds which may be recoverable from the assets of the insolvent insurer through any settlement or judgment of the person against the

insolvent insurer.

(f) The offer of coverage required by this section shall be made only for policies issued or renewed on or after July 1, 1984.

(g) Any insurer whose insured has made a claim under either coverage provided in paragraphs (1) and (2) of subdivision (a), and that claim is pending, shall, at least 30 days before the expiration of the applicable statute of limitation, notify its insured in writing of the statute of limitation applicable to the property damage. Failure of the insurer to provide the written notice shall operate to toll any applicable statute of limitation until 30 days after the date the written notice is actually given. The notice shall not be required if the insurer has received notice that the insured is represented by an attorney.

SEC. 4. Section 17203 of the Vehicle Code is repealed.

SEC. 5. Section 1 of this act shall become operative on April 1, 1989.

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## CHAPTER 1472

An act to add Sections 6517.6 and 14015 to the Government Code, relating to state offices, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 27, 1988. Filed with Secretary of State September 28, 1988.]

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

SECTION 1. The Legislature hereby finds that it is in the best interest of the people of California to consolidate in one location all of the Department of Transportation offices which are now housed in various locations of the San Francisco Bay area at the earliest possible opportunity. The Legislature hereby finds and declares that it is in the best interest of the people of California to authorize the consolidation of offices in the San Francisco Bay area in that this consolidation affords the greatest economic benefit to the department and the state.

SEC. 2. Section 6517.6 is added to the Government Code, to read:

6517.6. (a) (1) Notwithstanding any provision of this chapter, the Department of General Services may enter into a joint powers agreement with any other public agency to finance the acquisition of real property authorized by Section 14015 and all costs incidental or related thereto. The joint powers agency or entity shall have the power to acquire office and parking facilities and to issue certificates of participation as determined by the Treasurer in accordance with Section 14015.

(2) Upon the request of the department, the Treasurer is hereby further authorized to serve as treasurer of the joint powers agency established pursuant to this section and to serve as trustee or fiscal

agent for the certificates of participation.

(3) The department may lease property from, and enter into an agreement with, the joint powers agency or entity created pursuant to subdivision (a) to purchase real property and improvements thereon on behalf of the state for terms not exceeding 25 years.

(4) The department shall provide the Legislature with a 30-day notification of intent to advertise for proposals pursuant to this section. The department shall further provide the Legislature and the California Transportation Commission with notification of intent to acquire the real property 30 days prior to the acquisition.

(b) Following the acquisition and occupation of the real property being acquired, the Department of Transportation shall sell or cause to be sold the exisiting office building located at 150 Oak Street in the City and County of San Francisco. The proceeds of the sale shall be deposited in the State Highway Account in the State Transportation Fund to be used to reduce the amount to finance the acquired facility.

SEC. 3. Section 14015 is added to the Government Code, to read:

14015. (a) The Director of General Services, as agent for the Department of Transportation, may enter into an agreement to purchase, lease-purchase, or lease with an option to purchase real property in the San Francisco Bay area for the purpose of financing, refinancing, and acquiring office and parking facilities, and any other improvements, betterments, and facilities related thereto in order to allow full occupancy by August 30, 1991. The total purchase price, excluding financing costs, shall not exceed one hundred million dollars ($100,000,000) plus all costs of financing, including, but not limited to, interest during acquisition or construction of these facilities, interest payable on any interim loan from the Pooled Money Investment Account pursuant to Section 16301 or 16313, a reasonably required reserve fund, and the costs of issuance of interim financing or permanent financing after completion of the construction or acquisition of these facilities. In selecting a site or sites for office space and parking facilities, the department shall give consideration to sites located in the East Bay region, including the City of Oakland. Criteria used in the evaluation of prospective sites shall include an economic evaluation of locating in a new or existing state office building in the East Bay region.

(b) The total cost of financing the net cost of acquiring the building and facilities described in subdivision (a), including the costs of modifications and operation, shall not exceed the total avoided costs of leasing and occupying those buildings and facilities currently occupied by the Department of Transportation which will no longer be occupied once the building and facilities described in subdivision (a) are occupied. "Net cost" means the cost of acquiring the building and facilities described in subdivision (a), including financing costs, less the amount realized from the disposition of the existing office building. "Avoided costs" mean those costs the Department of Transportation would have incurred if it continued

to occupy the buildings and facilities which would no longer be occupied as a result of the acquistion of the building and facilities described in subdivision (a). In order to ensure that the requirements of this subdivision are met, the Department of Transportation shall provide the Joint Legislative Budget Committee with a report concerning the cost-effectiveness required by this section at least 30 days prior to entering into any purchase agreement.

(c) Pursuant to Section 5702, the Treasurer is hereby authorized to sell certificates of participation, lease revenue bonds, or any other approved form of obligations in connection with the financing, refinancing, and acquisition described in subdivision (a).

(d) The Department of Transportation shall take all necessary actions to ensure that its annual budget includes all payments which may be necessary to satisfy the obligation for the office facilities purchased pursuant to subdivision (a).

(e) Following the acquisition and occupation of the building and facilities described in subdivision (a), the Department of Transportation shall sell the office building at 150 Oak Street in San Francisco. The net proceeds of that sale shall be applied toward any obligations undertaken by the Director of General Services pursuant to subdivision (a).

(f) If the new offices of the Department of Transportation are to be located in a new state office building, the Director of General Services may sell the existing state office building located at 1111 Jackson Street in the City of Oakland and the Department of General Services shall commence preliminary planning for the construction of the new state office building in the East Bay region.

(g) Notwithstanding subdivision (a), the office and parking facilities acquired by the Department of General Services pursuant to subdivision (a) shall be and remain under the jurisdiction and control of, and shall be operated and maintained by, the Department of Transportation. Construction or acquisition of any office and parking facilities utilizing the financing methods authorized by subdivision (a) shall be done by the Department of General Services as agent of the Department of Transportation. The Department of General Services, in consultation with the Department of Transportation, may contract with a construction manager and others for construction and other services related to the construction of the office and parking facilities financed pursuant to subdivision (a).

SEC. 4. (a) A sum not to exceed ten million dollars ($10,000,000) is hereby appropriated from the State Highway Account in the State Transportation Fund to the Department of Transportation to pay all obligations it incurred during the first fiscal year pursuant to subdivision (a) of Section 14015 of the Government Code.

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 for the financing and refinancing of state office and parking facilities to commence as soon as possible, it is necessary that this act take effect immediately.

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## CHAPTER 1473

An act to add Section 10127.8 to the Insurance Code, relating to insurance.

[Approved by Governor September 27, 1988. Filed with Secretary of State September 28, 1988.]

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

SECTION 1. Section 10127.8 is added to the Insurance Code, to read:

10127.8. (a) The purpose of this section is to assure truthful and adequate disclosure of all material and relevant information in the advertising of term life insurance which the commissioner, on the basis of an assessment of the total advertisement, determines is directed to individuals 55 years of age or older.

(b) Advertisements for term life insurance directed to individuals 55 years of age or older shall:

(1) Clearly and prominently distinguish basic life insurance benefits from suppplemental benefits such as accidental death benefits.

(2) Prominently disclose any limitations, exceptions, or reductions affecting each benefit.

(3) Prominently disclose any condition affecting the policy or certificate holder's continued insurability. If term coverage terminates at a stated age, or at the end of any designated period, that fact and the specified age or designated period shall be disclosed.

(4) Prominently disclose any change in benefits resulting from the aging of the insured, policy duration, or any other factor.

(5) Prominently disclose any change in premium resulting from the aging of the insured, policy duration, or any other factor. If the insurer retains any right to modify premiums in the future, that fact shall be disclosed.

(c) If the benefits of the advertised policy or certificate decrease with the insured's age or with policy or certificate duration, while the premium remains approximately constant, that fact shall, in a print or broadcast advertisement, be disclosed, in the same form and with prominence or visible duration, or both, equal to that given any positive description of benefits or the telephone number or address provided for further information or application, whichever is the most prominent.

(d) A television or radio advertisement for term life insurance

directed to individuals 55 years of age or older shall in the spoken text contain the statement "policy (or certificate) benefits and limitations should be carefully examined prior to purchase."

(e) The commissioner may, by regulation, adopt a term life insurance monetary value index, similar to the Life Insurance Surrender Cost Index of Article 12.5 (commencing with Section 2545) of Subchapter 2 of Chapter 5 of Title 10 of the California Code of Regulations, to be disclosed in all advertisements of term life insurance for individuals 55 years of age or older, and on all policies and certificates of that insurance. In developing a term life insurance monetary value index, the commissioner shall consider actual premiums and policy and certificate benefits and the manner in which they are affected with the passage of time. Any term life insurance monetary value index developed pursuant to this section shall assume an insured's desire to retain coverage for at least 10 years.

(f) This section does not supersede or repeal any regulation of the commissioner which governs life insurance advertising and such regulation shall continue to be in force in addition to this section.

(g) The commissioner shall adopt regulations that are necessary to carry out this section.

(h) This section applies to the advertisement of individual policies of insurance and any group policies or certificates delivered or issued for delivery in this state, regardless of the situs of the contract.

(i) In addition to any other penalty provided by law or the availability of any administrative procedure, if an insurer, after notice and hearing, is found to have violated this section, or regulations adopted pursuant to this section, or knowingly permits any person to do so, the commissioner, in accordance with the procedures provided in Section 704, may suspend the insurer's certificate of authority to transact life insurance. Section 704.7 shall apply in any proceeding conducted pursuant to this section.

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## CHAPTER 1474

An act to amend Section 39363 of the Education Code, relating to school districts.

[Approved by Governor September 27, 1988 Filed with Secretary of State September 28, 1988.]

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

SECTION 1. Section 39363 of the Education Code is amended to read:

39363. The funds derived from the sale of surplus property shall be used for capital outlay or for costs of maintenance of school district property that the governing board of the school district determines

will not recur within a five-year period. Proceeds from a lease of school district property with an option to purchase may be deposited into a restricted fund for the routine repair of district facilities, as defined by the State Allocation Board, for up to a five-year period. In addition, the proceeds may be deposited in the general fund of the district for any general fund purpose if the school district governing board and the State Allocation Board have determined that the district has no anticipated need for additional sites or building construction for the five-year period following such sale or lease, and the district has no major deferred maintenance requirements. A school district that sold or leased real property pursuant to Section 39360 and that deposited the interest earned on those proceeds in the general fund of the school district in the 1986–87 or the 1987–88 fiscal years, may continue to deposit the interest into the general fund for operating expenses through June 30, 1991. In the 1991–92 fiscal year, and each fiscal year thereafter for 5 fiscal years, the school district shall reduce the deposit of interest by twenty percent (20%) and shall use the reduction in interest for capital outlay or for costs of deferred maintenance of school district property. The State Allocation Board may grant a school district permission to change the 5-year and twenty percent (20%) requirement to 10 years and 10 percent (10%), if the State Allocation Board determines that the individual circumstances of the district warrants the change.

The proceeds may also be deposited into a special reserve fund for capital outlay, for costs of maintenance of school district property that the governing board determines will not recur within a five-year period, or for the future maintenance and renovation of schoolsites if the district governing board and the State Allocation Board have determined that the district has no anticipated need for schoolsites or building construction or major deferred maintenance projects for a five-year period following the sale or lease. Proceeds deposited in the special reserve fund shall not be available for general operating expenses as provided in Section 42842.

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## CHAPTER 1475

An act to add and repeal Section 3003 to the Health and Safety Code, relating to arrested persons.

[Approved by Governor September 27, 1988. Filed with Secretary of State September 28, 1988.]

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

SECTION 1. Section 3003 is added to the Health and Safety Code, to read:

3003. (a) The State Department of Health Services shall conduct a study regarding various methods which should be used to protect

persons employed in occupations, including law enforcement personnel, health care professionals, fire service personnel, and emergency medical services personnel, which involve a possible exposure and transmission of the human immunodeficiency virus (HIV) or of antibodies to HIV, from the exposure to, and transmission of, HIV or HIV antibodies. The department shall report to the Legislature by January 1, 1990, regarding the results of the study.

(b) This section shall remain in effect only until January 1, 1990, and as of that date is repealed, unless a later enacted statute enacted prior to that date deletes or extends that date.

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## CHAPTER 1476

An act to add Section 66758 to the Government Code, relating to solid waste.

[Approved by Governor September 27, 1988. Filed with Secretary of State September 28, 1988.]

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

SECTION 1. Section 66758 is added to the Government Code, to read:

66758. (a) Notwithstanding any other provision of law, a regional board shall not issue a waste discharge permit for a new landfill, or a lateral expansion of an existing landfill, which is used for the disposal of nonhazardous solid waste if the land has been primarily used at any time for the mining or excavation of gravel or sand.

(b) A regional board, in a public meeting, may grant a variance from subdivision (a) if the applicant demonstrates and the regional board determines that the discharges to a new facility or expansion of an existing facility during its operation and postclosure period will not pollute or threaten to pollute the waters of the state. In deciding whether to grant a variance, the regional board shall consider, among other factors, site characteristics, including permeability and transmissivity of the underlying soils and depth to groundwater. For the purpose of this section, "groundwater" means the uppermost aquifer useable for beneficial purposes.

(c) Nothing in this section precludes any local jurisdiction from exercising any power which it has pursuant to any other provision of law.

(d) For the purposes of this section, "lateral expansion" means a new or expanded waste management unit which is not authorized on January 1, 1989, under existing waste discharge requirements issued pursuant to Division 7 (commencing with Section 13000) of the Water Code and an existing solid waste facility permit issued pursuant to Title 7.3 (commencing with Section 66700) of the

Government Code.

(e) The regional board may hold a single hearing for purposes of granting a variance pursuant to subdivision (b) and establishing waste discharge requirements.

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## CHAPTER 1477

An act to amend Sections 8261 and 8266 of the Government Code, relating to the Commission on Uniform State Laws.

[Approved by Governor September 27, 1988. Filed with Secretary of State September 28, 1988.]

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

SECTION 1. Section 8261 of the Government Code is amended to read:

8261. The commission consists of one Member of the Senate, appointed by the Committee on Rules, one Member of the Assembly, appointed by the Speaker, six additional members, appointed by the Governor, the Legislative Counsel, any person, not otherwise a member of the commission, elected as a life member of the National Conference of Commissioners on Uniform State Laws based upon service as a member of the commission, and any person, not otherwise a member of the commission, who served as a member of the commission, other than as an appointee of the Governor, for a period of at least eight years.

The Members of the Legislature appointed to the commission shall serve at the pleasure of the appointing power and shall participate in the activities of the commission to the extent that the participation is not incompatible with their respective positions as Members of the Legislature. For the purposes of this article, the Members of the Legislature shall constitute a joint interim investigating committee on the subject of this article and shall have the powers and duties imposed upon those committees by the Joint Rules of the Senate and Assembly.

SEC. 2. Section 8266 of the Government Code is amended to read:

8266. No member of the commission shall receive any compensation for his or her services as a commissioner, but shall receive one hundred dollars ($100) for each day while on official business of the commission. In addition, each member shall also be entitled to receive actual expenses incurred in the discharge of his or her duties, including actual and necessary travel expenses.

## CHAPTER 1478

An act to amend Sections 443.21, 1250, 1250.1, 1265.7, 1266, 1267.9, 1270, 1326, and 1418 of, and to add Sections 1267.12, 1267.13, 1267.15, 1267.16, 1267.17, and 1267.19 to, the Health and Safety Code, relating to health facilities, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 27, 1988. Filed with Secretary of State September 28, 1988.]

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

SECTION 1. The Legislature finds and declares that "congregate living health facilities" are needed to allow persons to receive appropriate inpatient care in the least restrictive environment. Being able to remain in a small facility in a residential neighborhood is not only progressive and humane, but cost-effective as well.

The Legislature further finds and declares, however, that certain provisions of law regarding congregate living facilities prevent a number of these facilities from becoming licensed. If a facility is not licensed, the residents do not have the same protection and may not be eligible for reimbursement for certain essential services provided them.

It is the intent of the Legislature to allow more facilities to qualify as "congregate living health facilities" in order that more people may have access to this type of care. It is further the intent of the Legislature that any modifications in the definition not substantially alter the category as the original sponsors envisioned.

Increasing the number of beds allowed from not more than six to not more than 15 will permit more facilities to qualify as "congregate living health facilities" without altering the quality of care or the character of the environment intended in the original statutes.

SEC. 2. Section 443.21 of the Health and Safety Code is amended to read:

443.21. As used in this part, the following terms mean:

(a) "Commission" means the California Health Policy and Data Advisory Commission.

(b) "Health facility" or "health facilities" means all health facilities required to be licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2.

(c) "Hospital" means all health facilities except skilled nursing, intermediate care, and congregate living health facilities.

(d) "Office" means the Office of Statewide Health Planning and Development.

SEC. 2.5. Section 443.21 of the Health and Safety Code, as amended by Section 2 of this act, is amended to read:

443.21. As used in this part, the following terms mean:

(a) "Commission" means the California Health Policy and Data

Advisory Commission.

(b) "Health facility" or "health facilities" means all health facilities required to be licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2.

(c) "Hospital" means all health facilities except skilled nursing, intermediate care, AIDS hospice, AIDS residential intermediate care, and congregate living health facilities.

(d) "Office" means the Office of Statewide Health Planning and Development.

SEC. 3. Section 1250 of the Health and Safety Code is amended to read:

1250. As used in this chapter, "health facility" means any facility, place, or building which is organized, maintained, and operated for the diagnosis, care, prevention, and treatment of human illness, physical or mental, including convalescence and rehabilitation and including care during and after pregnancy, or for any one or more of these purposes, for one or more persons, to which the persons are admitted for a 24-hour stay or longer, and includes the following types:

(a) "General acute care hospital" means a health facility having a duly constituted governing body with overall administrative and professional responsibility and an organized medical staff which provides 24-hour inpatient care, including the following basic services: medical, nursing, surgical, anesthesia, laboratory, radiology, pharmacy, and dietary services. A general acute care hospital may include more than one physical plant maintained and operated on separate premises as provided in Section 1250.8. A general acute care hospital which exclusively provides acute medical rehabilitation center services, including at least physical therapy, occupational therapy, and speech therapy, may provide for the required surgical and anesthesia services through a contract with another acute care hospital. In addition, a general acute care hospital which, on July 1, 1983, provided required surgical and anesthesia services through a contract or agreement with another acute care hospital may continue to provide these surgical and anesthesia services through a contract or agreement with an acute care hospital.

(b) "Acute psychiatric hospital" means a health facility having a duly constituted governing body with overall administrative and professional responsibility and an organized medical staff which provides 24-hour inpatient care for mentally disordered, incompetent, or other patients referred to in Division 5 (commencing with Section 5000) or Division 6 (commencing with Section 6000) of the Welfare and Institutions Code, including the following basic services: medical, nursing, rehabilitative, pharmacy, and dietary services.

(c) "Skilled nursing facility" means a health facility which provides skilled nursing care and supportive care to patients whose primary need is for availability of skilled nursing care on an extended basis.

(d) "Intermediate care facility" means a health facility which provides inpatient care to ambulatory or nonambulatory patients who have recurring need for skilled nursing supervision and need supportive care, but who do not require availability of continuous skilled nursing care.

(e) "Intermediate care facility/developmentally disabled habilitative" means a facility with a capacity of four to 15 beds which provides 24-hour personal care, habilitation, developmental, and supportive health services to 15 or fewer developmentally disabled persons who have intermittent recurring needs for nursing services, but have been certified by a physician as not requiring availability of continuous skilled nursing care.

(f) "Special hospital" means a health facility having a duly constituted governing body with overall administrative and professional responsibility and an organized medical or dental staff which provides inpatient or outpatient care in dentistry or maternity.

(g) "Intermediate care facility/developmentally disabled" means a facility which provides 24-hour personal care, habilitation, developmental, and supportive health services to developmentally disabled clients whose primary need is for developmental services and who have a recurring but intermittent need for skilled nursing services.

(h) "Intermediate care facility/developmentally disabled—nursing" means a facility with a capacity of four to 15 beds which provides 24-hour personal care, developmental services, and nursing supervision for developmentally disabled persons who have intermittent recurring needs for skilled nursing care but have been certified by a physician and surgeon as not requiring continuous skilled nursing care. The facility shall serve medically fragile persons who have developmental disabilities or demonstrate significant developmental delay that may lead to a developmental disability if not treated.

(i) (1) "Congregate living health facility" means a residential home with a capacity of no more than six beds, which provides inpatient care, including the following basic services: medical supervision, 24-hour skilled nursing and supportive care, pharmacy, dietary, social recreational, and at least one supplemental service as defined in this section. The primary need of these residents is for availability of skilled nursing care on a recurring, intermittent, extended, or continuous basis. This care is generally less intense than that provided in general acute care hospitals but more intense than that provided in skilled nursing facilities. A congregate living health facility serving persons who are terminally ill, which is located in a county with a population of 500,000 or more persons may have a capacity of up to 25 beds.

(2) A facility operated by a city and county which is owned by the government of the United States for the purposes of delivering services under this section may have a capacity of 59 beds.

(3) Congregate living health facilities shall provide one of the following supplemental services:

(A) Services for persons who are mentally alert, physically disabled, who may be ventilator dependent.

(B) Services for persons who have a diagnosis of terminal illness. Terminal illness means the individual has a life expectancy of six months or less as stated in writing by his or her attending physician and surgeon.

(4) A congregate living health facility shall have a noninstitutional, homelike environment.

(k) (1) "Correctional treatment center" means a health facility operated by the Department of Corrections, the Department of the Youth Authority, or a county, city, or city and county law enforcement agency which, as determined by the state department, provides outpatient health services, in addition to inpatient health services, to that portion of the inmate population who do not require a general acute care level of basic services. This definition shall not apply to those areas of a city, county, or city and county law enforcement facility which houses inmates or wards that may be receiving outpatient services and are housed separately for reasons of security and protection. The health services provided by a correctional treatment center shall include, but are not limited to, all of the following basic services: physician and surgeon, psychiatrist, psychologist, nursing, pharmacy, dental, and dietary. A correctional treatment center may provide the following services: laboratory, radiology, perinatal, and any other services approved by the state department.

(2) Outpatient surgical care with anesthesia may be provided, if the correctional treatment center meets the same requirements as a surgical clinic licensed pursuant to Section 1204, with the exception of the requirement that patients remain less than 24 hours.

(3) Correctional treatment centers shall maintain written service agreements with general acute care hospitals to provide for those inmate physical health needs that cannot be met by the correctional treatment center.

Each health care facility in the Department of Corrections and in the Department of the Youth Authority shall have a medical director in charge of the health care services of that facility who shall be a physician and surgeon licensed to practice in California and who shall be appointed by the directors of the departments. The medical director shall direct the medical treatment programs for all health services and services supporting the health services provided in the facility.

No person shall be admitted or accepted for care or discharge by a correctional treatment facility except upon the order of a physician and surgeon. All persons admitted or accepted for care by the correctional treatment facility shall be under the care of a physician and surgeon.

(4) Physician and surgeon services shall be readily available in a

correctional treatment center on a 24-hour basis.

(5) It is not the intent of the Legislature to have a correctional treatment center supplant the facilities at the California Medical Facility, the California Men's Colony, and the California Institution for Men which were in the process of licensure in 1987.

(6) This subdivision shall remain operative only until January 1, 1993.

SEC. 3.1. Section 1250 of the Health and Safety Code is amended to read:

1250. As used in this chapter, "health facility" means any facility, place, or building which is organized, maintained, and operated for the diagnosis, care, prevention, and treatment of human illness, physical or mental, including convalescence and rehabilitation and including care during and after pregnancy, or for any one or more of these purposes, for one or more persons, to which the persons are admitted for a 24-hour stay or longer, and includes the following types:

(a) "General acute care hospital" means a health facility having a duly constituted governing body with overall administrative and professional responsibility and an organized medical staff which provides 24-hour inpatient care, including the following basic services: medical, nursing, surgical, anesthesia, laboratory, radiology, pharmacy, and dietary services. A general acute care hospital may include more than one physical plant maintained and operated on separate premises as provided in Section 1250.8. A general acute care hospital which exclusively provides acute medical rehabilitation center services, including at least physical therapy, occupational therapy, and speech therapy, may provide for the required surgical and anesthesia services through a contract with another acute care hospital. In addition, a general acute care hospital which, on July 1, 1983, provided required surgical and anesthesia services through a contract or agreement with another acute care hospital may continue to provide these surgical and anesthesia services through a contract or agreement with an acute care hospital.

(b) "Acute psychiatric hospital" means a health facility having a duly constituted governing body with overall administrative and professional responsibility and an organized medical staff which provides 24-hour inpatient care for mentally disordered, incompetent, or other patients referred to in Division 5 (commencing with Section 5000) or Division 6 (commencing with Section 6000) of the Welfare and Institutions Code, including the following basic services: medical, nursing, rehabilitative, pharmacy, and dietary services.

(c) "Skilled nursing facility" means a health facility which provides skilled nursing care and supportive care to patients whose primary need is for availability of skilled nursing care on an extended basis.

(d) "Intermediate care facility" means a health facility which provides inpatient care to ambulatory or nonambulatory patients

who have recurring need for skilled nursing supervision and need supportive care, but who do not require availability of continuous skilled nursing care.

(e) "Intermediate care facility/developmentally disabled habilitative" means a facility with a capacity of four to 15 beds which provides 24-hour personal care, habilitation, developmental, and supportive health services to 15 or fewer developmentally disabled persons who have intermittent recurring needs for nursing services, but have been certified by a physician as not requiring availability of continuous skilled nursing care.

(f) "Special hospital" means a health facility having a duly constituted governing body with overall administrative and professional responsibility and an organized medical or dental staff which provides inpatient or outpatient care in dentistry or maternity.

(g) "Intermediate care facility/developmentally disabled" means a facility which provides 24-hour personal care, habilitation, developmental, and supportive health services to developmentally disabled clients whose primary need is for developmental services and who have a recurring but intermittent need for skilled nursing services.

(h) "Intermediate care facility/developmentally disabled—nursing" means a facility with a capacity of four to 15 beds which provides 24-hour personal care, developmental services, and nursing supervision for developmentally disabled persons who have intermittent recurring needs for skilled nursing care but have been certified by a physician as not requiring continuous skilled nursing care. The facility shall serve medically fragile persons who have developmental disabilities or demonstrate significant developmental delay that may lead to a developmental disability if not treated.

(i) (1) "Congregate living health facility" means a residential home with a capacity of no more than six beds, which provides inpatient care, including the following basic services: medical supervision, 24-hour skilled nursing and supportive care, pharmacy, dietary, social recreational, and at least one supplemental service as defined in this section. The primary need of these residents is for availability of skilled nursing care on a recurring, intermittent, extended, or continuous basis. This care is generally less intense than that provided in general acute care hospitals but more intense than that provided in skilled nursing facilities. A congregate living health facility serving persons who are terminally ill, which is located in a county with a population of 500,000 or more persons may have a capacity of up to 25 beds.

(2) A facility operated by a city and county which is owned by the government of the United States for the purposes of deliverng services under this section may have a capacity of 59 beds.

(3) Congregate living health facilities shall provide one of the following supplemental services:

(A) Services for persons who are mentally alert, physically

disabled, who may be ventilator dependent.

(B) Services for persons who have a diagnosis of terminal illness. Terminal illness means the individual has a life expectancy of six months or less as stated in writing by his or her attending physician and surgeon.

(4) A congregate living health facility shall have a noninstitutional, homelike environment.

(j) (1) "Correctional treatment center" means a health facility operated by the Department of Corrections, the Department of the Youth Authority, or a county, city, or city and county law enforcement agency which, as determined by the state department, provides outpatient health services, in addition to inpatient health services, to that portion of the inmate population who do not require a general acute care level of basic services. This definition shall not apply to those areas of a city, county, or city and county law enforcement facility which houses inmates or wards that may be receiving outpatient services and are housed separately for reasons of security and protection. The health services provided by a correctional treatment center shall include, but are not limited to, all of the following basic services: physician and surgeon, psychiatrist, psychologist, nursing, pharmacy, dental, and dietary. A correctional treatment center may provide the following services: laboratory, radiology, perinatal, and any other services approved by the state department.

(2) Outpatient surgical care with anesthesia may be provided, if the correctional treatment center meets the same requirements as a surgical clinic licensed pursuant to Section 1204, with the exception of the requirement that patients remain less than 24 hours.

(3) Correctional treatment centers shall maintain written service agreements with general acute care hospitals to provide for those inmate physical health needs that cannot be met by the correctional treatment center.

Each health care facility in the Department of Corrections and in the Department of the Youth Authority shall have a medical director in charge of the health care services of that facility who shall be a physician and surgeon licensed to practice in California and who shall be appointed by the directors of the departments. The medical director shall direct the medical treatment programs for all health services and services supporting the health services provided in the facility.

No person shall be admitted or accepted for care or discharge by a correctional treatment facility except upon the order of a physician and surgeon. All persons admitted or accepted for care by the correctional treatment facility shall be under the care of a physician and surgeon.

(4) Physician and surgeon services shall be readily available in a correctional treatment center on a 24-hour basis.

(5) It is not the intent of the Legislature to have a correctional treatment center supplant the facilities at the California Medical

Facility, the California Men's Colony, and the California Institution for Men which were in the process of licensure in 1987.

(6) This subdivision shall remain operative only until January 1, 1993.

(k) AIDS hospice facility, as defined in Chapter 9 (commencing with Section 1750). This subdivision shall be inoperative if both Assembly Bill No. 4536 and Assembly Bill No. 3710 are enacted and become effective on or before January 1, 1989.

(*l*) AIDS residential intermediate care facility, as defined in Chapter 9 (commencing with Section 1750).

SEC. 3.2. Section 1250 of the Health and Safety Code is amended to read:

1250. As used in this chapter, "health facility" means any facility, place, or building which is organized, maintained, and operated for the diagnosis, care, prevention, and treatment of human illness, physical or mental, including convalescence and rehabilitation and including care during and after pregnancy, or for any one or more of these purposes, for one or more persons, to which the persons are admitted for a 24-hour stay or longer, and includes the following types:

(a) "General acute care hospital" means a health facility having a duly constituted governing body with overall administrative and professional responsibility and an organized medical staff which provides 24-hour inpatient care, including the following basic services: medical, nursing, surgical, anesthesia, laboratory, radiology, pharmacy, and dietary services. A general acute care hospital may include more than one physical plant maintained and operated on separate premises as provided in Section 1250.8. A general acute care hospital which exclusively provides acute medical rehabilitation center services, including at least physical therapy, occupational therapy, and speech therapy, may provide for the required surgical and anesthesia services through a contract with another acute care hospital. In addition, a general acute care hospital which, on July 1, 1983, provided required surgical and anesthesia services through a contract or agreement with another acute care hospital may continue to provide these surgical and anesthesia services through a contract or agreement with an acute care hospital.

(b) "Acute psychiatric hospital" means a health facility having a duly constituted governing body with overall administrative and professional responsibility and an organized medical staff which provides 24-hour inpatient care for mentally disordered, incompetent, or other patients referred to in Division 5 (commencing with Section 5000) or Division 6 (commencing with Section 6000) of the Welfare and Institutions Code, including the following basic services: medical, nursing, rehabilitative, pharmacy, and dietary services.

(c) "Skilled nursing facility" means a health facility which provides skilled nursing care and supportive care to patients whose primary need is for availability of skilled nursing care on an extended

basis.

(d) "Intermediate care facility" means a health facility which provides inpatient care to ambulatory or nonambulatory patients who have recurring need for skilled nursing supervision and need supportive care, but who do not require availability of continuous skilled nursing care.

(e) "Intermediate care facility/developmentally disabled habilitative" means a facility with a capacity of four to 15 beds which provides 24-hour personal care, habilitation, developmental, and supportive health services to 15 or fewer developmentally disabled persons who have intermittent recurring needs for nursing services, but have been certified by a physician as not requiring availability of continuous skilled nursing care.

(f) "Special hospital" means a health facility having a duly constituted governing body with overall administrative and professional responsibility and an organized medical or dental staff which provides inpatient or outpatient care in dentistry or maternity.

(g) "Intermediate care facility/developmentally disabled" means a facility which provides 24-hour personal care, habilitation, developmental, and supportive health services to developmentally disabled clients whose primary need is for developmental services and who have a recurring but intermittent need for skilled nursing services.

(h) "Intermediate care facility/developmentally disabled—nursing" means a facility with a capacity of four to 15 beds which provides 24-hour personal care, developmental services, and nursing supervision for developmentally disabled persons who have intermittent recurring needs for skilled nursing care but have been certified by a physician as not requiring continuous skilled nursing care. The facility shall serve medically fragile persons who have developmental disabilities or demonstrate significant developmental delay that may lead to a developmental disability if not treated.

(i) (1) "Congregate living health facility" means a residential home with a capacity of no more than six beds, which provides inpatient care, including the following basic services: medical supervision, 24-hour skilled nursing and supportive care, pharmacy, dietary, social recreational, and at least one supplemental service as defined in this section. The primary need of these residents is for availability of skilled nursing care on a recurring, intermittent, extended, or continuous basis. This care is generally less intense than that provided in general acute care hospitals but more intense than that provided in skilled nursing facilities. A congregate living health facility serving persons who are terminally ill, which is located in a county with a population of 500,000 or more persons may have a capacity of up to 25 beds.

(2) A facility operated by a city and county which is owned by the government of the United States for the purposes of delivering services under this section may have a capacity of 59 beds.

(3) Congregate living health facilities shall provide one of the following supplemental services:

(A) Services for persons who are mentally alert, physically disabled, who may be ventilator dependent.

(B) Services for persons who have a diagnosis of terminal illness. Terminal illness means the individual has a life expectancy of six months or less as stated in writing by his or her attending physician and surgeon.

(4) A congregate living health facility shall have a noninstitutional, homelike environment.

(j) (1) "Correctional treatment center" means a health facility operated by the Department of Corrections, the Department of the Youth Authority, or a county, city, or city and county law enforcement agency which, as determined by the state department, provides outpatient health services, in addition to inpatient health services, to that portion of the inmate population who do not require a general acute care level of basic services. This definition shall not apply to those areas of a city, county, or city and county law enforcement facility which houses inmates or wards that may be receiving outpatient services and are housed separately for reasons of security and protection. The health services provided by a correctional treatment center shall include, but are not limited to, all of the following basic services: physician and surgeon, psychiatrist, psychologist, nursing, pharmacy, dental, and dietary. A correctional treatment center may provide the following services: laboratory, radiology, perinatal, and any other services approved by the state department.

(2) Outpatient surgical care with anesthesia may be provided, if the correctional treatment center meets the same requirements as a surgical clinic licensed pursuant to Section 1204, with the exception of the requirement that patients remain less than 24 hours.

(3) Correctional treatment centers shall maintain written service agreements with general acute care hospitals to provide for those inmate physical health needs that cannot be met by the correctional treatment center.

(4) Physician and surgeon services shall be readily available in a correctional treatment center on a 24-hour basis.

(5) It is not the intent of the Legislature to have a correctional treatment center supplant the facilities at the California Medical Facility, the California Men's Colony, and the California Institution for Men which were in the process of licensure in 1987.

(6) This subdivision shall remain operative only until January 1, 1993.

SEC. 3.3. Section 1250 of the Health and Safety Code is amended to read:

1250. As used in this chapter, "health facility" means any facility, place, or building which is organized, maintained, and operated for the diagnosis, care, prevention, and treatment of human illness, physical or mental, including convalescence and rehabilitation and

including care during and after pregnancy, or for any one or more of these purposes, for one or more persons, to which the persons are admitted for a 24-hour stay or longer, and includes the following types:

(a) "General acute care hospital" means a health facility having a duly constituted governing body with overall administrative and professional responsibility and an organized medical staff which provides 24-hour inpatient care, including the following basic services: medical, nursing, surgical, anesthesia, laboratory, radiology, pharmacy, and dietary services. A general acute care hospital may include more than one physical plant maintained and operated on separate premises as provided in Section 1250.8. A general acute care hospital which exclusively provides acute medical rehabilitation center services, including at least physical therapy, occupational therapy, and speech therapy, may provide for the required surgical and anesthesia services through a contract with another acute care hospital. In addition, a general acute care hospital which, on July 1, 1983, provided required surgical and anesthesia services through a contract or agreement with another acute care hospital may continue to provide these surgical and anesthesia services through a contract or agreement with an acute care hospital.

(b) "Acute psychiatric hospital" means a health facility having a duly constituted governing body with overall administrative and professional responsibility and an organized medical staff which provides 24-hour inpatient care for mentally disordered, incompetent, or other patients referred to in Division 5 (commencing with Section 5000) or Division 6 (commencing with Section 6000) of the Welfare and Institutions Code, including the following basic services: medical, nursing, rehabilitative, pharmacy, and dietary services.

(c) "Skilled nursing facility" means a health facility which provides skilled nursing care and supportive care to patients whose primary need is for availability of skilled nursing care on an extended basis.

(d) "Intermediate care facility" means a health facility which provides inpatient care to ambulatory or nonambulatory patients who have recurring need for skilled nursing supervision and need supportive care, but who do not require availability of continuous skilled nursing care.

(e) "Intermediate care facility/developmentally disabled habilitative" means a facility with a capacity of four to 15 beds which provides 24-hour personal care, habilitation, developmental, and supportive health services to 15 or fewer developmentally disabled persons who have intermittent recurring needs for nursing services, but have been certified by a physician as not requiring availability of continuous skilled nursing care.

(f) "Special hospital" means a health facility having a duly constituted governing body with overall administrative and professional responsibility and an organized medical or dental staff

which provides inpatient or outpatient care in dentistry or maternity.

(g) "Intermediate care facility/developmentally disabled" means a facility which provides 24-hour personal care, habilitation, developmental, and supportive health services to developmentally disabled clients whose primary need is for developmental services and who have a recurring but intermittent need for skilled nursing services.

(h) "Intermediate care facility/developmentally disabled—nursing" means a facility with a capacity of four to 15 beds which provides 24-hour personal care, developmental services, and nursing supervision for developmentally disabled persons who have intermittent recurring needs for skilled nursing care but have been certified by a physician as not requiring continuous skilled nursing care. The facility shall serve medically fragile persons who have developmental disabilities or demonstrate significant developmental delay that may lead to a developmental disability if not treated.

(i) (1) "Congregate living health facility" means a residential home with a capacity of no more than six beds, which provides inpatient care, including the following basic services: medical supervision, 24-hour skilled nursing and supportive care, pharmacy, dietary, social recreational, and at least one supplemental service as defined in this section. The primary need of these residents is for availability of skilled nursing care on a recurring, intermittent, extended, or continuous basis. This care is generally less intense than that provided in general acute care hospitals but more intense than that provided in skilled nursing facilities. A congregate living health facility serving persons who are terminally ill, which is located in a county with a population of 500,000 or more persons may have a capacity of up to 25 beds.

(2) A facility operated by a city and county which is owned by the government of the United States for the purposes of deliverng services under this section may have a capacity of 59 beds.

(3) Congregate living health facilities shall provide one of the following supplemental services:

(A) Services for persons who are mentally alert, physically disabled, who may be ventilator dependent.

(B) Services for persons who have a diagnosis of terminal illness. Terminal illness means the individual has a life expectancy of six months or less as stated in writing by his or her attending physician and surgeon.

(4) A congregate living health facility shall have a noninstitutional, homelike environment.

(j) (1) "Correctional treatment center" means a health facility operated by the Department of Corrections, the Department of the Youth Authority, or a county, city, or city and county law enforcement agency which, as determined by the state department, provides outpatient health services, in addition to inpatient health services, to that portion of the inmate population who do not require

a general acute care level of basic services. This definition shall not apply to those areas of a city, county, or city and county law enforcement facility which houses inmates or wards that may be receiving outpatient services and are housed separately for reasons of security and protection. The health services provided by a correctional treatment center shall include, but are not limited to, all of the following basic services: physician and surgeon, psychiatrist, psychologist, nursing, pharmacy, dental, and dietary. A correctional treatment center may provide the following services: laboratory, radiology, perinatal, and any other services approved by the state department.

(2) Outpatient surgical care with anesthesia may be provided, if the correctional treatment center meets the same requirements as a surgical clinic licensed pursuant to Section 1204, with the exception of the requirement that patients remain less than 24 hours.

(3) Correctional treatment centers shall maintain written service agreements with general acute care hospitals to provide for those inmate physical health needs that cannot be met by the correctional treatment center.

(4) Physician and surgeon services shall be readily available in a correctional treatment center on a 24-hour basis.

(5) It is not the intent of the Legislature to have a correctional treatment center supplant the facilities at the California Medical Facility, the California Men's Colony, and the California Institution for Men which were in the process of licensure in 1987.

(6) This subdivision shall remain operative only until January 1, 1993.

(k) AIDS hospice facility, as defined in Chapter 9 (commencing with Section 1750). This subdivision shall be inoperative if both Assembly Bill 4536 and Assembly Bill 3710 are enacted and become effective on or before January 1, 1989.

(*l*) AIDS residential intermediate care facility, as defined in Chapter 9 (commencing with Section 1750).

SEC. 4. Section 1250.1 of the Health and Safety Code is amended to read:

1250.1. The state department shall adopt regulations which define all of the following bed classifications for health facilities:

(a) General acute care.

(b) Skilled nursing.

(c) Intermediate care-developmental disabilities.

(d) Intermediate care-other.

(e) Acute psychiatric.

(f) Specialized care, with respect to special hospitals only.

(g) Chemical dependency recovery.

(h) Intermediate care facility/developmentally disabled habilitative.

(i) Intermediate care facility/developmentally disabled nursing.

(j) Congregate living health facility.

(k) Correctional treatment center. For correctional treatment

centers that provide psychiatric services provided by county mental health agencies in local detention facilities, the State Department of Mental Health shall adopt regulations specifying acute and nonacute levels of 24-hour care. This subdivision shall remain operative only until January 1, 1993.

Except as provided in Section 1253.1, beds classified as intermediate care beds, on September 27, 1978, shall be reclassified by the state department as intermediate care—other. This reclassification shall not constitute a "project" within the meaning of Section 437.10 and shall not be subject to any requirement for a certificate of need under Part 1.5 (commencing with Section 437) of Division 1, and regulations of the state department governing intermediate care prior to such effective date shall continue to be applicable to the intermediate care—other classification unless and until amended or repealed by the state department.

Licensed inpatient beds in a correctional treatment center shall be used only for the purpose of providing health services. This paragraph shall remain operative only until January 1, 1993.

SEC. 5. Section 1265.7 of the Health and Safety Code is amended to read:

1265.7. (a) The state department shall adopt regulations for the licensure of congregate living health facilities. The regulations shall include minimum standards of adequacy, safety, and sanitation of the physical plant and equipment, minimum standards for staffing with duly qualified personnel, and training of the staff, and minimum standards for providing the services offered.

(1) Regulations for facilities approved to provide supplemental services for persons who may be ventilator dependent shall ensure that residents of these facilities are assured appropriate supportive health services in the most normal, least restrictive physical and rehabilitative environment appropriate to individual resident needs.

(2) Regulations for facilities approved to provide supplemental services for persons who are terminally ill shall ensure that residents of these facilities receive appropriate supportive health services in the most normal, least restrictive physical environment appropriate to individual resident needs. These regulations shall be filed with the Secretary of State no later than January 1, 1990.

(b) The state department shall establish an expert advisory committee to assist in the development of the regulations required pursuant to this section. A representative of the department shall act as chairperson of the committee. The members of the expert advisory committee shall serve without compensation, but shall be reimbursed for all necessary expenses actually incurred in the actual performance of their duties. For the purposes of budgeting support for the expert advisory committee, including the expenses of the members of the committee and necessary staff, the committee shall be organizationally located within the state department. To the extent sufficient funds have been appropriated in the Budget Act, the state department may provide staff support to the advisory

committee as the state department may deem is necessary for the conduct of the advisory committee's business. The committee shall meet at the director's pleasure until the time as the proposed regulations are presented for adoption at the public hearing.

(c) Pending adoption of the regulations pursuant to paragraph (2) of subdivision (a), an entity may be licensed as a congregate living health facility serving persons who are terminally ill, by the state department beginning July 1, 1988, if it meets the requirements identified in subdivision (i) of Section 1250 and Section 1267.13.

SEC. 6. Section 1266 of the Health and Safety Code is amended to read:

1266. (a) Each new and renewal application for a license for the health facilities listed below shall be accompanied by an annual fee as set forth below.

The annual fee for a general acute care hospital, acute psychiatric hospital, special hospital, psychiatric health facility, and chemical dependency recovery hospital, based on the number of licensed beds, is as follows:

| | |
|---|---|
| 1–49 beds | $460 plus $8 per bed |
| 50–99 beds | $850 plus $8 per bed |
| 100 or more beds | $1,175 plus $8 per bed |

The annual fee for a skilled nursing facility, intermediate care facility, and intermediate care facility/developmentally disabled, based on the number of licensed beds, is as follows:

| | |
|---|---|
| 1–59 beds | $2,068 plus $26 per bed |
| 60–99 beds | $2,543 plus $26 per bed |
| 100 or more beds | $3,183 plus $26 per bed |

The fees provided in this subdivision shall be adjusted, commencing July 1, 1983, as proposed in the state department's 1983–84 fiscal year Health Facility License Fee Report to the Legislature. Commencing July 1, 1984, fees provided in this subdivision shall be adjusted annually, as directed by the Legislature in the annual Budget Act.

(b) The state department shall submit to the Legislature, on or before January 17 of each year, a report describing program costs within the Licensing and Certification Division, and a methodology for calculating fee levels in an amount sufficient to provide revenues equal to (1) the General Fund expenditures for the fiscal year ending on June 30 of that year, as specified in the proposed Governor's Annual Budget, less license fees which shall be collected in that fiscal year by the Licensing and Certification Program pursuant to sections other than this section, plus (2) the amount of federal funds budgeted for the fiscal year ending June 30 of that year for the Licensing and Certification Program, less federal funds received or credited, or anticipated to be received or credited, during that fiscal year for that purpose. The methodology for calculating the fee levels

shall include an adjustment which takes into consideration the actual amount of license fee revenue collected in the prior fiscal year pursuant to this section, as compared to the amount of license fee revenue estimated to be collected pursuant to this section for that prior fiscal year.

The report shall specifically identify federal funds received, but not previously budgeted, for the Licensing and Certification Program which are used to offset the amount of General Fund dollars to be recovered through license fees. The report shall also identify the purpose of federal funds received for any additional activities under the Licensing and Certification Program which are not used to offset the amount of General Fund dollars.

(c) The annual fees determined pursuant to this section shall be waived for any health facility conducted, maintained, or operated by this state or any state department, authority, bureau, commission, or officer, or by the Regents of the University of California, or by a local hospital district, city, county, or city and county.

(d) The department shall, by July 30 of each year, publish a list of actual numerical fee charges as adjusted pursuant to this section. This adjustment of fees and the publication of the fee list shall not be subject to the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(e) Prior to the establishment of the annual fee, the state department shall prepare a staffing and systems analysis to ensure efficient and effective utilization of fees collected, proper allocation of departmental resources to licensing and certification activities, survey schedules, complaint investigations, enforcement and appeal activities, data collection and dissemination, surveyor training, and policy development.

The analysis under this subdivision shall include all of the following:

(1) The number of surveyors and administrative support personnel devoted to the licensing and certification of health care facilities.

(2) The percentage of time devoted to licensing and certification activities for the various types of health facilities.

(3) The number of facilities receiving full surveys and the frequency and number of followup visits.

(4) The number and timeliness of complaint investigations.

(5) Data on deficiencies and citations issued, and numbers of citation review conferences and arbitration hearings.

(6) Training courses provided for surveyors.

(7) Other applicable activities of the licensing and certification division.

The analysis shall also include recommendations for administrative changes to streamline and prioritize the survey process, complaint investigations, management information systems, word processing capabilities and effectiveness, consumer information system, and

surveyor training.

The annual staffing and systems analysis shall be presented to the Health Care Advisory Committee and the Legislature prior to the establishment and adoption of the annual fee.

(f) The annual fee for a congregate living health facility serving persons who are terminally ill shall initially, and until adjusted by the Legislature in a Budget Act, be based on the number of licensed beds as follows:

| | |
|---|---|
| 1–3 beds | $ 800 |
| 4–6 beds | $1,000 |
| 7–10 beds | $1,200 |
| 11–15 beds | $1,500 |
| 15 or more beds | $1,700 |

Commencing July 1, 1991, fees provided in this subdivision shall be adjusted annually, as directed by the Legislature in the annual budget.

SEC. 7. Section 1267.9 of the Health and Safety Code is amended to read:

1267.9. (a) The Legislature hereby declares it to be the policy of the state to prevent overconcentrations of intermediate care facilities/developmentally disabled habilitative, intermediate care facilities/developmentally disabled—nursing, or congregate living health facilities which impair the integrity of residential neighborhoods. Therefore, the director shall deny an application for a new intermediate care facility/developmentally disabled habilitative license, a new intermediate care facility/developmentally disabled—nursing license, or a congregate living health facility if the director determines that the location is in such proximity to an existing intermediate care facility/developmentally disabled habilitative, an intermediate care facility/developmentally disabled—nursing or a congregate living health facility as would result in overconcentration.

(b) As used in this section, "overconcentration" means that if a new license is issued, either of the following will occur:

(1) There will be intermediate care facilities/developmentally disabled habilitative, intermediate care facilities/developmentally disabled—nursing, or residential care facilities, as defined in Section 1502, which are separated by a distance of less than 300 feet, as measured from any point upon the outside walls of the structures housing the facilities.

(2) There will be congregate living health facilities serving persons who are terminally ill, as defined in Section 1250, which are separated by a distance of less than 1,000 feet, as measured from any point upon the outside walls of the structures housing the facilities. Based on special local needs and conditions, the director may approve a separation distance of less than 300 feet or 1,000 feet, whichever is applicable, with the approval of the city or county in

which the proposed facility will be located.

(c) At least 45 days prior to approving any application for a new intermediate care facility/developmentally disabled habilitative, a new intermediate care facility/developmentally disabled—nursing, or a congregate living health facility the director shall notify, in writing, the city or county planning authority in which the facility will be located, of the proposed location of the facility.

(d) Any city or county may request denial of the license applied for on the basis of overconcentration of intermediate care facilities/developmentally disabled habilitative, intermediate care facilities/developmentally disabled—nursing, or a congregate living health facility.

(e) Nothing in this section authorizes the director, on the basis of overconcentration, to refuse to renew an intermediate care facility/developmentally disabled habilitative license, an intermediate care facility/developmentally disabled—nursing license, or a congregate living health facility or to refuse to grant a license upon a change of ownership of an existing intermediate care facility/developmentally disabled habilitative, intermediate care facility/developmentally disabled—nursing, or a congregate living health facility where there is no change in the location of the facility.

(f) Foster family homes and residential care facilities for the elderly shall not be considered in determining overconcentration of intermediate care facilities/developmentally disabled-habilitative, intermediate care facilities/developmentally disabled-nursing, residential care facilities, as defined in Section 1502, or a congregate living health facility.

SEC. 8. Section 1267.12 is added to the Health and Safety Code, to read:

1267.12. No person shall be admitted, or accepted for care, or discharged, by a congregate living health facility except upon the order of a physician and surgeon. Admission criteria shall be subject to review and approval by the state department. All persons admitted or accepted for care by the congregate living health facility shall remain under the care of a physician and surgeon who shall see the resident at least every 30 calendar days or more frequently if required by the resident's medical condition.

SEC. 9. Section 1267.13 is added to the Health and Safety Code, to read:

1267.13. Pursuant to paragraph (2) of subdivision (a) and subdivision (b) of Section 1265.7, this section shall be effective until the adoption of permanent regulations. Notwithstanding, the state department has authority to make reasonable accommodation for exceptions to the standards in this section, providing the health, safety, and quality of patient care is not compromised. No exceptions shall be made for building standards. Prior written approval communicating the terms and conditions under which the exception is granted shall be required. Applicants shall request the exception in writing accompanied by detailed, supporting documentation.

Congregate living health facilities serving persons who are terminally ill shall conform to the following:

(a) Facilities shall obtain and maintain a valid fire clearance from the State Fire Marshal.

(b) Facilities shall be in a homelike residential setting. Living accommodations and grounds shall be related to the facility's function and clientele. Facilities shall provide sufficient space for comfortable living accommodations and privacy for residents, staff, and others who may reside in the facility.

(c) Common rooms, such as living rooms, dining rooms, and dens or other recreation or activity rooms, shall be provided and shall have sufficient space or separation or both to promote and facilitate the program of activities and to prevent such from interfering with other functions. Accommodations shall ensure adequate space for residents to have visitors and for privacy during visits, if desired.

(d) Resident bedrooms shall have adequate space to allow easy passage throughout; permit comfortable usage of furnishings; promote ease of nursing care; and accommodate use of assistive devices, including, but not limited to, wheelchairs, walkers, and patient lifts, when needed.

(e) No room commonly used for other purposes, including, but not limited to, a hall, stairway, attic, garage, storage area, shed, or similar detached building, shall be used as a sleeping room for any resident.

(f) No resident bedroom shall be used as a passageway to another room, bath, or toilet.

(g) Not more than two residents shall share a bedroom.

(h) Equipment and supplies necessary for personal care and maintenance of adequate hygiene shall be readily available to all residents.

(i) Toilets and bathrooms shall be conveniently located. At least one toilet and washbasin shall be provided per six residents. At least one bathtub or shower shall be provided per 10 residents. Individual privacy shall be provided in all toilet, bath and shower areas. Separate toilet, washbasin, and bathtub or shower accommodations shall be provided for staff.

(j) Sufficient room shall be available throughout the facility to accommodate and serve all persons in comfort and safety. The premises shall be maintained in good repair and shall provide a safe, clean, and healthful environment.

(k) Facilities shall have equipment and supplies appropriate to meet the routine and specialized needs of all residents.

(*l*) All persons shall be protected from hazards throughout the premises:

(1) Stairways, inclines, ramps, open porches, and other areas of potential hazard to residents with poor balance or eyesight shall be made inaccessible unless well lighted and equipped with sturdy hand railings.

(2) Night lights shall be maintained in hallways and passages to

nonprivate bathrooms.

(3) All indoor and outdoor passageways and stairways shall be kept free of obstructions.

(4) Fireplaces, woodstoves, and open-faced heaters shall be adequately screened.

(5) Facilities shall assure the inaccessibility of fishponds, wading pools, hot tubs, swimming pools, or similar bodies of water or other areas of potential hazard when not in active use.

(m) Facilities serving persons who are terminally ill shall, in addition to the requirements of this chapter and until specific regulations governing their operation are filed, conform to regulations contained in Chapter 3 of Division 5 of Title 22 of the California Code of Regulations of April 1, 1988, with the exception of the following sections or portions of sections: 72007, 72053, 72073, subdivision (a) of Section 72077, 72097, 72099, 72103, 72203, subdivision (a) of Section 72205, 72301, 72305, subdivision (a) of Section 72325, 72327, 72329, 72331, 72337, subdivisions (b), (g), and (h) of Section 72351, 72353, subdivision (a) of Section 72367, 72373, subdivision (b) of Section 72375, 72401, 72403, 72405, 72407, 72409, 72411, 72413, 72415, 72417, 72419, 72421, 72423, 72425, 72427, 72429, 72431, 72433, 72435, 72437, 72439, 72441, 72443, 72445, 72447, 72449, 72451, 72453, 72455, 72457, 72459, 72461, 72463, 72465, 72467, 72469, 72471, 72473, 72475, 72503, paragraph (2) of subdivision (a) of Section 72513, 72520, 72525, 72535, 72555, 72557, subdivisions (a) and (b) of Section 72601, subdivision (d) of Section 72607, subdivisions (a) and (d) of Section 72609, 72611, 72615, 72617, 72629, 72631, 72633, 72635, subdivision (b), (c), and (d) of Section 72639, 72641, 72665, 72701, 72703, 72705, 72707, 72709, 72711, and 72713.

(n) (1) Facilities serving persons who are terminally ill shall have an administrator who is responsible for the day-to-day operation of the facility. The administrator may be either a licensed registered nurse, a nursing home administrator, or the licensee. The administrator shall be present at the facility a sufficient number of hours to ensure the smooth operation of the facility. If the administrator is also the registered nurse fulfilling the duties specified in paragraph (2), the administrator shall not be responsible for more than one facility. In all other circumstances, the administrator shall not be responsible for more than three facilities with an aggregate total of 75 beds and these facilities shall be within one hour's surface travel time of each other.

(2) For each congregate living health facility of more than six beds serving persons who are terminally ill there shall be, at a minimum, a registered nurse or licensed vocational nurse awake and on duty at all times. A registered nurse shall be awake and on duty eight hours a day, five days a week. A registered nurse shall be available for consultation and able to come into the facility within 30 minutes, if necessary, when no registered nurse is on duty. For each congregate living health facility of six or fewer beds serving persons who are terminally ill a registered nurse shall visit each patient at

least twice a week for approximately two hours, or more as patient care requires. A registered nurse shall be available for consultation and able to come into the facility within 30 minutes, if necessary, when no registered nurse is on duty.

In addition, certified nurse assistants, or persons with similar training and experience as determined by the department, shall be awake and on duty in the facility in at least the following ratios: facilities with six beds or less, one per shift; facilities with 7 to 12 beds, two per shift; facilities with 13 to 25 beds, three per day and evening shifts and two per nocturnal shift. No nursing services personnel shall be assigned housekeeping or dietary duties.

(3) Notwithstanding the provisions of this subdivision, the facility shall provide appropriately qualified staff in sufficient numbers to meet patient care needs.

(4) Nursing service personnel shall be employed and on duty in at least the number and with the qualifications determined by the department to provide the necessary nursing services for patients admitted for care. The department may require a facility to provide additional professional, administrative, or supportive personnel whenever the state department determines through a written evaluation, that additional personnel is needed to provide for the health and safety of patients.

(4) All staff members shall receive orientation regarding care appropriate for the patients' diagnoses and individual resident needs. Orientation shall include a minimum of 16 hours during the first 40 hours of employment.

(5) Nothing in this chapter shall prevent the use of volunteers; however, volunteers shall not be used as substitutes for the personnel required in the above sections. Volunteers providing patient care services shall:

(A) Be provided clearly defined roles and written job descriptions.

(B) Receive orientation and training equivalent to that provided paid staff.

(C) Possess education and experience equal to that required of paid staff performing similar functions.

(D) Conform to the facility's policies and procedures.

(E) Receive periodic performance evaluations.

These interim regulations are exempt from the review requirements pursuant to Chapter 3.5 (commencing with Section 11340) of Division 3 of Title 2 of the Government Code and become inoperative upon the filing of the permanent regulations, or on January 1, 1990, whichever occurs first.

SEC. 10. Section 1267.15 is added to the Health and Safety Code, to read:

1267.15. Congregate living health facilities shall be freestanding, but this does not preclude their location on the premises of a hospital. Congregate living health facilities shall be separately licensed.

SEC. 11. Section 1267.16 is added to the Health and Safety Code,

to read:

1267.16. (a) This article does not forbid any city, county, or local public entity from placing restrictions on building heights, setback, lot dimensions, or placement of signs of a congregate living health facility, nor does it abrogate any existing zoning prohibitions against local health facilities in purely residential zones.

(b) This article does not forbid the application to a congregate living health facility of any local ordinance which deals with health and safety, building standards, environmental impact standards, or any other matter within the jurisdiction of a local public entity, except as provided in subdivisions (a) and (b) of Section 1267.9 and this section.

(c) Any congregate living health facility of more than six beds for persons who are terminally ill is subject to the conditional use permit requirements of the city or county in which it is located unless those requirements are waived by the city or county. However, any facility that, on the effective date of this section, is performing the functions of a congregate living health facility for persons who are terminally ill and that is subsequently licensed as a congregate living health facility within 18 months of the effective date of this section shall not be subject to the conditional use permit requirements of the city or county in which it is located, unless the number of beds is increased.

SEC. 12. Section 1267.17 is added to the Health and Safety Code, to read:

1267.17. Each congregate living health facility shall conspicuously post the license, or a true copy thereof in a location accessible to public view.

SEC. 13. Section 1267.19 is added to the Health and Safety Code, to read:

1267.19. Congregate living health facilities shall not be subject to architectural plan review by the Office of Statewide Health Planning and Development. As part of the application for licensure, the prospective licensee shall submit evidence of compliance with local building code requirements. In addition, the physical environment shall be adequate to provide the level of care and service required by the residents of the facility as detemined by the department.

SEC. 14. Section 1270 of the Health and Safety Code is amended to read:

1270. The provisions of this chapter do not apply to the following institutions:

(a) 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 that church or denomination.

(b) Hotels or other similar places that furnish only board and room, or either, to their guests.

(c) Any house or institution supplying board and room only, or room only, or board only; provided, that no resident thereof requires

any element of medical care as determined by the department.

For the purpose of this subdivision "medical care" means those services required to be provided by health professionals in accordance with the provisions of Division 2 (commencing with Section 500) of the Business and Professions Code. In addition, medical services means those services provided by health facilities as defined in Sections 1250, 1250.2, and 1250.3 which includes nursing care to patients whose primary need is for the availability of licensed nursing care on an extended, continuous, intermittent, or part-time basis.

(d) Any facility as defined in Section 1502.

SEC. 15. Section 1326 of the Health and Safety Code is amended to read:

1326. As used in this article, "long-term health care facility" means any skilled nursing facility, intermediate care facility, intermediate care facility/developmentally disabled, intermediate care facility/developmentally disabled habilitative, intermediate care facility/developmentally disabled—nursing, or congregate living health facility licensed pursuant to this chapter.

SEC. 16. Section 1418 of the Health and Safety Code is amended to read:

1418. As used in this chapter:

(a) "Long-term health care facility" means any facility licensed pursuant to Chapter 2 (commencing with Section 1250) which is any of the following:

(1) Skilled nursing facility.

(2) Intermediate care facility.

(3) Intermediate care facility/developmentally disabled.

(4) Intermediate care facility/developmentally disabled habilitative.

(5) Intermediate care facility/developmentally disabled—nursing.

(6) Congregate living health facility.

"Long-term health care facility" does not include a general acute care hospital or an acute psychiatric hospital, except for that distinct part of the hospital which provides skilled nursing facility or intermediate care facility services.

(b) "Licensee" means the holder of a license issued under Chapter 2 (commencing with Section 1250) for a long-term health care facility.

SEC. 16.3. Section 2.5 of this bill incorporates amendments to Section 443.21 of the Health and Safety Code proposed by both this bill and SB 2207. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1989, but this bill becomes operative first, (2) each bill amends Section 443.21 of the Health and Safety Code, and (3) this bill is enacted after SB 2207, in which case Section 443.21 of the Health and Safety Code, as amended by Section 2 of this bill, shall remain operative only until the operative date of SB 2207, at which time Section 2.5 of this bill

shall become operative.

SEC. 16.5. (a) Section 3.1 of this bill incorporates amendments to Section 1250 of the Health and Safety Code proposed by both this bill and SB 2207. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1989, but this bill becomes operative first, (2) each bill amends Section 1250 of the Health and Safety Code, (3) SB 2100 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after SB 2207, in which case Section 1250 of the Health and Safety Code, as amended by Section 3 of this bill, shall remain operative only until the operative date of SB 2207, at which time Section 3.1 of this bill shall become operative and Sections 3.2 and 3.3 of this bill shall not become operative.

(b) Section 3.2 of this bill incorporates amendments to Section 1250 of the Health and Safety Code proposed by both this bill and SB 2100. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1989, but this bill becomes operative first, (2) each bill amends Section 1250 of the Health and Safety Code, (3) SB 2207 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after SB 2100, in which case Section 1250 of the Health and Safety Code, as amended by Section 3 of this bill, shall remain operative only until the operative date of SB 2100, at which time Section 3.2 of this bill shall become operative and Sections 3.1 and 3.3 of this bill shall not become operative.

(c) Section 3.3 of this bill incorporates amendments to Section 1250 of the Health and Safety Code proposed by this bill, SB 2207, and SB 2100. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 1989, but this bill becomes operative first, (2) all three bills amend Section 1250 of the Health and Safety Code, (3) this bill is enacted after both SB 2207 and SB 2100, in which case Section 1250 of the Health and Safety Code, as amended by Section 3 of this bill, shall remain operative only until the operative date of SB 2207 and SB 2100, at which time Section 3.3 of this bill shall become operative and Sections 3.1 and 3.2 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.

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 provide congregate living facilities to more persons, and especially persons diagnosed as having a terminal illness, at the earliest possible time, it is necessary that this act take effect immediately.

## CHAPTER 1479

An act relating to correctional institutions, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 27, 1988. Filed with Secretary of State September 28, 1988.]

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

SECTION 1. The Department of Corrections is hereby authorized to construct and establish a combination 1,750-bed reception center and 500-bed Level III prison together with a 200-bed service facility in the vicinity of Wasco in Kern County.

SEC. 2. The Department of Corrections is hereby authorized to construct and establish a combination 1,750-bed reception center and 500-bed Level III prison together with a 200-bed service facility in the vicinity of Delano in Kern County.

SEC. 3. The sum of four hundred thirty-nine million two hundred thousand dollars ($439,200,000) is hereby appropriated to the Department of Corrections as follows:

(a) For constructing the combination reception center and Level III prison in the vicinity of Wasco in Kern County, as authorized by Section 1 of this act, the sum of one hundred eighty-two million two hundred thousand dollars ($182,200,000) is appropriated as follows:

(1) From the 1986 Prison Construction Fund..... $2,800,000
(2) From the 1988 Prison Construction Fund..... $179,400,000

Funds appropriated by this subdivision shall be available for purposes, as necessary, of site acquisition, site studies and suitability reports, environmental studies, master planning, architectural programming, schematics, preliminary plans, working drawings, construction, and long lead and equipment items.

(b) For constructing the combination reception center and Level III prison in the vicinity of Delano in Kern County, as authorized by Section 2 of this act, the sum of one hundred eighty-five million eight hundred thousand dollars ($185,800,000) is appropriated as follows:

(1) From the 1986 Prison Construction Fund..... $2,300,000
(2) From the 1988 Prison Construction Fund..... $183,500,000

Funds appropriated by this subdivision shall be available for purposes, as necessary, of site acquisition, site studies and suitability reports, environmental studies, master planning, architectural programming, schematics, preliminary plans, working drawings, construction, and long lead and equipment items.

(c) For constructing the 2,000-bed prison, with an additional 200-bed service facility, in Los Angeles County, as authorized by paragraph (2) of subdivision (a) of Section 1 of Chapter 1549 of the

Statutes of 1982, as amended by Chapter 465 of the Statutes of 1987, the sum of fifty million three hundred thousand dollars ($50,300,000) is appropriated as follows:

(1) From the 1986 Prison Construction Fund..... $5,100,000
(2) From the 1988 Prison Construction Fund..... $45,200,000

Funds appropriated by this subdivision shall be available for purposes, as necessary, of site acquisition, site studies and suitability reports, environmental studies, master planning, architectural programming, schematics, preliminary plans, working drawings, construction, and long lead and equipment items.

(d) From the 1988 Prison Construction Fund, the sum of two million six hundred thousand dollars ($2,600,000).

Funds appropriated by this subdivision shall be available for purposes as necessary, of site studies and suitability reports, environmental studies, master planning, architectural programming, and schematics for new medical or psychiatric facilities, or a combination thereof.

(e) From the 1988 Prison Construction Fund, the sum of four million three hundred thousand dollars ($4,300,000).

Funds appropriated by this subdivision shall be available for purposes, as necessary, of site studies and suitability reports, environmental studies, master planning, architectural programming, and schematics for new correctional facilities.

(f) The sum of fourteen million dollars ($14,000,000) is appropriated from the General Fund to the Department of Corrections to be available for the augmentation of new prison construction projects pursuant to Section 13332.11 of the Government Code for the payment of claims and potential claims. Any expenditures from the General Fund in accordance with this subdivision shall be repaid to the General Fund from the 1988 Prison Construction Fund only upon the passage of the New Prison Construction Bond Act of 1988 by the voters in the November 1988 general election. Any amounts made available from the General Fund pursuant to this subdivision shall be repaid to the General Fund prior to June 30, 1989. The unencumbered balance of the appropriation made by this subdivision shall revert to the General Fund on June 30, 1989.

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:

California prisons are severely overcrowded. In order to alleviate that problem at the earliest possible date, this act must take effect immediately.

# CHAPTER 1480

An act to add Article 1.9 (commencing with Section 1642) to Chapter 1 of Part 3 of Division 1 of the Revenue and Taxation Code, relating to taxation.

[Approved by Governor September 27, 1988. Filed with Secretary of State September 28, 1988.]

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

SECTION 1. Article 1.9 (commencing with Section 1642) is added to Chapter 1 of Part 3 of Division 1 of the Revenue and Taxation Code, to read:

## Article 1.9. Hearings Before Assessment Hearing Officers for Unitary Property Located in More Than One County

1642. (a) An assessee of mining or mineral property located in more than one county and alleged to be unitary property, may, within the time specified in Sections 1603 and 1605, request a hearing before a panel comprising one assessment hearing officer from each county in which that unitary property is located by filing in each county concerned a multicounty application for reduction of assessment. The board of supervisors of each county in which the unitary property is located shall appoint one assessment hearing officer pursuant to Section 1636. In the event that the unitary property is located in an even number of counties, the assessment hearing officers shall designate one additional assessment hearing officer who shall be included in the panel. If the assessment hearing officers fail to designate the additional hearing officer within 60 days after the application is filed, the Office of Administrative Hearings shall designate the additional assessment hearing officer.

(b) Hearings before the panel of assessment hearing officers shall be conducted pursuant to Article 1 (commencing with Section 1601) governing equalization proceedings by county boards of equalization. All counties in which the unitary property is located shall be parties to the hearing. Hearings shall be held at the place or places as a majority of the panel shall designate.

(c) Section 1638 shall apply to the hearings by the panel.

(d) The presence of all members of the panel shall be necessary to constitute a quorum.

1643. (a) The panel of hearing officers shall conduct the hearing and receive evidence to determine (1) if the property concerned is unitary and (2) if it is unitary, the value of the unitary property as a whole and the portion thereof allocable to each county. The panel shall prepare a summary report of the proceedings, and make a recommendation concerning the total value of the entire unitary property and the apportionment of that value among the counties

concerned. Any determination by a majority of the hearing officers shall constitute a determination by the panel.

(b) If the panel determines that the property concerned is not unitary, the application shall be referred back to each of the counties concerned to be treated as an application for reduction of assessment filed in each county.

1644. The report and recommendation of the panel of hearing officers shall be transmitted to the county clerk of each of the counties concerned. Each county clerk shall transmit a copy of the report and recommendation to the protesting party, the assessor, and to the board of equalization or the assessment appeals board of the county concerned within 14 days of the receipt thereof.

1645. (a) If, within 30 days following receipt of the report and recommendation of the panel of hearing officers by the county board of equalization or assessment appeals board of a concerned county, the assessor of that county or the assessee submits a written request to the board to reject the recommendation of the panel of hearing officers with respect to property located in that county, the board shall, without further testimony, do either of the following:

(1) Accept the recommendation of the panel and change the assessed values for that county in accordance with that recommendation.

(2) Reject the recommendation of the panel and set the request for hearing before the board as an application for reduction of assessment.

(b) In the event that neither the assessor nor the assessee makes a request in accordance with subdivision (a) within the prescribed 30-day period, the board shall, not later than 60 days following its receipt of the report and recommendation of the panel of hearing officers, without further testimony, take the action specified in paragraph (1) or (2) of subdivision (a).

(c) In any hearing set by the board pursuant to this section, there shall be a rebuttable presumption that the recommendation of the panel of hearing officers is correct.

1645.5. For purposes of this article, the term "unitary property" shall mean one or more parcels of real property that are contiguous and are operated as an economic unit.

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 five hundred thousand dollars ($500,000), reimbursement shall be made from the State Mandates Claims Fund.

SEC. 3. This act shall be applicable to property taxes levied for the 1989–90 fiscal year and fiscal years thereafter.

## CHAPTER 1481

An act to add Section 465 to the Health and Safety Code, relating to food.

[Approved by Governor September 27, 1988. Filed with Secretary of State September 28, 1988.]

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

SECTION 1. Section 465 is added to the Health and Safety Code, to read:

465. The county health officer may designate a nonprofit food distribution agency to coordinate and facilitate the donation of food and food products to nonprofit, charitable corporations, from available sources, including restaurants, grocery stores, or food distributors.

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## CHAPTER 1482

An act to amend Sections 3352, 3366, and 3367 of the Labor Code, and to amend Section 832.6 of, and to add Section 830.65 to, the Penal Code, relating to peace officers.

[Approved by Governor September 27, 1988 Filed with Secretary of State September 28, 1988.]

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

SECTION 1. Section 3352 of the Labor Code is amended to read:

3352. "Employee" excludes the following:

(a) Any person defined in subdivision (d) of Section 3351 who is employed by his or her parent, spouse, or child.

(b) Any person performing services in return for aid or sustenance only, received from any religious, charitable, or relief organization.

(c) Any person holding an appointment as deputy clerk, deputy sheriff, or deputy constable appointed for his or her own convenience, and who receives no compensation from the county or municipal corporation or from the citizens thereof for his or her services as the deputy. This exclusion is operative only as to employment by the county or municipal corporation and does not deprive any person so deputized from recourse against a private person employing him or her for injury occurring in the course of and arising out of the employment.

(d) Any person performing voluntary services at or for a recreational camp, hut, or lodge operated by a nonprofit organization, exempt from federal income tax under Section 101(6)

of the Internal Revenue Code, of which he or she or a member of his or her family is a member and who receives no compensation for those services other than meals, lodging, or transportation.

(e) Any person performing voluntary service as a ski patrolman who receives no compensation for those services other than meals or lodging or the use of ski tow or ski lift facilities.

(f) Any person employed by a ski lift operator to work at a snow ski area who is relieved of and not performing any prescribed duties, while participating in recreational activities on his or her own initiative.

(g) Any person, other than a regular employee, participating in sports or athletics who receives no compensation for the participation other than the use of athletic equipment, uniforms, transportation, travel, meals, lodgings, or other expenses incidental thereto.

(h) Any person defined in subdivision (d) of Section 3351 who was employed by the employer to be held liable for less than 52 hours during the 90 calendar days immediately preceding the date of the injury for injuries, as defined in Section 5411, or during the 90 calendar days immediately preceding the date of the last employment in an occupation exposing the employee to the hazards of the disease or injury for injuries, as defined in Section 5412, or who earned less than one hundred dollars ($100) in wages from the employer during the 90 calendar days immediately preceding the date of the injury for injuries, as defined in Section 5411, or during the 90 calendar days immediately preceding the date of the last employment in an occupation exposing the employee to the hazards of the disease or injury for injuries, as defined in Section 5412.

(i) Any person performing voluntary service for a public agency or a private, nonprofit organization who receives no remuneration for the services other than meals, transportation, lodging, or reimbursement for incidental expenses.

(j) Any person, other than a regular employee, performing officiating services relating to amateur sporting events sponsored by any public agency or private, nonprofit organization, who receives no remuneration for these services other than a stipend for each day of service no greater than the amount established by the State Board of Control as a per diem expense for employees or officers of the state pursuant to Section 13920 of the Government Code. The stipend shall be presumed to cover incidental expenses involved in officiating, including, but not limited to, meals, transportation, lodging, rule books and courses, uniforms, and appropriate equipment.

(k) Any student participating as an athlete in amateur sporting events sponsored by any public agency, public or private nonprofit college, university or school, who receives no remuneration for the participation other than the use of athletic equipment, uniforms, transportation, travel, meals, lodgings, scholarships, grants-in-aid, or other expenses incidental thereto.

(*l*) Any law enforcement officer who is regularly employed by a

local or state law enforcement agency in an adjoining state and who is deputized to work under the supervision of a California peace officer pursuant to paragraph (4) of subdivision (a) of Section 832.6 of the Penal Code.

SEC. 2. Section 3366 of Labor Code is amended to read:

3366. (1) For the purposes of this division, each person engaged in the performance of active law enforcement service as part of the posse comitatus or power of the county, and each person (other than an independent contractor or an employee of an independent contractor) engaged in assisting any peace officer in active law enforcement service at the request of such peace officer, is deemed to be an employee of the public entity that he or she is serving or assisting in the enforcement of the law, and is entitled to receive compensation from the public entity in accordance with the provisions of this division.

(b) Nothing in this section shall be construed to provide workers' compensation benefits to any law enforcement officer who is regularly employed by a local or state law enforcement agency in an adjoining state and who is deputized to work under the supervision of a California peace officer pursuant to paragraph (4) of subdivision (a) of Section 832.6 of the Penal Code.

SEC. 3. Section 3367 of the Labor Code is amended to read:

3367. (a) For purposes of this division any person voluntarily rendering technical assistance to a public entity to prevent a fire, explosion, or other hazardous occurrence, at the request of a duly authorized fire or law enforcement officer of that public entity is deemed an employee of the public entity to whom the technical assistance was rendered, and is entitled to receive compensation benefits in accordance with the provisions of this division. Rendering technical assistance shall include the time that person is traveling to, or returning from, the location of the potentially hazardous condition for which he or she has been requested to volunteer his or her assistance.

(b) Nothing in this section shall be construed to provide worker' compensation benefits to any law enforcement officer who is regularly employed by a local or state law enforcement agency in an adjoining state and who is deputized to work under the supervision of a California peace officer pursuant to paragraph (4) of subdivision (a) of Section 832.6 of the Penal Code.

SEC. 4. Section 830.65 is added to the Penal Code, to read:

830.65. (a) Any person who is a regularly employed police officer of a city or a regularly employed deputy sheriff of a county, or a reserve peace officer of a city or county and is appointed in the manner described in paragraph (1) or (2) of subdivision (a) of Section 832.6, may be appointed as a Campaign Against Marijuana Planting emergency appointee by the Attorney General pursuant to Section 5 of Chapter 1563 of the Statutes of 1985 to assist with a specific investigation, tactical operation, or search and rescue operation. When so appointed, the person shall be a peace officer of

the Department of Justice, provided that the person's authority shall extend only for the duration of the specific assignment.

(b) Notwithstanding any other provision of law, any person who is appointed as a peace officer in the manner described in this section shall be deemed to have met the requirements of Section 1031 of the Government Code and the selection and training standards of the Commission on Peace Officer Standards and Training.

SEC. 5. Section 832.6 of the Penal Code is amended to read:

832.6. (a) On or after January 1, 1981, every person deputized or appointed, as described in subdivision (a) of Section 830.6, shall have the powers of a peace officer only when the person is any of the following:

(1) Deputized or appointed pursuant to paragraph (1) of subdivision (a) of Section 830.6 and is assigned to the prevention and detection of crime and the general enforcement of the laws of this state, whether or not working alone, and the person has completed the basic training prescribed by the Commission on Peace Officer Standards and Training.

A person deputized or appointed pursuant to paragraph (2) of subdivision (a) of Section 830.6 shall have the powers of a peace officer when assigned to the prevention and detection of crime and the general enforcement of the laws of this state, whether or not working alone, and the person has completed the basic training course for deputy sheriffs and police officers prescribed by the Commission on Peace Officer Standards and Training.

(2) Assigned to the prevention and detection of crime and the general enforcement of the laws of this state while under the immediate supervision of a peace officer possessing a basic certificate issued by the Commission on Peace Officer Standards and Training, the person is engaged in a field training program approved by the Commission on Peace Officer Standards and Training, and the person has completed the course required by Section 832 and any other training prescribed by the commission.

(3) Deployed and authorized only to carry out limited duties not requiring general law enforcement powers in their routine performance. Those persons shall be permitted to perform these duties only under the direct supervision of a peace officer possessing a basic certificate issued by the commission, and shall have completed the training required under Section 832 and any other training prescribed by the commission for those persons. Notwithstanding the provisions of this paragraph, a level III reserve officer may perform search and rescue, personnel administration support, community public information services, communications technician services, and scientific services, which do not involve direct law enforcement without supervision.

(4) Assigned to the prevention and detection of a particular crime or crimes or to the detection or apprehension of a particular individual or individuals while working under the supervision of a California peace officer of an agency in a county adjacent to the state

border who possesses a basic certificate issued by the Commission on Peace Officer Standards and Training, and the person is a law enforcement officer who is regularly employed by a local or state law enforcement agency in an adjoining state and has completed the basic training required for peace officers in his or her state.

This training shall fully satisfy any other training requirements required by law, including those specified in Section 832.

In no case shall a peace officer of an adjoining state provide services within a California jurisdiction during any period in which the regular law enforcement agency of the jurisdiction is involved in a labor dispute.

(b) Notwithstanding subdivision (a), a person who is issued a level I reserve officer certificate before January 1, 1981, shall have the full powers and duties of a peace officer as provided by Section 830.1 if so designated by local ordinance or, if the local agency is not authorized to act by ordinance, by resolution, either individually or by class, if the appointing authority determines the person is qualified to perform general law enforcement duties by reason of the person's training and experience. Persons who were qualified to be issued the level I reserve officer certificate before January 1, 1981, and who state in writing under penalty of perjury that they applied for but were not issued the certificate before January 1, 1981, may be issued the certificate before July 1, 1984. For purposes of this section, certificates so issued shall be deemed to have the full force and effect of any level I reserve officer certificate issued prior to January 1, 1981.

(c) In carrying out this section, the commission:

(1) May use proficiency testing to satisfy reserve training standards.

(2) Shall provide for convenient training to remote areas in the state.

(3) Shall establish a professional certificate for reserve officers as defined in paragraph (1) of subdivision (a) and may establish a professional certificate for reserve officers as defined in paragraphs (2) and (3) of subdivision (a).

(d) In carrying out paragraphs (1) and (3) of subdivision (c), the commission may establish and levy appropriate fees, provided the fees do not exceed the cost for administering the respective services. These fees shall be deposited in the Peace Officers' Training Fund established by Section 13520.

(e) The commission shall include an amount in its annual budget request to carry out this section.

# CHAPTER 1483

An act to add Section 8212.3 to the Education Code, relating to children, and making an appropriation therefor.

[Approved by Governor September 28, 1988. File with Secretary of State September 28, 1988.]

I am deleting the $250,000 appropriation contained in Section 3 of Assembly Bill No. 2412.

This bill authorizes specified short-term respite child care consistent with current practice. The bill also appropriates $250,000 from the General Fund to fund expanded short-term child care.

The demands placed on budget resources require all of us to set priorities. The budget enacted in July 1988 appropriated nearly $44 billion in state funds. This amount is more than adequate to provide the necessary essential services provided for by State Government. It is not necessary to put additional pressure on taxpayer funds for programs that fall beyond the priorities currently provided.

Thus, after reviewing this legislation, I have concluded that its merits do not sufficiently outweigh the need this year for funding top priority programs and continuing a prudent reserve for economic uncertainties.

It is more appropriate to consider funding the provisions of this bill during the budget process for Fiscal Year 1989–90. Only at that time can we review the relative merits of this program in comparison to all other funding projects. The budget process enables us to weigh all demands on the state's revenues and direct our resources to programs, either new or existing, that have the most merit.

With this deletion, I approve Assembly Bill No. 2412.

GEORGE DEUKMEJIAN, Governor

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

SECTION 1. Section 8212.3 is added to the Education Code, to read:

8212.3. (a) In addition to the services described in Section 8212, a child care resource and referral program, established to serve a defined geographic area, may provide short-term respite child care. "Short-term respite care," for purposes of this article, means temporary child care services to do any of the following:

(1) Provide services to families identified and referred by child protective agencies.

(2) Relieve the stress caused by child abuse, neglect, or exploitation, or the risk of abuse, neglect, or exploitation.

(3) Assist parents who, because of serious illness or injury, homelessness, or family crisis, including temporary absence from the home because of illness or injury, would be unable without assistance to provide the normal care and nurture expected of parents.

(4) Provide temporary relief to parents from the care of children with exceptional needs.

(b) Pursuant to the delivery of short-term respite child care services, priority shall be given for the provision of services to families identified and referred by child protective agencies, to relieve the stress caused by child abuse, neglect, or exploitation, or the risks thereof, as described in paragraphs (1) and (2) of subdivision (a). Priority shall be given to assist parents and to provide temporary relief to parents, as described in paragraphs (3)

and (4) of subdivision (a) to the extent that resources are available.

SEC. 2. On or before October 1, 1989, the State Department of Education shall report to the Legislature on the number of children served, and the number of children served who were referred by child protective agencies in each county.

SEC. 3. (a) The sum of two hundred fifty thousand dollars ($250,000) is hereby appropriated from the General Fund to the State Department of Education for the 1988–89 fiscal year to fund child care resource and referral programs for the purposes set forth in Section 8212.3 of the Education Code.

(b) It is the intent of the Legislature that funding for the purposes described in subdivision (a) for the 1989–90 fiscal year, and each fiscal year thereafter, be provided in the Budget Act for that fiscal year.

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## CHAPTER 1484

An act to amend Sections 667.5, 669, and 1170.1 of the Penal Code, relating to sentencing.

[Approved by Governor September 27, 1988. Filed with Secretary of State September 28, 1988.]

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

SECTION 1. Section 667.5 of the Penal Code, as amended by Section 1.5 of Chapter 89 of the Statutes of 1988, 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 was one of the violent felonies specified in subdivision (c); provided that 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 subdivision (2) of Section 261.

(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 14 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 or 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.

The Legislature finds and declares that these specified crimes merit special consideration when imposing a sentence to display society's condemnation for such 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 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 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 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. 2. Section 669 of the Penal Code is amended to read:

669. When any person is convicted of two or more crimes, whether in the same proceeding or court or in different proceedings or courts, and whether by judgment rendered by the same judge or by different judges, the second or other subsequent judgment upon which sentence is ordered to be executed shall direct whether the terms of imprisonment or any of them to which he is sentenced shall run concurrently or consecutively; life sentences, whether with or without the possibility of parole, may be imposed to run consecutively with one another or with any other term of imprisonment for a felony conviction. Whenever a person is committed to prison on a life sentence which is ordered to run consecutive to any determinate term of imprisonment imposed pursuant to Sections 1170, 1170.1, 667, 667.5, 12022, 12022.2, 12022.4,

12022.5, 12022.55, 12022.6, 12022.7, 12022.75, and 12022.9, the determinate term of imprisonment shall be served first and no part thereof shall be credited toward the person's eligibility for parole as calculated pursuant to Section 3046 or pursuant to any other section of law that establishes a minimum period of confinement under the life sentence before eligibility for parole.

In the event that the court at the time of pronouncing the second or other judgment upon such person had no knowledge of a prior existing judgment or judgments, or having knowledge, fails to determine how the terms of imprisonment shall run in relation to each other, then, upon such failure so to determine, or upon such prior judgment or judgments being brought to the attention of the court at any time prior to the expiration of 60 days from and after the actual commencement of imprisonment upon the second or other subsequent judgments, the court shall, in the absence of the defendant and within 60 days of such notice, determine how the term of imprisonment upon said second or other subsequent judgment shall run with reference to the prior incompleted term or terms of imprisonment. Upon the failure of the court so to determine how the terms of imprisonment on the second or subsequent judgment shall run, the term of imprisonment on the second or subsequent judgment shall run concurrently.

The Department of Corrections shall advise the court pronouncing the second or other subsequent judgment of the existence of all prior judgments against the defendant, the terms of imprisonment upon which have not been completely served.

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 Section 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 such felony conviction for which a consecutive term of imprisonment is imposed, and shall exclude any enhancements. In no case shall the total of subordinate terms for such 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) or (9) of subdivision (c) of Section 667.5, shall consist of one-third of the middle term of imprisonment prescribed for each other such felony 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.

(b) 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 both separate victims and 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 and separate occasions.

(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 such 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 such 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. The provisions of 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, 667.5, 667.8, 667.85, 12022, 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 such 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 penetration of a genital or anal opening by a foreign object, as defined in Section 289, oral copulation, sodomy, robbery, rape, or burglary, or attempted penetration of a genital or anal opening by a foreign object, oral copulation, sodomy, robbery, 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 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, 667.5, 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) 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, 667.8, 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.

(h) Notwithstanding any other provision of law, the court may strike the additional punishment for the enhancements provided in Sections 667.5, 667.8, 667.85, 12022, 12022.2, 12022.4, 12022.5, 12022.55, 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 subdivision (2) or (3) 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 such enhancements are pursuant to this or some other section of law. Each of such 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 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, or 667.6, 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 667.8, 667.85, 12022, 12022.1, 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 such felony conviction for which a consecutive term of imprisonment is imposed, and shall exclude any enhancements. In no case shall the total of subordinate terms for such 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) or (9) of subdivision (c) of Section 667.5, shall consist of one-third of the middle term of imprisonment prescribed for each other such felony 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.

(b) 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 both separate victims and 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 and separate occasions.

(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 such 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 such 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. The provisions of 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, 667.5, 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 such 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 penetration of a genital or anal opening by a foreign object, as defined in Section 289, oral copulation, sodomy, robbery, rape or burglary, or attempted penetration of a genital or anal opening by a foreign object, oral copulation, sodomy, robbery, 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 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, 667.5, 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) 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, 667.8, 667.85, 12022, 12022.1, 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.

(h) Notwithstanding any other provision of law, the court may strike the additional punishment for the enhancements provided in Sections 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, 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 subdivision (2) or (3) 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 such enhancements are pursuant to this or some other section of law. Each of such enhancements shall be a full and separately served enhancement and shall not be merged with any term or with any other enhancement.

SEC. 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 667.8, 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 such felony conviction for which a consecutive term of imprisonment is imposed, and shall exclude any enhancements. In no case shall the total of subordinate terms for such 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) or (9) of subdivision (c) of Section 667.5, shall consist of one-third of the middle term of imprisonment prescribed for each other such felony 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.

(b) 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 both separate victims and 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 and separate occasions.

(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 such 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 such 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. The provisions of 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, 667.5, 667.8, 667.85, 12022, 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 such 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,

penetration of a genital or anal opening by a foreign object, as defined in Section 289, oral copulation, sodomy, robbery, 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, penetration of a genital or anal opening by a foreign object, oral copulation, sodomy, robbery, 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 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, 667.5, 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) 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, 667.8, 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.

(h) Notwithstanding any other provision of law, the court may strike the additional punishment for the enhancements provided in Sections 667.5, 667.8, 667.85, 12022, 12022.2, 12022.4, 12022.5, 12022.55, 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 subdivision (2) or (3) 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 such enhancements are pursuant to this or some other section of law. Each of such enhancements shall be a full and separately served enhancement and shall not be merged with any term or with any other enhancement.

SEC. 6. 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, or 667.6, 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 667.8, 667.85, 12022, 12022.1, 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 such felony conviction for which a consecutive term of imprisonment is imposed, and shall exclude any enhancements. In no case shall the total of subordinate terms for such 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) or (9) of subdivision (c) of Section 667.5, shall consist of one-third of the middle term of imprisonment prescribed for each other such felony 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.

(b) 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 both separate victims and 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 and separate occasions.

(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 such 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 such 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. The provisions of 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, 667.5, 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 such 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, penetration of a genital or anal opening by a foreign object, as defined in Section 289, oral copulation, sodomy, robbery, 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, penetration of a genital or anal opening by a foreign object, oral copulation, sodomy, robbery, 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 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, 667.5, 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) 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, 667.8, 667.85, 12022, 12022.1, 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.

(h) Notwithstanding any other provision of law, the court may strike the additional punishment for the enhancements provided in Sections 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, 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 subdivision (2) or (3) 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 such enhancements are pursuant to this or some other section of law. Each of such enhancements shall be a full and separately served enhancement and shall not be merged with any term or with any other enhancement.

SEC. 7. (a) Section 4 of this bill incorporates amendments to Section 1170.1 of the Penal Code proposed by both this bill and SB 1445. It shall only become operative if (1) both bills are enacted and become effective January 1, 1989, (2) each bill amends Section 1170.1 of the Penal Code, and (3) AB 3423 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after SB 1445, in which case Sections 3, 5, and 6 of this bill shall not become operative.

(b) Section 5 of this bill incorporates amendments to Section 1170.1 of the Penal Code proposed by both this bill and AB 3423. It shall only become operative if (1) both bills are enacted and become effective January 1, 1989, (2) each bill amends Section 1170.1 of the Penal Code, (3) SB 1445 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 3423 in which case Sections 3, 4, and 6 of this bill shall not become operative.

(c) Section 6 of this bill incorporates amendments to Section 1170.1 of the Penal Code proposed by this bill, SB 1445, and AB 3423. It shall only become operative if (1) all three bills are enacted and become effective January 1, 1989, (2) all three bills amend Section 1170.1 of the Penal Code, and (3) this bill is enacted after SB 1445 and AB 3423, in which case Sections 3, 4, and 5 of this bill shall not become operative.

# CHAPTER 1485

An act making an appropriation for the payment of claims against the State of California for state-mandated local costs, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 28, 1988. File with Secretary of State September 28, 1988.]

I am reducing the appropriation contained in Section 1 of Assembly Bill No. 2763 by $134,855,448 from $160,906,448 to $26,051,000, to provide funding for the 1988–89 fiscal year costs only. I am reducing:

(a) For health fee elimination from $42,418,000 to $1,400,000;
(b) For missing persons reports from $31,103,000 to $10,089,000;
(d) For the mandate reimbursement process from $19,180,000 to $4,000,000;
(e) For certification of teachers' evaluator's demonstrated competence from $6,582,000 to $582,000;
(f) For domestic violence diversion from $6,470,000 to $962,000;
(g) For motorists assistance from $10,559,000 to $3,125,000,
(h) For domestic violence from $20,777,000 to $5,493,000; and
(i) For pretreatment facilities from $3,092,000 to $400,000.

I am deleting:

(c) For victim's statements-minors, $4,534,000;
(j) For deficiencies in prior year reimbursement of mandated costs, $12,498,054;
(k) For deficiencies in prior year reimbursement of mandated costs payable from the Restitution Fund, $307,544;
(*l*) For augmentation of Schedule 55 of Item 8885-101-001 of the Budget Act of 1987, $2,504,730, and
(m) For augmentation of Schedule 56 of Item 8885-101-001 of the Budget Act of 1987, $881,120.

Due to an unexpected General Fund revenue shortfall, it has been agreed to with local government organizations and education organizations to fund the mandate costs incurred prior to fiscal year 1988–89, in equal installments in each of the Governor's Budgets for the 1989–90, 1990–91, and 1991–92 fiscal years.

The mandates listed in Schedules (a) through (i) incur reimbursable costs in fiscal year 1988–89, and are funded to that extent in this bill to ensure that the current year budgets of the affected local entities remain fiscally sound.

With these reductions and deletions, I approve Assembly Bill No. 2763.

GEORGE DEUKMEJIAN, Governor

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

SECTION 1. The sum of one hundred sixty million nine hundred six thousand four hundred forty-eight dollars ($160,906,448) is hereby appropriated from the General Fund to the Controller for the payment of claims for reimbursement of state-mandated local costs, according to the following schedule:

(a) Forty-two million four hundred eighteen thousand dollars ($42,418,000) to the Controller for the payment of claims of community college districts seeking reimbursable state-mandated costs incurred pursuant to Chapter 1 of the Statutes of 1984, 2nd Extraordinary Session (health fee elimination), for the 1983–84, 1984–85, 1985–86, 1986–87, 1987–88, and 1988–89 fiscal years.

(b) Thirty-one million one hundred three thousand dollars ($31,103,000) to the Controller for the payment of claims of counties, cities, and special districts seeking reimbursable state-mandated costs incurred pursuant to Chapter 51, Statutes of 1984; Chapter 177, Statutes of 1985; Chapter 111, Statutes of 1985; and Chapter 249,

Statutes of 1986, (missing persons reports) for the 1985–86, 1986–87, 1987–88, and 1988–89 fiscal years.

(c) Four million five hundred thirty-four thousand dollars ($4,534,000) to the Controller for the payment of claims of counties seeking reimbursable state-mandated costs incurred pursuant to Chapter 332, Statutes of 1981, and Chapter 1425, Statutes of 1984, (victim's statements-minors) for the 1981–82, 1982–83, 1983–84, 1984–85, 1985–86, 1986–87, 1987–88, and 1988–89 fiscal years.

(d) Nineteen million one hundred eighty thousand dollars ($19,180,000) to the Controller for the payment of claims of all local agencies and school districts seeking reimbursable state-mandated costs incurred pursuant to Chapter 486 of the Statutes of 1975 and Chapter 1459 of the Statutes of 1984 (mandate reimbursement process), for the 1984–85, 1985–86, 1986–87, 1987–88, and 1988–89 fiscal years, provided that the parameters and guidelines for reimbursement limit reimbursable consultant costs to ninety dollars ($90) per hour.

(e) Six million five hundred eighty-two thousand dollars ($6,582,000) to the Controller for the payment of claims of school districts and county offices of education seeking reimbursable state-mandated costs incurred pursuant to Chapter 498 of the Statutes of 1983 (certification of teacher's evaluator's demonstrated competence) for the 1983–84, 1984–85, 1985–86, 1986–87, 1987–88, and 1988–89 fiscal years.

(f) Six million four hundred seventy thousand dollars ($6,470,000) to the Controller for the payment of claims of counties seeking reimbursable state-mandated costs incurred pursuant to Chapter 913 of the Statutes of 1979 and Chapter 1158 of the Statutes of 1980 (domestic violence diversion) for the 1980–81, 1981–82, 1982–83, 1983–84, 1984–85, 1985–86, 1986–87, 1987–88, and 1988–89 fiscal years.

(g) Ten million five hundred fifty-nine thousand dollars ($10,559,000) to the Controller for the payment of claims of law enforcement agencies seeking reimbursable state-mandated costs incurred pursuant to Chapter 1203 of the Statutes of 1985 (motorists assistance) for the 1985–86, 1986–87, 1987–88, and 1988–89 fiscal years.

(h) Twenty million seven hundred seventy-seven thousand dollars ($20,777,000) to the Controller for the payment of claims of local law enforcement agencies seeking reimbursable state-mandated costs incurred pursuant to Chapter 1609 of the Statutes of 1984 and Chapter 668 of the Statutes of 1985 (domestic violence) for the 1985–86, 1986–87, 1987–88, and 1988–89 fiscal years.

(i) Three million ninety-two thousand dollars ($3,092,000) to the Controller for the payment of claims of counties seeking reimbursable state-mandated costs incurred pursuant to subdivision (f) of Section 64435 of Title 22 of the California Code of Regulations (pretreatment facilities) for the 1984–85, 1985–86, 1986–87, 1987–88, and 1988–89 fiscal years, provided that the parameters and guidelines for reimbursement limit reimbursement to districts which demonstrate that they are unable to recover the capital costs

imposed by this mandate through fees and exclude annual increased operating costs.

(j) Twelve million four hundred ninety-eight thousand fifty-four dollars ($12,498,054) to the Controller to cover deficiencies in prior appropriations for reimbursement of costs incurred under state-mandated legislation.

(k) Three hundred seven thousand five hundred forty-four dollars ($307,544) from the Restitution Fund to cover deficiencies in prior appropriations for reimbursement of state-mandated costs incurred pursuant to Chapter 1123, Statutes of 1977.

(*l*) Two million five hundred four thousand seven hundred thirty dollars ($2,504,730) for the 1987–88 fiscal year in augmentation of Schedule 55 of Item 8885-101-001 of the Budget Act of 1987.

(m) Eight hundred eighty-one thousand one hundred twenty dollars ($881,120) for the 1987–88 fiscal year in augmentation of Schedule 56 of Item 8885-101-001 of the Budget Act of 1987.

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

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## CHAPTER 1486

An act to add Section 3617 to the Public Utilities Code, and to amend Sections 23113, 23114, and 23115 of, and to add Section 40000.16 to, the Vehicle Code, relating to vehicles.

[Approved by Governor September 28, 1988. Filed with Secretary of State September 28, 1988.]

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

SECTION 1. Section 3617 is added to the Public Utilities Code, to read:

3617. The commission shall, on or before September 1, 1990, and annually thereafter, review the rates established or approved for dump truck carriers pursuant to Section 3662 and adjust those rates to fully reflect costs incurred or reduced by those carriers in compliance with the procedures, equipment, and actions mandated by Sections 23113 to 23115, inclusive, of the Vehicle Code.

SEC. 2. Section 23113 of the Vehicle Code is amended to read:

23113. (a) Any person who drops, dumps, deposits, places, or throws, or causes or permits to be dropped, dumped, deposited, placed, or thrown, upon any highway or street any material described in Section 23112 or in paragraph (4) of subdivision (b) of

Section 23114 shall immediately remove the material or cause the material to be removed.

(b) If the person fails to comply with subdivision (a), the governmental agency responsible for the maintenance of the street or highway on which the material has been deposited may remove the material and collect, by civil action, if necessary, the actual cost of the removal operation in addition to any other damages authorized by law from the person made responsible under subdivision (a).

(c) A member of the Department of the California Highway Patrol may direct a responsible party to remove the aggregate material described in paragraph (4) of subdivision (b) of Section 23114 from a highway when that material has escaped or been released from a vehicle.

SEC. 3. Section 23114 of the Vehicle Code is amended to read:

23114. (a) No vehicle shall be driven or moved on any highway unless the vehicle is so constructed, covered, or loaded as to prevent any of its contents or load other than clear water or feathers from live birds from dropping, sifting, leaking, blowing, spilling, or otherwise escaping from the vehicle.

(b) (1) Aggregate material shall only be carried in the cargo area of a vehicle. The cargo area shall not contain any holes, cracks, or openings through which that material may escape, regardless of the degree to which the vehicle is loaded, except as provided in paragraph (2).

(2) Every vehicle used to transport aggregate materials, regardless of the degree to which the vehicle is loaded, shall be equipped with all of the following:

(A) Properly functioning seals on any openings used to empty the load, including, but not limited to, bottom-dump release gates and tailgates.

(B) Splash flaps behind every tire, or set of tires, regardless of position on the truck, truck tractor, or trailer.

(C) Center flaps at a location to the rear of each bottom-dump release gate as to trucks or trailers equipped with bottom-dump release gates. The top of the center flap shall not be lower than the adjacent tire or set of tires, and the bottom of the center flap shall extend to within five inches of the pavement surface.

(D) Fenders which completely cover the tops of tires not already covered by the truck, truck tractor, or trailer body.

(E) Complete enclosures on all vertical sides of the cargo area, including, but not limited to, tailgates.

(F) Shed boards designed to prevent aggregate materials from being deposited on the vehicle body during top loading.

(c) (1) On and after September 1, 1990, in addition to subdivisions (a) and (b), no vehicle shall transport any aggregate material upon a highway unless the material is covered.

(2) Vehicles transporting loads composed entirely of asphalt material are exempt only from the provisions of this section

requiring that loads be covered.

(3) Vehicles transporting loads composed entirely of petroleum coke material shall not be required to cover their loads if they are loaded using safety procedures, specialized equipment, and a chemical surfactant designed to prevent materials from blowing, spilling, or otherwise escaping from the vehicle.

(4) Vehicles transporting loads of aggregate materials shall not be required to cover their loads if the load, where it contacts the sides, front, and back of the cargo container area, remains six inches from the upper edge of the container area, and if the load does not extend, at its peak, above any part of the upper edge of the cargo container area.

(5) The requirements of this subdivision shall become operative on September 1, 1990.

(d) For purposes of this section, "aggregate material" means rock fragments, pebbles, sand, gravel, cobbles, crushed base, asphalt, and other similar materials.

SEC. 4. Section 23115 of the Vehicle Code is amended to read:

23115. (a) No vehicle loaded with garbage, swill, cans, bottles, wastepapers, ashes, refuse, trash, or rubbish, or any other noisome, nauseous, or offensive matter, or anything being transported to a dump site for disposal shall be driven or moved upon any highway unless the load is totally covered in a manner which will prevent the load or any part of the load from spilling or falling from the vehicle.

(b) This section does not prohibit a rubbish vehicle from being without cover while in the process of acquiring its load if no law, administrative regulation, or local ordinance requires that it be covered in those circumstances.

This section does not apply to any vehicle engaged in transporting wet waste fruit or vegetable matter, or waste products from a food processing establishment.

SEC. 5. Section 40000.16 is added to the Vehicle Code, to read:

40000.16. A violation of Section 23114, relating to preventing the escape of materials from vehicles, is a misdemeanor, and not an infraction.

SEC. 6. The Public Utilities Commission, in conjunction with the Department of the California Highway Patrol, the Department of Insurance, and the Department of Transportation, shall conduct a study to determine if the equipment requirements in subdivision (b) of Section 23114 of the Vehicle Code have been effective in reducing vehicle damage claims resulting from aggregate materials dropping, sifting, blowing, spilling, or otherwise escaping from vehicles carrying aggregate materials. The commission shall report the results of the study to the Chairpersons of the Assembly and Senate Transportation Committees on or before April 1, 1990.

It is the intent of the Legislature to repeal the requirements in Section 23114 that were added by the act enacting this section, which would otherwise require aggregate materials vehicles to be covered, if the study determines that there has been significant reduction in

damage claims. It is also the intent of the Legislature that if there is a determination made that there has been a significant reduction in damage claims that the Department of the California Highway Patrol shall not enforce subdivision (c) of Section 23114 Vehicle Code until January 1, 1991.

The study required by this section shall be funded from the existing resources of the Public Utilities Commission.

SEC. 7. Section 4 shall become operative on September 1, 1990.

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. Moreover, pursuant to Section 17579 of the Government Code, the legislature finds that there is no mandate contained in this act which will result in costs incurred by a local agency or school district for any other new program or higher level of service which would require reimbursement pursuant to Section 6 of Article XIII B of the California Constitution and Part 7 (commencing with Section 17500) of Division 4 or Title 2 of the Government Code.

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## CHAPTER 1487

An act to amend Sections 667.5 and 1170.1 of the Penal Code, relating to crimes.

[Approved by Governor September 28, 1988. Filed with Secretary of State September 28, 1988.]

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

SECTION 1. Section 667.5 of the Penal Code, as amended by Section 1.5 of Chapter 89 of the Statutes of 1988, 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 was one of the violent felonies specified in subdivision (c); provided that 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 subdivision (2) of Section 261.

(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 14 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.

(9) Any robbery perpetrated in an inhabited dwelling house or 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.

The Legislature finds and declares that these specified crimes merit special consideration when imposing a sentence to display society's condemnation for such 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 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 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 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. 1.1. Section 667.5 of the Penal Code, as amended by Section 1.5 of Chapter 89 of the Statutes of 1988, 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 was one of the violent felonies specified in subdivision (c); provided that 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 subdivision (2) of Section 261.

(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 14 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 or 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.

The Legislature finds and declares that these specified crimes merit special consideration when imposing a sentence to display society's condemnation for such 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 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 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 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. 1.5. 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 667.8, 667.85, 12022, 12022.2, 12022.3, 12022.4, 12022.5, 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 such felony conviction for which a consecutive term of imprisonment is imposed, and shall exclude any enhancements. In no case shall the total of subordinate terms for such 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) or (9) of subdivision (c) of Section 667.5, shall consist of one-third of the middle term of imprisonment prescribed for each other such felony 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, 12022.7, 12022.75, or 12022.9.

(b) 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 both separate victims and 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, 12022.7, 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 and separate occasions.

(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 such 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 such 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. The provisions of 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, 667.5, 667.8, 667.85, 12022, 12022.2, 12022.4, 12022.5, 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 such 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, 12022.7, 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, penetration of a genital or anal opening by a foreign object, as defined in Section 289, oral copulation, sodomy, robbery, 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, penetration of a genital or anal opening by a foreign object, oral copulation, sodomy, robbery, rape, murder, or burglary the court may impose both (1) one enhancement for weapons as provided in either Section 12022, 12022.4, or 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, 667.5, 667.6, 667.8, 667.85, 12022, 12022.1, 12022.2, 12022.3, 12022.4, 12022.5, 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) 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, 667.8, 667.85, 12022, 12022.2, 12022.4, 12022.5, 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.

(h) Notwithstanding any other provision of law, the court may strike the additional punishment for the enhancements provided in Sections 667.5, 667.8, 667.85, 12022, 12022.2, 12022.4, 12022.5, 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 subdivision (2) or (3) 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 such enhancements are pursuant to this or some other section of law. Each of such enhancements shall be a full and separately served enhancement and shall not be merged with any term or with any other enhancement.

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 667.8, 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 such felony conviction for which a consecutive term of imprisonment is imposed, and shall exclude any enhancements. In no case shall the total of subordinate terms for such 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) or (9) of subdivision (c) of Section 667.5, shall consist of one-third of the middle term of imprisonment prescribed for each other such felony 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.

(b) 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 both separate victims and 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 and separate occasions.

(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 such 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 such 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. The provisions of 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, 667.5, 667.8, 667.85, 12022, 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 such 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, penetration of a genital or anal opening by a foreign object, as defined in Section 289, oral copulation, sodomy, robbery, 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, penetration of a genital or anal opening by a foreign object, oral copulation, sodomy, robbery, 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 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, 667.5, 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) 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, 667.8, 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.

(h) Notwithstanding any other provision of law, the court may strike the additional punishment for the enhancements provided in Sections 667.5, 667.8, 667.85, 12022, 12022.2, 12022.4, 12022.5, 12022.55, 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 subdivision (2) or (3) 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 such enhancements are pursuant to this or some other section of law. Each of such enhancements shall be a full and separately served enhancement and shall not be merged with any term or with any other enhancement.

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, or 667.6, 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 667.8, 667.85, 12022, 12022.1, 12022.2, 12022.3, 12022.4, 12022.5, 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 such felony conviction for which a consecutive term of imprisonment is imposed, and shall exclude any enhancements. In no case shall the total of subordinate terms for such 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) or (9) of subdivision (c) of Section 667.5, shall consist of one-third of the middle term of imprisonment prescribed for each other such felony 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, 12022.7, 12022.75, or 12022.9.

(b) 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 both separate victims and 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, 12022.7, 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 and separate occasions.

(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 such 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 such 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. The provisions of 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, 667.5, 667.8, 667.85, 12022, 12022.1, 12022.2, 12022.4, 12022.5, 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 such additional term, the court shall apply the sentencing rules of the Judicial Council.

(e) When two or more enhancements under Sections 12022, 12022.1, 12022.4, 12022.5, 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, penetration of a genital or anal opening by a foreign object, as defined in Section 289, oral copulation, sodomy, robbery, 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, penetration of a genital or anal opening by a foreign object, oral copulation, sodomy, robbery, rape, murder, or burglary the court may impose both (1) one enhancement for weapons as provided in either Section 12022, 12022.4, or 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, 667.5, 667.6, 667.8, 667.85, 12022, 12022.1, 12022.2, 12022.3, 12022.4, 12022.5, 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) 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, 667.8, 667.85, 12022, 12022.1, 12022.2, 12022.4, 12022.5, 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.

(h) Notwithstanding any other provision of law, the court may strike the additional punishment for the enhancements provided in Sections 667.5, 667.8, 667.85, 12022, 12022.1, 12022.2, 12022.4, 12022.5, 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 subdivision (2) or (3) 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 such enhancements are pursuant to this or some other section of law. Each of such 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 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, or 667.6, 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 667.8, 667.85, 12022, 12022.1, 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 such felony conviction for which a consecutive term of imprisonment is imposed, and shall exclude any enhancements. In no case shall the total of subordinate terms for such 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) or (9) of subdivision (c) of Section 667.5, shall consist of one-third of the middle term of imprisonment prescribed for each other such felony 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.

(b) 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 both separate victims and 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 and separate occasions.

(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 such 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 such 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. The provisions of 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, 667.5, 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 such 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, penetration of a genital or anal opening by a foreign object, as defined in Section 289, oral copulation, sodomy, robbery, 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, penetration of a genital or anal opening by a foreign object, oral copulation, sodomy, robbery, 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 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, 667.5, 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) 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, 667.8, 667.85, 12022, 12022.1, 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.

(h) Notwithstanding any other provision of law, the court may strike the additional punishment for the enhancements provided in Sections 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, 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 subdivision (2) or (3) 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 such enhancements are pursuant to this or some other section of law. Each of such enhancements shall be a full and separately served enhancement and shall not be merged with any term or with any other enhancement.

SEC. 5. Section 1.1 of this bill incorporates amendments to

Section 667.5 of the Penal Code, as amended by Section 1.5 of Chapter 89 of the Statutes of 1988, proposed by both this bill and AB 2760. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1989, (2) each bill amends Section 667.5 of the Penal Code, and (3) this bill is enacted after AB 2760, in which case Section 1 of this bill shall not become operative.

SEC. 6. (a) Section 2 of this bill incorporates amendments to Section 1170.1 of the Penal Code proposed by both this bill and AB 2760. It shall only become operative if (1) both bills are enacted and become effective January 1, 1989, (2) each bill amends Section 1170.1 of the Penal Code, and (3) SB 1445 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 2760, in which case Sections 1.5, 3, and 4 of this bill shall not become operative.

(b) Section 3 of this bill incorporates amendments to Section 1170.1 of the Penal Code proposed by both this bill and SB 1445. It shall only become operative if (1) both bills are enacted and become effective January 1, 1989, (2) each bill amends Section 1170.1 of the Penal Code, (3) AB 2760 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after SB 1445 in which case Sections 1.5, 2, and 4 of this bill shall not become operative.

(c) Section 4 of this bill incorporates amendments to Section 1170.1 of the Penal Code proposed by this bill, AB 2760, and SB 1445. It shall only become operative if (1) all three bills are enacted and become effective January 1, 1989, (2) all three bills amend Section 1170.1 of the Penal Code, and (3) this bill is enacted after SB 1445 and AB 2760, in which case Sections 1.5, 2, and 3 of this bill shall not become operative.

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## CHAPTER 1488

An act to amend Section 12668 of, and to add Sections 8610 and 8611 to, the Water Code, relating to flood protection.

[Approved by Governor September 28, 1988. Filed with Secretary of State September 28, 1988.]

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

SECTION 1. Section 8610 is added to the Water Code, to read:

8610. (a) The board shall offer to lease to the Department of Fish and Game, or to an appropriate public resource protection or public conservation agency or organization approved by the Department of Fish and Game and the board, any lands it acquires as replacement habitat as mitigation for adverse environmental impacts of its projects. The lease agreement shall ensure that these lands are managed to provide the mitigation for which they were acquired and shall include, but not be limited to, provisions for funding

management of those lands. Funds for management of those lands may include, but are not limited to, funds appropriated by the Legislature to the Department of Water Resources, the Reclamation Board, or the Department of Fish and Game, and funds available from local entities. The lease agreement shall reserve the authority of the board to carry out necessary flood control activities and mitigate adverse environmental impacts.

(b) The board shall report to the appropriate policy committees of each house of the Legislature, on or before July 31, 1989, and on or before every July 31 thereafter, the amount of funds, if any, it has budgeted for maintenance of lands acquired for mitigation in accordance with subdivision (a).

SEC. 2. Section 8611 is added to the Water Code, to read:

8611. (a) Except as provided in subdivision (b), prior to construction at a site of a flood control, channel clearance, or bank stabilization project, the board, in consultation with the Department of Fish and Game, shall prepare and adopt a mitigation plan which shall be implemented as part of the project. A mitigation plan shall include, but not be limited to, all of the following:

(1) A description of the actions that the board proposes to take to ensure that the project will meet all mitigation standards required by law with the objective of ensuring that the project causes no net loss of riparian, fishery, or wildlife habitat.

(2) A designation of the agency or agencies responsible for implementing and maintaining each mitigation element of the plan.

(3) A schedule for implementation of the mitigation ensuring that the mitigation measures will be accomplished prior to, or concurrent with, construction of the project, unless the board determines that to do so would be impracticable.

(4) A financing plan for the mitigation identifying the source or sources of funds for the mitigation, the share of mitigation costs attributable to each source, and a schedule of when the funds are to be provided.

The plan may take into consideration the environmental benefits of restoring, maintaining, or increasing the sustainable diversity of native species and habitat which may result from the project, if these benefits have been approved by the Department of Fish and Game. The Department of Fish and Game may submit a review of the plan and its recommendations to the board for inclusion in the plan.

(b) No mitigation plan is required when the board is responding to an emergency where no mitigation is required.

(c) For any project authorized pursuant to Section 12668, the agreement set forth in subdivision (a) shall provide for the mitigation of the project with the objective of providing a net long-term enhancement of the riparian habitat and fishery in the project area. The degree of net enhancement required for each phase or part of the project shall not be so great as to cause the project to be infeasible.

SEC. 3. Section 12668 of the Water Code is amended to read:

12668. (a) The project for flood control on the San Joaquin River is adopted and authorized substantially in accordance with P.L. 98-63, at a federal cost of approximately eight million dollars ($8,000,000), for the accomplishment of selective clearing and snagging work in the San Joaquin Channel, from Friant Dam to the Stockton Deep Water Channel, and in that area of the North Fork of the Kings River and Mendota Pool from the southerly boundary of the James Reclamation District No. 1606 to Mendota Dam. Because of the unique situation presented by this project, the department shall maintain and operate, on behalf of the state, the work performed by the Corps of Engineers on this project, and the cost of that maintenance and operation shall be borne by the state.

(b) Any assurance agreement entered into between the Secretary of the Army and the Reclamation Board for this project shall provide for mitigation of the impact of the project with the objective of providing a net long-term enhancement of the riparian habitat and fishery in the project area.

(c) It is the intent of the Legislature, in reviewing future projects, to improve the capacity of the San Joaquin River to provide for mitigation of the impact of the project and net long-term enhancement of the riparian habitats and fisheries in the project area.

(d) The Legislature finds and declares that the local responsibility of maintenance of this and future federal projects in and along the San Joaquin River may be better, more efficiently, and more fairly fulfilled by geographically larger, or regional, local public entities. The Legislature, therefore, directs the Reclamation Board, in coordination with the department, to study the possibility of creating, by a joint powers agreement or by special act of the Legislature, one or more regional districts to undertake at a future time local maintenance responsibility for this project. The Reclamation Board shall report its findings to the Legislature not later than December 31, 1985.

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## CHAPTER 1489

An act to add Section 10196 to the Insurance Code, relating to insurance, and making an appropriation therefor.

[Approved by Governor September 28, 1988. Filed with Secretary of State September 28, 1988.]

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

SECTION 1. Section 10196 is added to the Insurance Code, to read:

10196. (a) The commissioner, with the advice of the Department of Corporations, shall prepare a guide that explains the

factors to be considered in selecting long-term care insurance and the consequences of particular clauses and exclusions. The guide shall be made available to the public and to interested organizations upon request. Any advertisement in this state dealing with long-term care insurance shall include notice of availability of this guide from the commissioner.

(b) For purposes of this section, "long-term care insurance" means any insurance policy or rider advertised, marketed, offered, or designed to provide coverage for not less than 12 consecutive months for each covered person on an expense incurred, indemnity, prepaid, or other basis for one or more necessary or medically necessary diagnostic, preventive, therapeutic, rehabilitative, maintenance, or personal care services, provided in a setting other than an acute care unit of a hospital. "Long-term care insurance" does not include any insurance policy which is offered primarily to provide basic Medicare supplement coverage, basic hospital expense coverage, basic medical-surgical expense coverage, hospital confinement indemnity coverage, major medical expense coverage, disability income protection coverage, accident only coverage, or specified disease or accident coverage.

SEC. 2. The sum of twenty-seven thousand dollars ($27,000) is hereby appropriated from the Insurance Fund to the Insurance Commissioner for purposes of carrying out Section 1 of this act.

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## CHAPTER 1490

An act to amend Section 7269 of the Government Code, relating to taxation.

[Approved by Governor September 28, 1988. Filed with Secretary of State September 28, 1988.]

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

SECTION 1. Section 7269 of the Government Code is amended to read:

7269. (a) No payment received by any person under this chapter or as tenant relocation assistance required by any state statute or local ordinance shall be considered as income for the purposes of the Personal Income Tax Law, Part 10 (commencing with Section 17001) of Division 2 of the Revenue and Taxation Code, or the Bank and Corporation Tax Law, Part 11 (commencing with Section 23001) of Division 2 of the Revenue and Taxation Code.

(b) No payment received by any person under this chapter shall be considered as income or resources to any recipient of public assistance and such payments shall not be deducted from the amount of aid to which the recipient would otherwise be entitled under any other provisions of law.

## CHAPTER 1491

An act to add Section 7118.4 to the Business and Professions Code, and to add Section 6509.5 to the Labor Code, relating to property inspections.

[Approved by Governor September 28, 1988. Filed with Secretary of State September 28, 1988.]

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

SECTION 1. Section 7118.4 is added to the Business and Professions Code, to read:

7118.4. (a) If a contractor has made an inspection for the purpose of determining the presence of asbestos or the need for related remedial action with knowledge that the report has been required by a person as a condition of making a loan of money secured by the property, or is required by a public entity as a condition of issuing a permit concerning the property, the contractor shall disclose orally and in writing if it is owned or has any common ownership, or any financial relationship whatsoever, including, but not limited to, commissions or referral fees, with an entity in the business of performing the corrective work.

(b) This section does not prohibit a contractor that has contracted to perform corrective work after the report of another company has indicated the presence of asbestos or the need for related remedial action from making its own inspection prior to performing that corrective work or from making an inspection to determine whether the corrective measures were successful and, if not, thereafter peforming additional corrective work.

(c) A violation of this section is grounds for disciplinary action.

(d) A violation of this section is a misdemeanor punishable by a fine of not less than three thousand dollars ($3,000) and not more than five thousand dollars ($5,000), or by imprisonment in the county jail for not more than one year, or both.

(e) For the purpose of this section, "asbestos" has the meaning set forth in Section 6501.7 of the Labor Code.

SEC. 2. Section 6509.5 is added to the Labor Code, to read:

6509.5. (a) If an asbestos consultant has made an inspection for the purpose of determining the presence of asbestos or the need for related remedial action with knowledge that the report has been required by a person as a condition of making a loan of money secured by the property, or is required by a public entity as a condition of issuing a permit concerning the property, the asbestos consultant or any employee, subsidiary, or any company with common ownership, shall not require, as a condition of performing the inspection, that the consultant also perform any corrective work on the property that was recommended in the report.

(b) This section does not prohibit an asbestos consultant that has

contracted to perform corrective work after the report of another company has indicated the presence of asbestos or the need for related remedial action from making its own inspection prior to performing that corrective work or from making an inspection to determine whether the corrective measures were successful and, if not, thereafter performing additional corrective work.

(c) A violation of this section is grounds for disciplinary action against any asbestos consultant who engages in that work pursuant to any license from a state agency.

(d) A violation of this section is a misdemeanor punishable by a fine of not less than three thousand dollars ($3,000) and not more than five thousand dollars ($5,000), or by imprisonment in the county jail for not more than one year, or both.

(e) For the purpose of this section:

(1) "Asbestos consultant" means any person who, for compensation, inspects property to identify asbestos containing materials, determining the risks, or the need for related remedial action.

(2) "Asbestos" has the meaning set forth in Section 6501.7.

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.

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## CHAPTER 1492

An act to amend Sections 11473, 11473.2, 11473.3, 11488.6, and 11489 of, to amend and repeal Sections 11470, 11488, 11488.4, and 11488.5 of, and to repeal Sections 11473.1 and 11509 of, the Health and Safety Code, relating to controlled substances, and making an appropriation therefor.

[Approved by Governor September 28, 1988. Filed with Secretary of State September 28, 1988.]

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

SECTION 1. Section 11470 of the Health and Safety Code, as amended by Section 1 of Chapter 924 of the Statutes of 1987, is amended to read:

11470. The following are subject to forfeiture:

(a) All controlled substances which have been manufactured, distributed, dispensed, or acquired in violation of this division.

(b) All raw materials, products and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting any controlled

substance in violation of this division.

(c) All property except real property or a boat, airplane, or any vehicle which is used, or intended for use, as a container for property described in subdivision (a) or (b).

(d) All books, computers, records, and research products and materials, including formulas, microfilm, tapes, data, computer programs, and software which are used, or intended for use, in violation of this division.

(e) The interest of any registered owner of a boat, airplane, or any vehicle, which has been used as an instrument to facilitate the possession for sale or sale of 7.125 grams or more of a substance containing either heroin or cocaine base, as specified in paragraph (1) of subdivision (f) of Section 11054, or 14.25 grams or more of a substance containing a Schedule I controlled substance except marijuana, peyote, or psilocybin; 5 pounds dry weight or more of marijuana, peyote, or psilocybin; or 14.25 grams or more of a substance containing cocaine, as specified in paragraph (6) of subdivision (b) of Section 11055, or methamphetamine; or 14.25 grams or more of a substance containing a Schedule II controlled substance. However, an interest not to exceed ten thousand dollars ($10,000) in a vehicle which may be lawfully driven on the highway with a class 3 or 4 license, as prescribed in Section 12804 of the Vehicle Code, which is a community property asset of a person who is a registered owner of the vehicle other than the person whose conduct renders the vehicle subject to forfeiture, and which is the sole class 3 or 4 vehicle available to that registered owner's immediate family, shall not be subject to forfeiture. The exemption from forfeiture provided by this subdivision shall not apply if pursuant to subdivision (e) of Section 11488.5 the trier of fact finds the person claiming the exemption knew or should have known of the unlawful use of the property.

(f) All moneys, negotiable instruments, securities, or other things of value furnished or intended to be furnished by any person in exchange for a controlled substance, all proceeds traceable to such an exchange, and all moneys, negotiable instruments, or securities used or intended to be used to facilitate any violation of Section 11351, 11351.5, 11352, 11355, 11359, 11360, 11378, 11378.5, 11379, 11379.5, 11379.6, or 11382 of this code, or Section 182 of the Penal Code, insofar as the offense involves manufacture, sale, possession for sale, offer for sale, or offer to manufacture, or conspiracy to commit at least one of those offenses, if the exchange, violation, or other conduct which is the basis for the forfeiture occurred within five years of the seizure of the property, or the filing of a petition under this chapter, or the issuance of an order of forfeiture of the property, whichever comes first.

(g) Real property related to a violation, whether charged or not, of Section 11366, 11366.5, 11366.6, or 11379.6. However, an interest not to exceed one hundred thousand dollars ($100,000) in real property which is used as a family residence and which is owned by two or

more persons shall not be subject to forfeiture. The exemption from forfeiture provided by this subdivision shall not apply if pursuant to subdivision (e) of Section 11488.5 the trier of fact finds the person claiming the exemption knew or should have known of the unlawful use of the property.

(h) All right, title, and interest in any property described in this section shall vest in the state upon commission of the act giving rise to forfeiture under this chapter.

The operation of the special vesting rule established by this subdivision shall be limited to circumstances where its application will not defeat the claim of any person, including a bona fide purchaser or encumbrancer who, pursuant to Section 11488.5 or 11488.6, claims an interest in the property seized, which interest arose prior to the seizure or the filing of the petition for forfeiture pursuant to this chapter, whichever occurs first, notwithstanding that the interest in the property being claimed was acquired from a person whose property interest would otherwise have been subject to divestment pursuant to this subdivision.

SEC. 2. Section 11470 of the Health and Safety Code, as amended by Section 8 of Chapter 1174 of the Statutes of 1987, is repealed.

SEC. 3. Section 11473 of the Health and Safety Code is amended to read:

11473. All seizures under provisions of this chapter, except seizures of vehicles, boats, or airplanes, as specified in subdivision (e) of Section 11470, or seizures of moneys, negotiable instruments, securities, or other things of value as specified in subdivisions (c), (d), and (f) of Section 11470, shall, upon conviction of the owner or defendant, be ordered destroyed by the court in which conviction was had.

SEC. 4. Section 11473.1 of the Health and Safety Code is repealed.

SEC. 5. Section 11473.2 of the Health and Safety Code is amended to read:

11473.2. All seizures under provisions of this chapter of vehicles, boats, or airplanes, may, upon declaration, or judgment of forfeiture, be placed in the name of the law enforcement agency for use in its law enforcement program. A certified copy of the declaration, or judgment of forfeiture issued by the court as a result of the proceeding, filed with the Department of Motor Vehicles, appropriate federal agency, or other appropriate registry, shall constitute authority for the government entity to convey clear title in its own name for use in its law enforcement program.

SEC. 6. Section 11473.3 of the Health and Safety Code is amended to read:

11473.3. (a) When authorized by a final judgment of forfeiture or by a declaration of forfeiture issued pursuant to subdivision (j) of Section 11488.4, items of property seized or subject to forfeiture, but not seized, pursuant to subdivision (b), (c), or (d) of Section 11470 may be utilized by the law enforcement agency in its law enforcement program.

(b) A certified copy of the judgment of forfeiture issued by the court or a declaration of forfeiture issued pursuant to subdivision (j) of Section 11488.4 as a result of the forfeiture proceedings shall serve to vest title to any property specified in subdivision (a) in the named law enforcement agency.

(c) The same authority with respect to transfer or sale of property as is specified in Section 11473.2 shall apply to property subject to this section.

SEC. 7. Section 11488 of the Health and Safety Code, as amended by Chapter 924 of the Statutes of 1987, is amended to read:

11488. (a) Any peace officer of this state, incident or subsequent to making or attempting to make an arrest for a violation of Section 11351, 11351.5, 11352, 11355, 11359, 11360, 11378, 11378.5, 11379, 11379.5, 11379.6, or 11382 of this code, or Section 182 of the Penal Code insofar as the offense involves manufacture, sale, purchase for the purpose of sale, possession for sale or offer to manufacture or sell, or conspiracy to commit one of those offenses, may seize any item subject to forfeiture under Section 11470.

(b) The peace officer shall notify the Franchise Tax Board of a seizure where there is reasonable cause to believe that the value of the seized property exceeds five thousand dollars ($5,000).

(c) Receipts for property seized pursuant to this section shall be delivered to any person out of whose possession such property was seized, in accordance with Section 1412 of the Penal Code. In the event property seized was not seized out of anyone's possession, receipt for the property shall be delivered to the individual in possession of the premises at which the property was seized or, if the individual is not present on the premises, the receipt shall be left in a prominent place at the premises.

(d) There shall be a presumption affecting the burden of proof that the person to whom a receipt for property was issued is the owner thereof. This presumption may, however, be rebutted at the forfeiture hearing specified in Section 11488.5.

SEC. 8. Section 11488 of the Health and Safety Code, as added by Chapter 1044 of the Statutes of 1986, is repealed.

SEC. 9. Section 11488.4 of the Health and Safety Code, as amended by Section 4 of Chapter 924 of the Statutes of 1987, is amended to read:

11488.4. (a) Except as provided in subdivision (j), if the Department of Justice or the local governmental entity determines that the factual circumstances do warrant that the moneys, negotiable instruments, securities, or other things of value seized or subject to forfeiture come within the provisions of subdivisions (a) to (g), inclusive, of Section 11470, and are not automatically made forfeitable or subject to court order of forfeiture or destruction by another provision of this chapter, the Attorney General or district attorney shall file a petition of forfeiture with the superior court of the county in which the property subject to forfeiture has been seized or, if no seizure has occurred, in the county in which the

property subject to forfeiture is located. If the petition alleges that real property is forfeitable, the prosecuting attorney shall cause a lis pendens to be recorded in the office of the county recorder of each county in which the real property is located.

A petition of forfeiture under this subdivision shall be filed within one year of the seizure of the property which is subject to forfeiture, or within one year of the filing by the Attorney General or district attorney of a lis pendens or other process against the property, whichever is earlier.

(b) Physical seizure of assets shall not be necessary in order to have that particular asset alleged to be forfeitable in a petition under this section. The prosecuting attorney may seek protective orders for any asset pursuant to Section 11492.

(c) The Attorney General or district attorney shall make service of process regarding this petition upon every individual designated in a receipt issued for the property seized. In addition, the Attorney General or district attorney shall cause a notice of the seizure, if any, and of the intended forfeiture proceeding, as well as a notice stating that any interested party may file a verified claim with the superior court of the county in which the property was seized or if the property was not seized, a notice of the initiation of forfeiture proceedings with respect to any interest in the property seized or subject to forfeiture, to be served by personal delivery or by registered mail upon any person who has an interest in the seized property or property subject to forfeiture other than persons designated in a receipt issued for the property seized.

(d) The Attorney General, district attorney, or law enforcement agency which made the seizure shall make an investigation into any right, title, interest, or lien of record with the Department of Motor Vehicles or appropriate federal agency as to a vehicle, boat, or airplane. If the investigation discloses that any person, other than the registered owner, is the legal owner thereof, and such ownership did not arise subsequent to the date and time of arrest or notification of the forfeiture proceedings or seizure of the vehicle, boat, or airplane, the Attorney General or district attorney shall forthwith send a notice to the legal owner at his or her address appearing on the records of the Department of Motor Vehicles or appropriate federal agency.

(e) When a forfeiture action is filed, the notices shall be published once a week for three successive weeks in a newspaper of general circulation in the county where the seizure was made or where the property subject to forfeiture is located.

(f) All notices shall set forth the time within which a claim of interest in the property seized or subject to forfeiture is required to be filed pursuant to Section 11488.5.

(g) (1) No sooner than 10 days after a petition is filed pursuant to Section 11488.4, a claimant, who alleges standing based on an interest in the property which arose prior to the seizure or filing of the petition for forfeiture, whichever occurs first, may move the

court for the return of the property named in the claim on the grounds that there is not probable cause to believe that the property is subject to forfeiture pursuant to Section 11470, or is not automatically forfeitable or subject to court order of forfeiture or otherwise subject to destruction by another provision of this chapter. The showing of probable cause may be supported by evidence, prior judicial testimony, deposition, affidavit, or declaration. If the court determines that there is not probable cause to believe that the property is subject to forfeiture it shall order the property returned to the owner thereof unless the property is otherwise lawfully held.

(2) If a petition is filed pursuant to Section 11488.4 and there is an underlying or related criminal action and the defendant has not pled guilty or nolo contendre, a defendant who is a claimant alleging an interest in the property in the related forfeiture proceeding shall move, exclusively pursuant to Section 1538.5 of the Penal Code, for the return of the property on the grounds that there is not probable cause to believe that the property is forfeitable pursuant to Section 11470, or is not automatically made forfeitable or subject to court order of forfeiture or destruction by another provision of this chapter.

The motion may be made at the preliminary examination or subsequent thereto. If made subsequent to the preliminary examination, the Attorney General or district attorney may submit the record of the preliminary hearing to establish that probable cause exists to believe that the property is subject to forfeiture. If the court determines that there is not probable cause to believe that the property is subject to forfeiture it shall order the property returned to the owner thereof unless the property is otherwise lawfully held.

(h) Within 30 days after a motion for return of property is granted pursuant to subdivision (g), the people may file a petition for writ of mandate or prohibition seeking appellate review of the order.

(i) Except as provided in subdivision (j) of Section 11488.4 and paragraph (1) of subdivision (b) of Section 11488.5, the state or local government entity shall have the burden of proving by a preponderance of the evidence that the property is subject to forfeiture as described in Section 11470.

A judgment of forfeiture does not require as a condition precedent thereto, that any defendant be convicted of an offense which made the property subject to forfeiture provided that the offense occurred within five years of the seizure of the property or within five years of the notification of intention to seek forfeiture. If there is a related criminal action, the issue of forfeiture may be tried in conjunction therewith. Trial shall be by jury unless waived by all parties. If there is no related criminal action, the presiding judge of the superior court shall assign the action brought pursuant to this chapter for trial.

(j) The Attorney General or the district attorney of the county in which property is subject to forfeiture under Section 11470 may, pursuant to this subdivision, order forfeiture of personal property not exceeding one hundred thousand dollars ($100,000) in value. The

Attorney General or district attorney shall provide notice of proceedings under this subdivision pursuant to subdivisions (c), (d), (e), and (f), including:

(1) A description of the property.

(2) The appraised value of the property.

(3) The date and place of seizure or location of any property not seized but subject to forfeiture.

(4) The violation of law alleged with respect to forfeiture of the property.

(5) The instructions for filing a claim with the superior court pursuant to Section 11488.5 and time limits for filing a claim. If no claims are timely filed, the Attorney General or the district attorney shall prepare a written declaration of forfeiture of the subject property to the state and dispose of the property in accordance with Section 11489. A written declaration of forfeiture signed by the Attorney General or district attorney under this subdivision shall be deemed to provide good and sufficient title to the forfeited property.

The prosecuting agency ordering forfeiture pursuant to this subdivision shall provide a copy of the declaration of forfeiture to any person listed in the receipt given at the time of seizure and to any person personally served notice of the forfeiture proceedings.

If a claim is timely filed and served, then the Attorney General or district attorney shall file a petition of forfeiture pursuant to this section within 30 days of the receipt of the claim. The petition of forfeiture shall then proceed pursuant to other provisions of this chapter, except that no additional notice need be given and no additional claim need be filed.

SEC. 10. Section 11488.4 of the Health and Safety Code, as added by Chapter 924 of the Statutes of 1987, is repealed.

SEC. 11. Section 11488.5 of the Health and Safety Code, as amended by Section 6 of Chapter 924 of the Statutes of 1987, is amended to read:

11488.5. (a) (1) Any person claiming an interest in the property seized pursuant to Section 11488 may, at any time within 30 days from the date of the first publication of the notice of seizure, if that person was not personally served or served by mail, or within 10 days after receipt of actual notice, file with the superior court of the county in which the property was seized or, if there was no seizure, in which the property is located, a verified claim stating his or her interest in the property. An endorsed copy of the claim shall be served by the claimant on the Attorney General or district attorney, as appropriate, within 10 days of the filing of the claim. The Judicial Council shall develop and approve official forms for the verified claim that is to be filed pursuant to this section. The official forms shall be drafted in nontechnical language and shall be made available through the office of the clerk of the appropriate court.

(2) Any person who claims that the property was assigned to him or to her prior to the seizure or notification of pending forfeiture of the property under this chapter, whichever occurs first, shall file a

claim with the court and prosecuting agency pursuant to Section 11488.5 declaring an interest in that property and such interest shall be adjudicated at the forfeiture hearing. The property shall remain under control of the law enforcement or prosecutorial agency until the adjudication of the forfeiture hearing.

(3) The claim of a law enforcement agency to property seized pursuant to Section 11488 or subject to forfeiture shall have priority over a claim to the seized or forfeitable property made by the Franchise Tax Board in a notice to withhold issued pursuant to Section 18817 or 26132 of the Revenue and Taxation Code.

(b) If, at the end of the time set forth in subdivision (a), there is no claim on file, the court, upon motion, shall declare the property seized or subject to forfeiture pursuant to Section 11470 forfeited to the state. In moving for a default judgment pursuant to this subdivision, the state or local governmental entity shall be required to establish a prima facie case in support of its petition for forfeiture.

(c) (1) If a verified claim is filed, the forfeiture proceeding shall be set for hearing on a day not less than 30 days therefrom, and the proceeding shall have priority over other civil cases. A claim shall not be admissible in the proceeding regarding the offense.

(2) The hearing shall be by jury, unless waived by consent of all parties.

(d) Forfeiture shall be ordered when, at the hearing, the state or local governmental entity has shown that the assets in question are subject to forfeiture pursuant to Section 11470, in accordance with the burden of proof set forth in subdivision (i) of Section 11488.4.

(e) The forfeiture hearing shall be continued upon motion of the prosecution or a claimant who is concurrently a defendant in a related criminal proceeding until the charge in that proceeding has been resolved in the trial court or the defendant fails to appear. The forfeiture hearing shall be conducted in accordance with Sections 600 to 630, inclusive, of the Code of Civil Procedure if a trial by jury, and by Sections 631 to 636, inclusive, of the Code of Civil Procedure if by the court. Unless the court or jury finds that the seized property is subject to forfeiture pursuant to Section 11470, the court shall order the seized property released to the person it determines is entitled thereto.

(f) If the court or jury finds that the seized property was subject to forfeiture, and finds that a person claiming an interest therein knew or should have known of facts which made the property subject to forfeiture pursuant to Section 11470, the court shall order that the person's interest in the seized property be forfeited. If the court or jury does not make these findings, the court shall order that the person's interest in the property be returned. The state or local governmental entity shall have the burden of proving in accordance with the burden of proof set forth in subdivision (i) of Section 11488.4, that a person claiming an interest knew or should have known of facts which made the property subject to forfeiture pursuant to Section 11470.

(g) All seized property which was the subject of a forfeiture hearing and which was not released by the court to a claimant shall be declared by the court to be forfeited to the state. Except as provided in Sections 11473.2 and 11473.3, the clerk of the court shall dispose of the forfeited property as set forth in Section 11489.

(h) All seized property which was the subject of the forfeiture hearing and which was not forfeited shall remain subject to any order to withhold issued with respect to the property by the Franchise Tax Board.

SEC. 12. Section 11488.5 of the Health and Safety Code, as added by Section 7 of Chapter 924 of the Statutes of 1987, is repealed.

SEC. 13. Section 11488.6 of the Health and Safety Code is amended to read:

11488.6. (a) If the court or jury at the forfeiture hearing finds that the property is forfeitable pursuant to Section 11470, and further finds that the state or local government entity has not met its burden of proving that a person holding a valid lien, mortgage, security interest, or interest under a conditional sales contract knew or should have known of facts which would or did make the property subject to forfeiture pursuant to Section 11470 when the interest was acquired, and the amount due that person is less than the appraised value of the property, that person may pay to the state or the local governmental entity which initiated the forfeiture proceeding the amount of the owner's equity, which shall be deemed to be the difference between the appraised value and the amount of the lien, mortgage, security interest, or interest under a conditional sales contract. Upon such payment, the state or local governmental entity shall relinquish all claims to the property. If the holder of the interest elects not to make such payment to the state or local governmental entity, the property shall be deemed forfeited to the state or local governmental entity and the ownership certificate shall be forwarded. The appraised value shall be determined as of the date judgment is entered on a wholesale basis either by agreement between the legal owner and the governmental entity involved, or if they cannot agree, then by the inheritance tax appraiser for the county in which the action is brought. A person holding a valid lien, mortgage, security interest, or interest under a conditional sales contract shall be paid the appraised value of his or her interest in accordance with the provisions of Section 11489.

(b) If the amount due to a person holding a valid lien, mortgage, security interest, or interest under a conditional sales contract is less than the value of the property and the person elects not to make payment to the governmental entity, the property, excluding vehicles identified in Section 11473.2 which a law enforcement agency may place in its own name for use in its law enforcement program, shall be sold at public auction by the Department of General Services or by the local governmental entity which shall provide notice of such sale by one publication in a newspaper published and circulated in the city, community, or locality where

the sale is to take place.

(c) The proceeds of sale pursuant to subdivision (b) shall be first distributed in accordance with the provisions of Section 11489.

SEC. 14. Section 11489 of the Health and Safety Code is amended to read:

11489. Notwithstanding Section 11502 and except as otherwise provided in Sections 11473 and 11473.2, in all cases where the property is seized pursuant to this chapter and forfeited to the state or local governmental entity and, where necessary, sold by the Department of General Services or local governmental entity, the money forfeited or the proceeds of sale shall be distributed by the state or local governmental entity as follows:

(a) To the bona fide or innocent purchaser or encumbrancer, conditional sales vendor, or mortgagee of the property, if any, up to the amount of his or her interest in the property, when the court declaring the forfeiture orders a distribution to that person.

(b) The balance, if any, to accumulate, and to be distributed and transferred quarterly in the following manner:

(1) To the state agency or local governmental entity for all expenditures made or incurred by it in connection with the sale of the property, including expenditures for any necessary repairs, storage, or transportation of any property seized under this chapter.

(3) Ninety percent of the balance shall be distributed as follows:

(A) Eighty-five percent to the state or local or to the state and local law enforcement agencies that participated in the seizure, allocated between them to reflect the proportionate contribution of each agency.

(B) Fifteen percent to the prosecutorial agency which processes the forfeiture action.

(4) Ten percent of the balance for deposit in the Asset Forfeiture Distribution Fund, which is hereby created, and which shall be administered by the Office of Criminal Justice Planning.

(A) Notwithstanding Section 11340 of the Government Code, one million five hundred thousand dollars ($1,500,000) is hereby continuously appropriated each fiscal year, as adjusted annually by the state and local implicit price deflator, to the State Department of Mental Health for the purposes of Chapter 6 (commencing with Section 5475) of Part 1 of Division 5 of the Welfare and Institutions Code. This subparagraph shall be funded prior to funding subparagraph (B).

(B) After the obligation specified in subparagraph (A) is satisfied, moneys in the Asset Forfeiture Distribution Fund are available for appropriation in the annual Budget Act for the following purposes:

(i) One million dollars ($1,000,000), in 1989 and 1990 only, to the Los Angeles County Office of Education to fund grants and administer the Gang Risk Intervention Pilot Program as established pursuant to Assembly Bill 3723 of the 1987–88 Regular Session of the Legislature. This clause (i) shall be funded prior to funding clauses (ii) and (iii). This clause (i) shall remain operative only until January

1, 1991, and as of that date is inoperative.

(ii) An amount not to exceed 5 percent of the Asset Forfeiture Distribution Fund to cover administrative costs incurred by the Office of Criminal Justice Planning. Notwithstanding Section 16305.7 of the Government Code, any interest earned or other increment derived from investments made from moneys in the Assets Forfeiture Distribution Fund shall be deposited in the Asset Forfeiture Distribution Fund. This clause (ii) shall be funded prior to funding clause (iii).

(iii) The balance, if any, remaining shall be distributed, as follows:

(I) Eighty-five percent for deposit in the Peace Officers' Training Fund as set forth in Section 13520 of the Penal Code. State agencies shall be entitled to allocations out of the funds generated by this section, in the same manner as provided in Section 13523 of the Penal Code, for drug related training provided to full-time regularly-paid peace officers employed by the state, to the extent that there are funds in the Peace Officers' Training Fund generated by this section.

(II) Fifteen percent for financial assistance to provide for a statewide program of education, training, and research for local public prosecutors, which shall be administered by a private nonprofit organization composed of local prosecutors and which provides statewide education, training, and research.

(c) Notwithstanding Item 0820-101-469 of the Budget Act of 1985 (Chapter 111 of the Statutes of 1985), all funds allocated to the Department of Justice pursuant to subparagraph (A) of paragraph (3) of subdivision (b) shall be deposited into the Department of Justice Special Deposit Fund—State Asset Forfeiture Account and used for the law enforcement efforts of the state or for state or local law enforcement efforts pursuant to Section 11493.

All funds allocated to the Department of Justice by the federal government under its Federal Asset Forfeiture program authorized by the Comprehensive Crime Control Act of 1984 may be deposited directly into the Narcotics Assistance and Relinquishment by Criminal Offenders Fund and used for state and local law enforcement efforts pursuant to Section 11493.

Funds which are not deposited pursuant to the above paragraph shall be deposited into the Department of Justice Special Deposit Fund-Federal Asset Forfeiture Account.

(d) All the funds distributed pursuant to paragraph (3) of subdivision (b) shall not supplant any state or local funds that would, in the absence of this subdivision, be made available to support the law enforcement and prosecutorial efforts of these agencies. Funds so distributed shall be used by the law enforcement and prosecutorial agencies exclusively to support law enforcement and prosecutorial efforts of those agencies.

The court shall order the forfeiture proceeds distributed to the state, local, or state and local governmental entities as provided in this section.

For the purposes of this section, "local governmental entity"

means any city, county, or city and county in this state.

All proceeds from forfeiture proceedings completed after January 1, 1989, shall be distributed in accordance with this section.

SEC. 14.5. Section 11489 of the Health and Safety Code is amended to read:

11489. Notwithstanding Section 11502 and except as otherwise provided in Sections 11473 and 11473.2, in all cases where the property is seized pursuant to this chapter and forfeited to the state or local governmental entity and, where necessary, sold by the Department of General Services or local governmental entity, the money forfeited or the proceeds of sale shall be distributed by the state or local governmental entity as follows:

(a) To the bona fide or innocent purchaser or encumberancer, conditional sales vendor, or mortgagee of the property, if any, up to the amount of his or her interest in the property, when the court declaring the forfeiture orders a distribution to that person.

(b) The balance, if any, to accumulate, and to be distributed and transferred quarterly in the following manner:

(1) To the state agency or local governmental entity for all expenditures made or incurred by it in connection with the sale of the property, including expenditures for any necessary repairs, storage, or transportation of any property seized under this chapter, and for distribution of the proceeds of the sale.

(3) Ninety percent of the balance shall be distributed as follows:

(A) Eighty-five percent shall be distributed to the state or local or to the state and local law enforcement agencies that participated, or had a significant role in, the investigation leading to, the seizure, allocated between them to reflect the proportionate contribution of each agency.

(B) Fifteen percent to the prosecutorial agency which processes the forfeiture action.

(4) Ten percent of the balance for deposit in the Asset Forfeiture Distribution Fund, which is hereby created, and which shall be administered by the Office of Criminal Justice Planning.

(A) Notwithstanding Section 11340 of the Government Code, one million five hundred thousand dollars ($1,500,000) is hereby continuously appropriated each fiscal year, as adjusted annually by the state and local implicit price deflator, to the State Department of Mental Health for the purposes of Chapter 6 (commencing with Section 5475) of Part 1 of Division 5 of the Welfare and Institutions Code. This subparagraph shall be funded prior to funding subparagraph (B).

(B) After the obligation specified in subparagraph (A) is satisfied, moneys in the Asset Forfeiture Distribution Fund are available for appropriation in the Annual Budget Act for the following purposes:

(i) One million dollars ($1,000,000), in 1989 and 1990 only, to the Los Angeles County Office of Education to fund grants and administer the Gang Risk Intervention Pilot Program as established pursuant to Assembly Bill 3723 of the 1987–88 Regular Session of the

Legislature. This clause (i) shall be funded prior to funding clauses (ii) and (iii). This clause (i) shall remain operative only until January 1, 1991, and as of that date is inoperative.

(ii) An amount not to exceed 5 percent of the Asset Forfeiture Distribution Fund to cover administrative costs incurred by the Office of Criminal Justice Planning. Notwithstanding Section 16305.7 of the Government Code, any interest earned or other increment derived from investments made from moneys in the Assets Forfeiture Distribution Fund shall be deposited in the Asset Forfeiture Distribution Fund. This clause (ii) shall be funded prior to funding clause (iii).

(iii) The balance, if any, remaining shall be distributed, as follows:

(I) Eighty-five percent for deposit in the Peace Officers' Training Fund as set forth in Section 13520 of the Penal Code. State agencies shall be entitled to allocations out of the funds generated by this section, in the same manner as provided in Section 13523 of the Penal Code, for drug related training provided to full-time regularly-paid peace officers employed by the state, to the extent that there are funds in the Peace Officers' Training Fund generated by this section.

(II) Fifteen percent for financial assistance to provide for a statewide program of education, training, and research for local public prosecutors, which shall be administered by a private nonprofit organization composed of local prosecutors and which provides statewide education, training, and research.

(c) Notwithstanding Item 0820-101-469 of the Budget Act of 1985 (Chapter 111 of the Statutes of 1985), all funds allocated to the Department of Justice pursuant to subparagraph (A) of paragraph (3) of subdivision (b) shall be deposited into the Department of Justice Special Deposit Fund—State Asset Forfeiture Account and used for the law enforcement efforts of the state or for state or local law enforcement efforts pursuant to Section 11493.

All funds allocated to the Department of Justice by the federal government under its Federal Asset Forfeiture program authorized by the Comprehensive Crime Control Act of 1984 may be deposited directly into the Narcotics Assistance and Relinquishment by Criminal Offender Fund and used for state and local law enforcement efforts pursuant to Section 11493.

Funds which are not deposited pursuant to the above paragraph shall be deposited into the Department of Justice Special Deposit Fund-Federal Asset Forfeiture Account.

(d) All the funds distributed pursuant to paragraph (3) of subdivision (b) shall not supplant any state or local funds that would, in the absence of this subdivision, be made available to support the law enforcement and prosecutorial efforts of these agencies. Funds so distributed shall be used by the law enforcement and prosecutorial agencies exclusively to support law enforcement and prosecutorial efforts of those agencies.

The court shall order the forfeiture proceeds distributed to the state, local, or state and local governmental entities as provided in

this section.

For the purposes of this section, "local governmental entity" means any city, county, or city and county in this state.

All proceeds from forfeiture proceedings completed after January 1, 1989, shall be distributed in accordance with this section.

SEC. 15. Section 11509 of the Health and Safety Code is repealed.

SEC. 16. The provisions of the Health and Safety Code amended by this act shall remain in effect only until January 1, 1994, at which time those sections as they read on December 31, 1988, shall have the same force and effect as if they had not been amended.

SEC. 17. Section 14.5 of this bill incorporates amendments to Section 11489 of the Health and Safety Code proposed by both this bill and AB 4523. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1989, (2) each bill amends Section 11489 of the Health and Safety Code, and (3) this bill is enacted after AB 4523, in which case Section 14 of this bill shall not become operative.

SEC. 18. The Mental Health Primary Prevention Fund shall continue until all funds in the fund have been appropriated to the State Department of Mental Health for primary prevention programs in accordance with Chapter 1083 of the Statutes of 1981.

SEC. 19. The Office of Criminal Justice Planning shall establish an advisory group of five elected district attorneys. Only an elected district attorney may serve on the advisory group, and the term shall be for one year. The Office of Criminal Justice Planning, in consultation with the advisory group, shall develop specific guidelines, including criteria for selection of an organization, to provide general education, training, and research services using funds appropriated pursuant to clause (ii) of subparagraph (D) of paragraph (4) of subdivision (b) of Section 11489 of the Health and Safety Code.

SEC. 20. 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 five hundred thousand dollars ($500,000), reimbursement shall be made from the State Mandates Claims Fund.

# CHAPTER 1493

An act relating to international trade, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 28, 1988. Filed with Secretary of State September 28, 1988.]

I am deleting the $100,000 appropriation contained in Section 4 of Assembly Bill No. 4219.

This bill would require the California State World Trade Commission to examine the role of international competition on California's agriculture industry. The bill would appropriate $100,000 from the General Fund to the Commission for the study.

The demands placed on budget resources require all of us to set priorities. The budget enacted in July 1988 appropriated nearly $44 billion in state funds. This amount is more than adequate to provide the necessary essential services provided for by State Government. It is not necessary to put additional pressure on taxpayer funds for programs that fall beyond the priorities currently provided.

Thus, after reviewing this legislation, I have concluded that its merits do not sufficiently outweigh the need this year for funding top priority programs and continuing a prudent reserve for economic uncertainties.

It is more appropriate to consider funding the provisions of this bill during the budget process for Fiscal Year 1989–90. Only at that time can we review the relative merits of this program in comparison to all other funding projects. The budget process enables us to weigh all demands on the state's revenues and direct our resources to programs, either new or existing, that have the most merit.

With this deletion, I approve Assembly Bill No. 4219.

GEORGE DEUKMEJIAN, Governor

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

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

(a) The recent evolution of global competition in the agriculture industry is creating a growing concern among California producers facing steadily increasing imports of farm products.

(b) Changing economics are increasingly driving California food producers and processors abroad and prompting California farmers to seek retaliatory protectionist measures against foreign producers.

(c) It is in the best interest of the California agriculture industry to take a hard comprehensive look at the factors contributing to the increasingly competitive global agriculture arena and to seek strategies and solutions to solving the problem.

SEC. 2. The California State World Trade Commission shall examine the role of international competition on California's agriculture industry. The examination shall focus on the strategies, actions, and activities necessary to maintain the competitiveness of California agriculture. The California State World Trade Commission shall convene a working group of agriculture industry representatives and experts to determine the overall scope of the examination, including:

(a) An indepth analysis of the potential impact and benefits of country-of-origin labeling requirements of agricultural products sold in California. The analysis shall address all of the following:

(1) Degree to which consumers desire to know the country-of-origin of agricultural products sold in California.

(2) Likely effect on consumption choices and buying patterns for different types of products, including an assessment of the potential for retailers to sell additional volumes of domestically produced agricultural commodities.

(3) Specific identification of any potential impacts on our international trading relationships.

(4) A review of Florida and Canada's provincial country-of-origin laws and the European Economic Community country-of-origin labeling requirement, including an assessment on the benefits to local agricultural producers from these requirements.

(5) A review of current federal country-of-origin labeling requirements and their impact on our international trading relationships.

(6) A review of the constitutionality and compliance with international trading rules of such a law.

(7) The need for, cost, and likely effectiveness of government enforcement.

(8) A review of the ability for retailers to comply with country-of-origin labeling and identification of any specific commodities for which a retailer would not know the country-of-origin.

(b) An analysis of other factors of importance in the increasingly competitive international agricultural arena and recommendations for further study or specific action necessary to maintain California competitiveness, including the following:

(1) The impact of management's cropping patterns, and efficiency of agricultural technology and decisionmaking.

(2) The impact of domestic labor costs in California and its effect on California producers' ability to compete with foreign produce domestically and abroad.

(3) The impact of California's stringent pesticide usage and residue tolerance levels on California growers' ability to compete with less stringently regulated foreign producers, both domestically and abroad, and alternative strategies to deal with this situation.

(4) The impact of the Generalized System of Preferences Program operated under the General Agreement on Tariffs and Trade on the ability of California specialty crops to compete domestically and internationally.

(5) The technological and new product development necessary to keep California competitive and an evaluation of the means for implementing the necessary research and development.

SEC. 3. The California State World Trade Commission may contract with the University of California, or any other entity, for the performance of the examination required by this act. The cost of the study shall not exceed one hundred thousand dollars ($100,000). The commission shall report all its findings and recommendations made pursuant to this act to the Governor, the Lieutenant Governor, the

Secretary of State, the Senate Committee on Rules, and the Speaker of the Assembly no later than June 30, 1989.

SEC. 4. The sum of one hundred thousand dollars ($100,000) is hereby appropriated from the General Fund to the California State World Trade Commission in order to implement this act. Any funds not needed to complete the study shall revert to the General Fund.

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 assure a timely examination of a pressing issue of critical importance to the state's economy, it is necessary that this act go into immediate effect.

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## CHAPTER 1494

An act to add Section 4026 to the Welfare and Institutions Code, relating to mentally disordered persons.

[Approved by Governor September 28, 1988. Filed with Secretary of State September 28, 1988.]

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

SECTION 1. Section 4026 is added to the Welfare and Institutions Code, to read:

4026. (a) The Legislature finds and declares all of the following:

(1) That there is a severe shortage of adequate facilities for mentally disordered patients of all ages since the closing of the 48 out of 94 facilities in the mental illness program in 1968.

(2) That most of these mentally disordered people, who do not have families and money, are turned away from any treatment or therapy from the state and are forced to be sent out on the street.

(3) That these mentally disordered patients are not receiving the care that they are entitled to.

(4) That this shortage is demonstrated by the current practice of placing mentally disordered patients in jails and in transferring them from county to county.

(5) That mentally disordered patients are currently displacing potential residents over the age of 55 at our existing long-term health care facilities.

(6) That since the closing of these mental health facilities, the counties have been instructed by the State Department of Mental Health to commit the mentally disordered to skilled and long-term care nursing facilities.

(7) That when long-term care facilities house both mentally disordered patients and seniors, severe disruption and stress results, particularly in the nonmentally disordered senior population.

(8) That in order to meet the needs of seniors residing in long-term health care facilities, as well as mentally disordered patients, it would be of immense value to preclude mentally disordered persons from residing in long-term health care facilities, while, at the same time, ensuring that adequate facilities exist for the housing of mentally disordered patients.

(b) The State Department of Mental Health shall determine the extent of the problem, and identify the number of mentally disordered patients who are in need of long-term health care.

The department also shall determine how many people, whose primary illness is a mental disorder, are residing in long-term health care facilities, as defined in Section 1418 of the Health and Safety Code. If deemed appropriate, the department shall ask that any person whose primary illness is a mental disorder be precluded from residing in long-term health care facilities, if the residence is not in accordance with the then current licensing requirements.

The department also shall identify the extent of the shortage of long-term health care services and programs and make a preliminary estimate of costs of providing long-term health care services and programs for those patients. Those services and programs shall be ready to serve mentally disordered persons prior to any mentally disordered patient being denied admission to, or discharged from, the health care facility, when the denial or discharge has been made to comply with the then current licensing requirements.

The department shall report the results of its investigation to the Governor and the Legislature by January 1, 1990, with recommendations on the desired course of action to alleviate any problems identified resulting from inappropriate placement of mentally disordered persons in these facilities.

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## CHAPTER 1495

An act to add Section 7072.5 to the Business and Professions Code, relating to contractors.

[Approved by Governor September 28, 1988. Filed with Secretary of State September 28, 1988.]

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

SECTION 1. Section 7072.5 is added to the Business and Professions Code, to read:

7072.5. (a) Upon the issuance of a license, a plasticized pocket card of a size, design, and content as may be determined by the registrar shall be issued at no cost to each licensee, or to the partners or officers or responsible managing officer of licensees licensed as other than individuals, which card shall be evidence that the licensee is duly licensed pursuant to this chapter. All cards issued shall be

surrended upon the suspension, revocation, or denial of renewal of the license, and shall be mailed or delivered to the board within five days of the suspension, revocation, or denial.

(b) When any person to whom a card is issued terminates his or her position, office, or association with a licensee which is licensed as other than an individual, that person shall surrender his or her card to the licensee and within five days thereafter the card shall be mailed or delivered by the licensee to the board for cancellation.

(c) The Contractors' State License Board shall, prior to production of the plasticized cards, develop a system for the reporting and tracking of lost or stolen cards. The cards shall be issued to all licensees upon license renewal on and after July 1, 1989.

SEC. 2. (a) There is hereby created a pilot project on direct access contractor license verification systems. The goals of the pilot project shall be to determine the most appropriate method of providing cities, counties, or cities and counties with direct access to the licensure information, including bonding, maintained by the Contractors' State License Board and the most appropriate method of obtaining and providing timely and accurate workers' compensation insurance information on contractors to cities, counties, and cities and counties. The project shall be conducted in not less than six cities, counties, or cities and counties, or other entities, as determined by the Registrar of Contractors, and upon assent thereto by those cities, counties, or cities and counties, or other entities. The Contractors' State License Board shall provide each participant in the pilot project with the capability to obtain verification of proper licensure, bonding, and workers' compensation insurance of contractors engaged in projects requiring licensure through direct access, to computerized contractor license records maintained by the Contractors' State License Board. The Contractors' State License Board shall consider methods of access including magnetized stripe cards, bar coded cards, microchip-based cards, related hardware and software, and telecommunication means. Their initial analysis shall include technical feasibility, operational effectiveness, maintenance, risk factors, and cost or benefit of these media. This analysis shall be done in coordination with the office of information technology of the Department of Finance. Risk factors shall include security information in accordance with the Records Management Act, the Information Practices Act, and state electronic data processing policies. The pilot project shall be in operation no less than one year in each of the participating entities.

(b) The Contractors' State License Board shall report to the Legislature on or before March 31, 1991, as to the effectiveness of the pilot project for verification of contractor licensure and the feasibility and cost of implementing one or more of the methods statewide. The report shall include, but not be limited to, the following:

(1) The equipment and technology or technologies used in the

pilot project.

(2) The technical feasibility, operational effectiveness, maintenance, risk factors, and cost or benefit of the equipment and technology or technologies used in the pilot project, including a feasibility study report on the recommended technology or technologies if necessary for implementation.

(3) The impacts of the pilot project on unlicensed and uninsured activity in the participating entities and any economic benefits to the entities participating in the pilot project.

(4) Recommendations for ongoing direct access programming, including funding, ownership of the data base and ancillary information, and to whom and under what conditions such data base information should be available.

(5) Recommendations on any legislation necessary to make an ongoing, direct access program more feasible, including determination of liability to the state for information contained in the data base.

(6) Recommendations on changes that are necessary to access workers' compensation insurance or other records and to ensure that contractors continue to meet the license and insurance standards exisiting at the time of permit issuance throughout the term of construction for which the permit was issued.

The Contractors' State License Board shall report on a biannual basis to the Legislature, Legislative Analyst, and the Office of Information Technology of the Department of Finance on the status and findings of the pilot project.

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## CHAPTER 1496

An act to amend, repeal, and add Section 3209.3 of the Labor Code, relating to workers' compensation.

[Approved by Governor September 28, 1988 Filed with Secretary of State September 28, 1988.]

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

SECTION 1. Section 3209.3 of the Labor Code 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 doctorate degree in psychology 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) This section shall remain in effect until January 1, 1993, and as of that date is repealed.

SEC. 2. Section 3209.3 is added to the Labor Code, 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 doctorate degree in psychology 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, 1993.

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## CHAPTER 1497

An act to amend Section 11169 of the Penal Code, relating to child abuse, and making an appropriation therefor.

[Approved by Governor September 28, 1988. Filed with Secretary of State September 28, 1988.]

I am deleting the $25,000 appropriation contained in Section 3 of Senate Bill No. 2457.

This bill would appropriate $25,000 from the General Fund to the Department of Justice to study the appropriateness of purging unsubstantiated reports of child abuse from the Child Abuse Registry.

The demands placed on budget resources require all of us to set priorities. The budget enacted in July 1988 appropriated nearly $44 billion in state funds. This amount is more than adequate to provide the necessary essential services provided for by State Government. It is not necessary to put additional pressure on taxpayer funds for programs that fall beyond the priorities currently provided.

Thus, after reviewing this legislation, I have concluded that its merits do not sufficiently outweigh the need this year for funding top priority programs and continuing a prudent reserve for economic uncertainties.

It is more appropriate to consider funding the provisions of this bill during the budget process for Fiscal Year 1989–90. Only at that time can we review the relative

merits of this program in comparison to all other funding projects. The budget process enables us to weigh all demands on the state's revenues and direct our resources to programs, either new or existing, that have the most merit.

With this deletion, I approve Senate Bill No. 2457.

GEORGE DEUKMEJIAN, Governor

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

SECTION 1. Section 11169 of the Penal Code is amended to read:

11169. A child protective agency shall forward to the Department of Justice a report in writing of every case it investigates of known or suspected child abuse which is determined not to be unfounded, other than cases coming within subdivision (b) of Section 11165.2. A child protective agency shall not forward a report to the Department of Justice unless it has conducted an active investigation and determined that the report is not unfounded, as defined in Section 11165.12. If a report has previously been filed which subsequently proves to be unfounded, the Department of Justice shall be notified in writing of that fact and shall not retain the report. The report required by this section shall be in a form approved by the Department of Justice. A child protective agency receiving a written report from another child protective agency shall not send such report to the Department of Justice.

The immunity provisions of Section 11172 shall not apply to the submission of a report by a child protective agency pursuant to this section. However, nothing in this section shall be construed to alter or diminish any other immunity provisions of state or federal law.

SEC. 2. The Department of Justice shall conduct a study on the appropriateness of purging from the index it maintains pursuant to Section 11170 of the Penal Code all unsubstantiated reports of child abuse, as defined in Section 11165.6 of the Penal Code, or neglect, as defined in Section 11165.2 of the Penal Code, if after five consecutive years, or some other reasonable time period there have been no additional reports of suspected child abuse or neglect by that party. The study also shall include the advantages and disadvantages of advising persons that their names are on the index, how they are categorized on the index, the names of the agencies that reported them to the department, and the procedure, if any, by which they may have their names removed from the index. The study shall also include a recommendation which defines the categories of "substantiated," "unsubstantiated," and "unfounded" reports of child abuse and neglect, and a discussion of the basis for the recommendation. The department shall consult with a wide array of interested parties, including, but not limited to, child protective agencies, child abuse prevention councils, child/parents advocates, and day-care providers. The department shall report the results of the study to the Legislature on or before January 1, 1990.

SEC. 3. The sum of twenty-five thousand dollars ($25,000) is hereby appropriated from the General Fund to the Department of Justice for the purpose of conducting the study required by Section 1 of this act.

# CHAPTER 1498

An act to amend Section 13651 of the Business and Professions Code, relating to service stations.

[Approved by Governor September 28, 1988. Filed with Secretary of State September 29, 1988.]

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

SECTION 1. Section 13651 of the Business and Professions Code is amended to read:

13651. (a) On and after January 1, 1985, every service station in this state shall provide, during operating hours, water, compressed air, and a gauge for measuring air pressure, to the public for use in servicing any passenger vehicle, as defined in Section 465 of the Vehicle Code, or any commercial vehicle, as defined in Section 260 of the Vehicle Code, with an unladen weight of 6,000 pounds or less.

(b) On and after January 1, 1990, every service station in this state located within 660 feet of an accessible right-of-way of any interstate or primary highway, as defined in Sections 5215 and 5220, shall provide, during business hours, public restrooms for use by its customers. The public restroom shall not be temporary or portable but shall be permanent and shall include separate facilities for men and women, each with toilets and sinks suitable for use by the handicapped in accordance with Section 19955.5 of the Health and Safety Code and Title 24 of the California Code of Regulations and shall be maintained in a clean and sanitary manner. This section shall not apply to service stations which are fully operational prior to January 1, 1990.

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.

# CHAPTER 1499

An act to add Section 17719.3 to the Education Code, relating to school facilities.

[Approved by Governor September 28, 1988. Filed with Secretary of State September 29, 1988.]

*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) There is a compelling public interest in ensuring that state and local governmental funds, as well as private funds, available for the construction of school facilities be obtained and used in a timely manner.

(2) In order to maximize the use of those funds and to maintain a competitive posture in seeking state school construction assistance, it is necessary for school districts to complete school facilities construction projects in a timely manner.

(3) Changes in state and local governmental funding, and the growing participation of private funding in the state school construction program, can result in significant fluctuations in construction project management workload. In order to maintain a more stable work force in school districts, and to avoid the costly process of short-term hiring and layoff of staff while responding in a timely manner to funding opportunities and uncertainties, additional flexibility is needed to supplement the program staff of school districts, through contracting with qualified construction project management contractors.

(b) Pursuant to the findings and declarations set forth in subdivision (a), it is the intent of the Legislature that school districts contract for construction project management services in order to provide professional technical assistance in the development and implementation of a project funded under the state school construction program whenever those districts are inadequately staffed to accomplish those purposes in a timely and effective manner. It is further the intent of the Legislature that, under those circumstances, funding be provided under the state school construction program to meet the costs of that contracting.

SEC. 2. Section 17719.3 is added to the Education Code, to read:

17719.3. (a) Any applicant school district may contract with a firm, as defined in Section 4525 of the Government Code, for construction project management services to assist in the development or implementation of a project for which the district has applied for funding under this chapter, subject to the requirement that a performance bond be required from all building contractors hired to construct the project in order to ensure the completion of performance under the contract.

(b) That portion of any contract, as described in subdivision (a), concerning the final phase of construction of the project, shall be submitted by the applicant district to the board for approval. If the board does not approve, reject, or recommend modifications to, that contract portion within 15 business days after receiving that contract information, that portion of the contract shall be deemed to be approved by the board.

(c) From the amount of funding approved by the board under this chapter for any project, the board shall authorize the expenditure of funds for the costs of construction project management services provided to the project, as described in subdivision (a), where the board finds that the contracting for those services was necessary and appropriate to the school district's development or implementation of that project.

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## CHAPTER 1500

An act to add Chapter 16 (commencing with Section 76501) of Division 22 of the Food and Agricultural Code, relating to seafood, and making an appropriation therefor.

[Approved by Governor September 28, 1988. Filed with Secretary of State September 29, 1988.]

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

SECTION 1. Chapter 16 (commencing with Section 76501) is added to Division 22 of the Food and Agricultural Code, to read:

### CHAPTER 16. CALIFORNIA SALMON COUNCIL

#### Article 1. Short Title and Definitions

76501. This chapter shall be known and may be cited as the "California Salmon Marketing and Development Act."

76502. Unless the context otherwise requires, the definitions in this article govern the construction of this chapter.

76510. "Council" means the California Salmon Council.

76520. "Exporter" means any individual who is, or an individual working for a partnership, corporation, or any other business unit or organization which is, engaged in the export to a foreign nation or nations of salmon which has been landed in California.

76525. "Fiscal year" means from April 1 of a year to March 31 of the next succeeding year.

76530. "Fisherman" means an individual licensed to commercially harvest fish pursuant to Sections 7850 to 7852, inclusive, of the Fish and Game Code, operating or working aboard a vessel with a commercial salmon vessel permit issued pursuant to

Sections 8230 to 8248, inclusive, of the Fish and Game Code, and who holds a valid commercial fishing salmon stamp issued pursuant to Section 7860 of the Fish and Game Code.

76535. "Handler" means any of the following:

(a) A processor.

(b) A receiver.

(c) A wholesaler.

(d) An exporter.

(e) An individual licensed or working for a partnership, corporation, or any other business unit or organization licensed pursuant to subdivision (a) of Section 8032 of the Fish and Game Code and engaged in the California commercial salmon fishery.

76537. "Individual" means a person, as defined in Section 64506.

76540. "Marketing association" means any commercial fishermen's organization established on either a local, county, or statewide level, incorporated in this state, to enable fishermen to collectively negotiate and issue orders and agreements with receivers for the purchase of their catches, or to otherwise engage in activities permitted of agricultural cooperatives, and whose members are involved in the salmon fishery.

76550. "Processor" means any individual licensed or working for a partnership, corporation, or any other business unit or organization licensed pursuant to Section 8034 of the Fish and Game Code and engaged in the California commercial salmon fishery.

76560. "Receiver" means any individual licensed or working for a partnership, corporation, or any other business unit or organization licensed pursuant to Section 8033 of the Fish and Game Code and engaged in the California commercial salmon fishery.

76570. "Salmon" means the following species of fish:

(a) King or chinook salmon (Oncorhynchus tshawytscha).

(b) Silver or coho salmon (Oncorhynchus kisutch).

(c) Pink or humpback salmon (Oncorhynchus gorhuscha).

76571. "Salmon fishery" means either of the following:

(a) One or more species of salmon taken offshore California with troll lines for commercial usage, treated as a unit for the purposes of conservation, restoration, management, marketing, or promotion.

(b) Any economic activity involving the harvesting, receiving, processing, manufacturing, or distributing of salmon described in subdivision (a) and products therefrom.

76572. "Salmon products" means any item manufactured which contains 50 percent or more of salmon flesh or parts from salmon, including the head, scales, skin, bone, or entrails, and which is intended for human consumption, medicine, animal feed, fertilizer, or other purposes.

76580. "Wholesaler" means any individual licensed or working for a partnership, corporation, or any other business unit or organization licensed pursuant to Section 8035 of the Fish and Game Code and engaged in the California commercial salmon fishery.

Article 2. General Provisions

76600. The Legislature finds and declares that the provisions of this chapter are enacted in the exercise of the power of this state for the purposes of protecting and furthering the public health and welfare.

76601. The Legislature further finds and declares that the salmon fishery of this state is affected with a public interest, in that, among other things:

(a) The harvesting, processing, manufacturing, and distributing of salmon and salmon products constitute a paramount industry of this state, which not only provides substantial and required revenues for the state and its political subdivisions and employment and a means of livelihood for many thousands of its population, but which also furnishes essential foods that are vital to the public health and welfare.

(b) The development of the salmon fishery requires, in addition to the protection and restoration of spawning and nursery habitat in rivers, rearing programs designed to rebuild salmon populations, the full utilization and efficient operation of mitigation fish hatcheries, and existing regulations that assure adequate returns of spawning salmon, an aggressive marketing program, and a program to allow for the purchase, during years of low abundance, of the allocation of fish provided to other salmon users in order to assure that the commercial salmon fishery has the maximum access to healthy salmon populations.

(c) The stabilization, maintenance, and expansion of the salmon fishery of California, and of the state, nationwide, and foreign markets for its products are necessary to assure the consuming public an adequate supply of foods which are indispensable in a proper human diet, to protect, for the state and its political subdivisions, a necessary source of tax revenue, to provide and maintain an adequate standard of living for a segment of the population of this state, to maintain proper wage scales for those engaged in the salmon fishery, and to maintain existing employment.

(d) The essentiality of salmon, low in fat and calories and naturally rich in Omega 3 fatty acids, in proper human nutrition and to the maintenance of a high level of public health is such as to require that the public be made thoroughly aware thereof, and be protected against misrepresentation and deception, by the dissemination of accurate and scientific information relative to the healthful qualities of salmon and salmon products, their various classifications and the food values and industrial and medicinal uses thereof, the methods, care and precautions necessary to their proper harvesting, processing, manufacturing, and distributing, and the necessary costs and expenses thereof, and the necessity and desirability on the part of the public of using and consuming salmon and salmon products of the highest standards of quality.

76602. The Legislature declares that the purposes of this chapter

are as follows:

(a) To enable the salmon fishery, with the aid of the state, to develop, maintain, and expand the state, nationwide, and foreign markets for salmon and salmon products harvested, processed, manufactured, sold, or distributed in this state for human consumption, and the use and consumption of salmon and salmon products in those markets.

(b) To enable the salmon fishery to purchase, where there are willing sellers, the allocation rights to harvest salmon, as they may exist, of other salmon user groups to provide fishermen, and thereby the salmon fishery, greater access to salmon stocks than otherwise may have been provided pursuant to a conservation, management, or allocation agreement.

(c) In aid, but not in limitation, of the purpose in subdivision (a), to authorize and enable the director to formulate and effectuate, directly or in cooperation with other agencies, organizations, including the Oregon Salmon Commission, the West Coast Fisheries Development Foundation, and the National Fish and Seafood Promotion Council, and instrumentalities which are specified in this chapter, sales stimulation and consumer, or other educational programs designed to increase the use and consumption of salmon and salmon products for human consumption.

(d) To provide funds for the administration and enforcement of this chapter by mandatory fees to be collected in the manner which is prescribed in this chapter.

76603. This chapter shall be liberally construed.

76604. If any provision of this chapter or the application thereof to any person or circumstances is held invalid, that invalidity does 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.

76605. A violation of this chapter is a misdemeanor.

## Article 3. Administration

76650. The director shall administer and enforce this chapter, and may exercise any of the administrative powers which are conferred by Sections 11180 to 11191, inclusive, of the Government Code upon a head of a department. In order to effectuate the declared purposes of this chapter, the director may contract to carry out the declared intent and purposes of this chapter.

76651. Upon recommendation by the council, the director may adopt, consistent with this chapter, any regulations which cover the administration and enforcement of this chapter that may be necessary to carry out the purposes and attain the objectives of this chapter, except the director shall not engage in any salmon promotion activity or pursue the purchase of allocation rights to harvest salmon without the approval of a majority of the voting members of the council.

76652. Upon the adoption of any regulations under this chapter, a copy of the regulations shall be posted on a bulletin board which shall be maintained by the director in his or her office. No regulation shall become effective until five days after the date of that posting and mailing. The director shall mail a copy of the notice of the issuance of the regulations to every marketing association and every receiver that is directly affected by the regulations whose name and address may be on file in the office of the director and to every person who files in the office of the director a written request for that notice.

## Article 4. California Salmon Council

76700. There is in the state government the California Salmon Council. The council shall be composed of nine voting members and their alternates, and five nonvoting members.

76701. The voting members of the council shall be appointed by the director, after consultation with the Director of Fish and Game, giving due consideration to proper geographic distribution. The nine members shall include:

(a) Five fishermen or their representatives, and their alternates.

(b) Two handlers who are receivers or processors or their representatives, and their alternates.

(c) One representative of a handler who is an exporter or a wholesaler, and an alternate.

(d) One public member, and an alternate.

76702. (a) The fishermen and their alternates shall be selected from lists of nominees submitted by marketing associations and any organization deemed to represent the majority of organized California commercial salmon fishermen, and from nominations by individual fishermen.

(b) The receivers, processors, wholesalers, or exporters and their alternates shall be selected from lists of nominees submitted by an organization deemed to represent the majority of those organized groups in the state, and from individual receivers, processors, wholesalers, and exporters.

(c) The public member and alternate shall be selected by the director from a list submitted by the fishermen and handler members of the council.

76703. The voting members of the council shall each be appointed to a three-year term, except that in the first year of the council, three members shall be appointed to one-year terms; three members shall be appointed to two-year terms; and three shall be appointed to three-year terms.

76704. The term of office of a member of the council shall begin on April 1 and expire on March 31.

76705. Any vacancy in the membership of the council which occurs during the unexpired term shall be filled by the director for the unexpired term from the eligible nominees. No council member

or alternate shall serve more than two consecutive three-year terms. Service as an alternate does not disqualify a person to then serve two additional terms as a member, and a member who was appointed for a one-year or a two-year term may serve two additional three-year terms.

76706. The director may remove any member of the council or alternate for cause, and, upon that removal, there is a vacancy which shall be filled in the manner as provided for the unexpired term in Section 76705.

76707. The director shall give notice, not later than January 31 of each year, of the vacancies that will exist upon the expiration of terms on March 31, in writing, to all marketing associations and organizations deemed to represent the majority of organized fishermen, or receivers, processors, wholesalers, and exporters, and shall issue any press releases and public statements that the director deems appropriate requesting nominations.

76708. (a) The notice requesting nominations shall indicate that nominations shall be mailed to the director at his or her office in Sacramento and that the director will consider nominations received by mail postmarked not later than March 15.

(b) Nominations shall set forth all of the following:

(1) The name and address of each nominee.

(2) Whether each nominee is being nominated as a member or alternate member.

(3) The type of category for which the nominee is being nominated.

(4) The list of qualifications and supporters, if any, for the nominee.

(5) The name and address of the nominating marketing association, organization, or individual.

76709. The nonvoting members of the council shall be representatives of the following agencies, as selected by the director:

(a) The department.

(b) The Department of Fish and Game.

(c) The California Sea Grant Program.

(d) The West Coast Fisheries Development Foundation or the Coastal Fisheries Foundation.

(e) The California State World Trade Commission.

76710. There is no fixed term for nonvoting members of the council. The agencies may, but are not required to, select an alternate for their representative.

76711. A majority of the voting members of the council shall constitute a quorum for the transaction of all business, including the election of officers.

76712. (a) The council shall select annually from its voting number, to serve at its pleasure, a chair and vice chair.

(b) The chair and vice chair, together with four other voting members, selected annually by the council, shall constitute the executive committee of the council. The executive committee shall

have and exercise any powers of the council that the council may delegate to it.

76713. The council shall hold two regular meetings in each year at times and places which are fixed by the council. The times for regular meetings shall be fixed so that there is an interval of at least four calendar months between the meetings. Consideration shall be given for the commercial fishing season and no regular meeting shall be held during the commercial salmon season. The council may meet in special meetings at any time and place at the call of the chair or upon the written request of five members of the council. The executive committee shall have two regular meetings each year at times and places which are fixed by it, and may meet in special meetings at any time and place at the call of the chair or on call of a majority of the members of the executive committee.

76714. The voting members of the council shall receive forty dollars ($40) per day per diem for each day spent in actual attendance at the meetings or on the business of the council and shall be reimbursed for necessary traveling and other expenses incurred in the performance of their official duties, except, during the first year of council operations, when members shall serve at their own expense. Nonvoting members shall be reimbursed at the same rate as voting members when their agencies do not pay their expenses. Alternates shall only be paid expenses and per diem for meetings at which they serve as the replacement for the regular member.

76715. No member of the council, except a member of the executive committee, shall receive compensation for more than three days' service per month, except the chair, who may receive compensation for not more than seven days per month.

76716. The director may require any employee or agent of the council to give a fidelity bond, executed by a surety company which is authorized to do business in this state, in favor of the director, in the sum, and containing any terms and conditions, that the director may prescribe. The cost of the fidelity bonds of employees or agents of the council shall be paid from the funds which are collected pursuant to this chapter.

76717. No member or employee of the council shall be held responsible individually to any person for liability on any contract or agreement of the council. All salaries, expenses, costs, obligations, and liabilities which arise out of the administration and enforcement of this chapter are payable only from funds which are collected pursuant to the provisions of this chapter.

76718. An alternate member of the council shall sit as a regular member of the council if the member for whom he or she is an alternate fails for any reason to attend any meeting of the council. The alternate member shall be compensated and reimbursed in the same manner and to the same extent as a regular member when so serving. When so serving, the alternate member has all of the powers, duties, liabilities, and immunities of the member in whose place he or she is serving, except that the alternate to the chair or

vice chair shall not succeed to the functions of these offices.

76719. The Legislature finds and declares that fishermen, receivers, processors, wholesalers, or exporters appointed to the council pursuant to this article are intended to represent and further the interest of a particular agricultural industry concerned, and that this representation and furtherance is intended to serve the public interest. Accordingly, the Legislature finds and declares that, with respect to persons who are appointed to the council, the particular agricultural industry concerned is tantamount to, and constitutes, the public generally within the meaning of Section 87103 of the Government Code.

### Article 5. Powers and Duties

76750. The duties of the council shall be advisory, except as to those duties which may be delegated to it by the director or as otherwise designated in this chapter. The council may, subject to the approval of the director, exercise any of the following powers which may be delegated to the council by the director:

(a) To recommend to the director administrative regulations which relate to the administration and enforcement of this chapter.

(b) To investigate all matters which affect the administration of this chapter, and to report violations of it to the director.

(c) To employ and, at its pleasure, discharge a manager and such clerical help and other employees as it deems necessary, and to prescribe their duties and powers and fix their compensation.

(d) To contract with, or employ, and at its pleasure, discharge any other persons that it deems necessary, and in the cases of such of them as it shall employ, to outline their powers and duties and fix their compensation.

(e) To establish offices and incur expenses incidental thereto.

(f) To make contracts and other agreements that may be proper to promote the sale of salmon and salmon products on either a local, state, national, or international basis.

(g) (1) To cooperate with any other local, state, or national commission, organization, or agency, whether voluntary or created by state or federal law, including, but not limited to, the Oregon Salmon Commission, the West Coast Fisheries Development Foundation, the Coastal Fisheries Foundation, and the National Fish and Seafood Promotion Council, which is engaged in work or activities similar to the work and activities of the council, and to recommend to the director the making of contracts and agreements with those organizations or agencies for carrying on joint programs of education, research, publicity, and advertising.

(2) To recommend to the director the making of contracts and agreements with other councils, commodity commissions, or producer organizations for joint programs of publicity and advertising where those products are compatible with the promotion of salmon and salmon products.

(3) In matters of research, to cooperate with organizations of recognized professional standing which are adequately equipped with facilities for the research which is contemplated.

(h) To recommend to the director the institution and promotion of scientific research to develop or discover, or both, the health, food, therapeutic, dietetic, and other uses of salmon.

(i) (1) To receive, invest, and disburse funds pursuant to Article 8 (commencing with Section 76900).

(2) To allocate funds to agencies not specifically or solely engaged in carrying on research or promotion for salmon, if the council and the director are satisfied that those allocations will be beneficial to the California salmon fishery and will tend to effectuate the declared purposes of this chapter.

76751. The council shall keep books, records, and accounts of all its transactions, dealings, contracts, agreements, funds, and expenditures that it deems necessary. The books, records, and accounts shall at all times be open to inspection and audit by the director.

76752. A member, alternate, agent, or employee of the council shall not do any of the following:

(a) Appear before any legislative committee of the state or federal government as a representative of the council unless requested to do so by that committee.

(b) Lobby in any manner as a representative of the council.

76753. Funds which are collected pursuant to this chapter shall not be used for political contributions.

76754. The council shall prepare, annually, summarized statements of the activities in which it has been engaged in the previous annual period, and of the activities in which it proposes to engage in the ensuing annual period. The statements shall be made available to all marketing associations, organizations of fishermen and receivers, processors, wholesalers, and exporters, and individuals that request them in writing.

## Article 6. Education, Research, and Public Information Programs

76800. The director shall conduct, or may cause the council to conduct, programs of education, research, or public information, which are designed to accomplish the following purposes, among others:

(a) Increase the consumption of salmon and salmon products.

(b) Gather, publicize, and diffuse accurate and scientific information which shows the importance of the use and consumption of salmon and salmon products in relation to the public health, economy, and diet, and proper nutrition of children and adults.

(c) Study means and methods which are employed in harvesting, processing, manufacturing, marketing, and distributing salmon and salmon products in order to comply with the sanitary and other regulations which are imposed by municipalities, this state, and the

United States.

(d) Gather and disseminate information regarding the high standards which are observed and imposed to insure pure and wholesome salmon and salmon products.

(e) Gather and disseminate information regarding the harmful effects on the public health resulting from the breakdown or instability of the salmon fishery, the factors and conditions peculiar to the salmon fishery which tend to cause an unbalanced production, and the price of salmon and salmon products in relation to the cost of other items of food in a balanced diet.

(f) Gather and disseminate information regarding the factors which tend to promote increased consumption of salmon and salmon products, stabilize the fishery, and foster a better understanding and more efficient cooperation among fishermen, receivers, processors, and the consuming public.

76801. No program or activity which is conducted or sponsored pursuant to this chapter shall make false or unwarranted claims, or disparage the quality, value, use, or sale of any commodity authorized by law to be marketed in this state, nor shall any program be conducted with reference to a private brand or trade name which refers to salmon or salmon products.

76802. The council shall not expend council funds for the advertising of brand name salmon products. The council may expend council funds to conduct cost-sharing advertising with nonbrand name salmon products.

## Article 7. Purchase of Allocation Shares

76850. The Attorney General shall annually review all applicable state and federal laws, regulations, and procedures used to set salmon fishing seasons and shall determine whether allocations of rights to harvest salmon held by users, including tribal interests, may lawfully exist for purchase, trade, or exchange or under what conditions that purchase, trade, or exchange may lawfully be made.

76851. If the Attorney General determines under Section 76850 that selling allocation rights to harvest salmon would be binding and consistent with California public policy and if an agreement for purchase of allocation rights of harvest is determined to be lawful and binding, the Director of Fish and Game may, in consultation with the director, develop a program to authorize the transfer of the allocation rights consistent with all other state or federal laws and regulations. Upon authorization by the Director of Fish and Game, the director may, at a price and quantity agreed to by the council, and with funds available from the council, enter into an agreement for the purchase of the allocation rights to harvest from another user holding bona fide rights to harvest stocks of salmon.

76852. The council, in any negotiations for the purchase of tribal allocations of rights to harvest, if any, however they may exist, may, with the director, seek federal or other funds as may be available to

match the council funds for the purchase of allocation rights to harvest in recognition of the federal government's responsibility to the Indian people and their resources.

Article 8. Financial Provisions

76900. In order to carry out the programs and administer the activities which are conducted pursuant to this chapter, except as specified in Section 76905, a fee of two cents ($0.02) per pound of every salmon sold to a receiver, or sold by a fisherman directly to the public pursuant to Section 8033.5 of the Fish and Game Code, shall be paid by the fisherman, deducted from the landing receipt issued to the fisherman by the receiver pursuant to Section 8043 of the Fish and Game Code, and shall be remitted to the director as specified in Section 76901. A fisherman selling to the public pursuant to Section 8033.5 of the Fish and Game Code shall remit the fee directly to the director as specified in Section 76901.

76901. The fees which are collected pursuant to this article shall be forwarded to the director at the time landing taxes are paid to the Department of Fish and Game pursuant to Section 8053 of the Fish and Game Code. The director shall supply forms that may be necessary for the remittance of fees. The director may consult with the Director of Fish and Game and enter into agreements with the Department of Fish and Game, where necessary and reasonable, to assist in the administration of this article and ensure compliance with it.

76902. The collection of funds from anyone who fails to pay or remit fees due and payable shall be conducted pursuant to Sections 8047 to 8052, inclusive, of the Fish and Game Code.

76903. Every claim or refund for credit for overpayment of fees shall be in writing and shall state the specific ground upon which the claim is founded.

76904. Sections 8060 to 8069, inclusive, of the Fish and Game Code shall apply to claims for overpayment of fees to the director. For purposes of this section, "department," as used in those sections, means the Department of Food and Agriculture, and "landing tax" means the fees imposed pursuant to this article.

76905. After one year after the establishment of the council, and not before the commercial salmon season of 1990, the council may recommend to the director an increase over and above the two cents ($0.02) per pound fee for the council to carry out its duties under this chapter. The council shall consider the budget for the council, funding for activities conducted pursuant to Article 6 (commencing with Section 76800) and Article 7 (commencing with Section 76850), as well as the market price of salmon, landing taxes imposed by the Department of Fish and Game, assessments charged by marketing associations, and any other relevant factor affecting the economics of the salmon fishery. The council shall, in making any determination to increase fees, consult with marketing associations and, if the

recommended increase would exceed seven cents ($0.07) per pound of salmon sold, shall conduct a ballot poll of the fishermen on the director's list established pursuant to Article 9 (commencing with Section 76950). After a ballot poll on a recommended increase exceeding seven cents ($0.07) per pound of salmon sold, the council shall consult with marketing associations and, if the recommended increase would exceed five cents ($0.05) per pound of salmon sold, shall conduct a ballot poll of the fishermen on the director's list. The director may not increase any fee without a majority approval of the voting members of the council.

76906. (a) All money which is collected by the director pursuant to this chapter shall be deposited in any bank, or other depository which is approved by the Director of Finance, allocated to the purposes of this chapter only, and disbursed by the director or the council only for the necessary expenses which are incurred by the council and the director in carrying out the purposes and provisions of this chapter, including expenses generated by the auditing requirement contained in this section. Money which is so collected shall be deposited and disbursed in conformity with appropriate auditing regulations which are prescribed by the director. The expenditure of the money is exempt from the provisions of Section 925.6 and 16304 of the Government Code.

(b) All such expenditures by the council and the director shall be audited at least once every two years by one of the following means:

(1) By contract with a certified public account.

(2) By contract with a public accountant holding a valid permit issued by the State Board of Accountancy.

(3) By contract with a public accounting firm.

(4) By agreement with the Department of Finance.

(c) A copy of the audit shall be delivered within 30 days after completion of the audit to the Governor, the director, and the Controller.

76907. Money which is deposited pursuant to Section 76906 may be invested and reinvested by the Treasurer or the council in any of the securities described in Article 1 (commencing with Section 16430) of Chapter 3 of Part 2 of Division 4 of Title 2 of the Government Code, or placed in a depository as provided in Chapter 4 (commencing with Section 16500) of Part 2 of Division 4 of Title 2 of the Government Code, and handled in the same manner as money in the State Treasury. For these purposes, the money may also be combined with funds which are determined by the director to be available for investment pursuant to Section 58939. Any increment which is received from investment, reinvestment, or deposit made by the Treasurer shall be remitted to the council. The Treasurer may deduct from the remittance an amount equal to the reasonable cost incurred in carrying out this section or may bill the council for the costs and the council shall pay the costs from money which is collected for it pursuant to this chapter.

76908. The director, after consultation with the council, shall

prepare an annual budget which sets forth in reasonable detail the proposed expenditures which the director deems necessary for the performance by him or her and by the department of the duties which are imposed upon them by this chapter. The director shall also prepare and submit to the council an annual statement, in reasonable detail, of the director's expenditures pursuant to this chapter.

76909. The director may receive funds in amounts that may be reasonable and necessary to defray the initial expenses in making effective this chapter. The director shall reimburse those persons from whom those funds are received in the amounts received from any funds which are received by the director pursuant to this article.

76910. The director may accept contributions to advance the purposes of this chapter. If requested by the donor, the contributions shall be segregated and separately maintained for the use of the council.

### Article 9. Implementation, Voting Procedure, and Termination

76950. On or before March 30, 1989, the director shall establish a list of fishermen eligible to vote on implementation of this chapter. In establishing the list, the director may require that handlers and fishermen submit the names and mailing addresses of all fishermen who harvested salmon during the previous season, as evidenced by receipts prepared under Section 8043 of the Fish and Game Code, together with the volume of salmon of each fisherman's landings. The director may also request the assistance of the Director of Fish and Game for the names of all fishermen who landed salmon the previous season. The request for the information shall be in writing. The list shall be filed within 30 days following receipt of the written notice. All information on volume of landings shall be kept confidential.

76951. Any fisherman whose name does not appear upon the director's list of fishermen affected may have his or her name established on the list by filing with the director a signed statement, identifying himself or herself as a fisherman and furnishing evidence of having made landings the previous year through the submission of receipts prepared under Section 8043 of the Fish and Game Code. Failure to be on the list does not exempt a fisherman from paying assessments under this chapter.

76952. This chapter, except as necessary to conduct an implementation referendum vote under this article or as provided in subdivision (b) of Section 76953, shall not become operative until the director finds in an implementation referendum conducted by the director under this article, that at least 40 percent of the total number of fishermen from the list, established by the director pursuant to Section 76950, have participated by voting in the referendum, and the director finds either of the following:

(a) Sixty-five percent or more of the fishermen who voted in the referendum voted in favor of implementing this chapter, and the

fishermen who voted in the referendum marketed a majority of the total quantity of salmon landed in the preceding fiscal year by all the fishermen who voted in the referendum.

(b) A majority of the fishermen who voted in the referendum voted in favor of implementing this chapter, and the fishermen who voted in the referendum marketed 65 percent or more of the total quantity of salmon landed in the preceding fiscal year by all of the fishermen who voted in the referendum.

76953. (a) The director shall establish a period in which to conduct the implementation referendum which shall not be less than 30 days nor more than 60 days in duration, and may prescribe additional procedures as may be necessary to conduct the referendum. If the initial period established is less than 60 days, the director may extend that period. However, the total referendum period may not exceed 60 days nor extend past May 1.

(b) If the director finds that it is not possible to establish a list and to conduct and complete an implementation referendum before May 1, 1989, this chapter shall become operative and a review referendum vote pursuant to Section 76958 shall be scheduled to begin not earlier than October 1, 1989, nor to extend past March 1, 1990.

76953.5. (a) Before the referendum vote is conducted by the director, the proponents of the council shall deposit with the director the amount that the director determines is necessary to defray the expenses of preparing the necessary lists and information and conducting the referendum vote.

(b) Any funds not used in carrying out this article shall be returned to the proponents of the council who deposited the funds with the director.

(c) Upon establishment of the council, the council may reimburse the proponents of the council for any funds deposited with the director which were used in carrying out this article, and for any legal expenses and costs incurred in establishing the council.

(d) After approval by the Commercial Salmon Trollers Advisory Committee created pursuant to Section 7862 of the Fish and Game Code, the Department of Fish and Game may expend funds collected pursuant to Section 7861 of the Fish and Game Code, for payment to the Director of Food and Agriculture to pay necessary costs incurred in conducting the implementation referendum vote. If a majority of the fishermen who voted at the implementation referendum voted in favor of implementing this article, as provided in Section 76952, the council shall reimburse the Commercial Salmon Stamp Account in the Fish and Game Preservation Fund all amounts received from that fund.

76954. Nonreceipt of a ballot shall not invalidate a referendum.

76955. (a) If the director finds that a favorable vote has been given, the director shall certify and give notice of the favorable vote to all fishermen whose names and addresses may be on file with the director.

(b) If the director finds that a favorable vote has not been given, the director shall so certify and declare all provisions of this chapter inoperative.

76957. (a) Between January 1, 1994, and February 28, 1994, and in the same period each five years thereafter, or pursuant to subdivision (b) of Section 76953, the director shall, by the public hearing procedure, and if appropriate, the review referendum procedure provided for in Sections 76958 and 76959, determine whether the council program provided for in this chapter shall continue in effect.

(b) If the director finds from evidence received at the hearing that a substantial question exists as to whether the council program is contrary to or does not effectuate the declared purposes or provisions of this chapter or receives in writing a referendum petition with the signatures of 25 percent or more of the number of fishermen who made landings in the previous year, as evidenced by receipts prepared under Section 8043 of the Fish and Game Code, the council program shall be submitted to referendum as provided in Section 76958.

76958. If the director determines that a review referendum procedure is appropriate or, pursuant to subdivision (b) of Section 76953, required, the director shall establish a referendum period of not to exceed 30 days during which period ballots shall be submitted to every fisherman on a statewide basis. If the director determines that the referendum period does not provide sufficient time for the balloting, the director may extend the referendum for an additional period not to exceed 30 days. The ballots shall provide a "yes" or "no" voting alternative to the following question:

"Shall the Salmon Council of California be continued for the next five fiscal years commencing April 1, following this referendum?"

76959. If the council program is submitted to a review referendum under Section 76958, the director shall find that fishermen statewide have approved the council program if the director finds either of the following:

(1) Sixty-five percent or more of the total number of fishermen, who voted in the review referendum and who harvested 65 percent or more of the total amount of salmon landed during the previous fiscal year by all fishermen who voted in the review referendum, approve the program.

(2) Fifty-one percent or more of the total number of fishermen, who voted in the review referendum and who harvested 65 percent or more of the total amount of salmon landed during the previous fiscal year by all fishermen who voted in the review referendum, approve the program.

76960. This chapter shall be operative indefinitely, except as provided in this article.

76961. On the termination of the council pursuant to this article, the council shall remain in existence for the purpose of furnishing the director with a complete record of its outstanding financial

obligations, accrued and to accrue. The director shall pay from the money deposited and disbursed any outstanding obligations and any obligations incurred by the director and the department under the terms and provisions of this section. Any money which remains shall be retained by the director to defray the expenses of formulation, issuance, administration, or enforcement of any subsequent program for salmon promotion. If no such program is undertaken within a period of three years from the date of termination of the council, that money shall be withdrawn from the approved depository and paid into the special account for enchancement and restoration programs established pursuant to Section 7861 of the Fish and Game Code.

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.

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## CHAPTER 1501

An act to add Sections 44279.5 and 44279.7 to the Education Code, relating to certificated employees.

[Approved by Governor September 28, 1988. Filed with Secretary of State September 29, 1988.]

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

SECTION 1. Section 44279.5 is added to the Education Code, to read:

44279.5. (a) The Legislature recognizes that effective professional growth must occur throughout the career of each certificated educator, in order that each educator remains informed of changes in school programs and policies, and in students' educational backgrounds and needs. In enacting this section, it is the intent of the Legislature to establish professional growth requirements that give each educator a range of acceptable options and the primary role in determining the course of his or her professional growth.

(b) A clear or professional specialist instruction credential, services credential, or designated subjects credential that is issued for the first time after September 1, 1990, shall be renewed by the commission only upon fulfillment of the requirements of the commission, including the following:

(1) Successful service as authorized by any of the valid credentials held by the applicant. The minimum length of service shall be equivalent to one-half of a school year.

(2) Completion of an individual program of professional growth

as required in this section and by the commission.

(3) Submission of an application and payment of the fee that is established by the commission pursuant to Section 44235.

(c) Life credentials shall not be subject to this section.

(d) Designated subjects credentials that authorize part-time service shall not be subject to this section.

(e) To administer subdivision (b), the commission shall establish credential renewal requirements that are comparable with the renewal requirements for clear multiple and single subject teaching credentials, as set forth in subdivisions (b) through (e), inclusive, of Section 44277. For the holders of clear specialist instruction credentials, services credentials, and designated subjects credentials that are issued initially after September 1, 1990, the commission may identify professional growth advisers who are appropriate for each category of credential holders, or the commission may authorize the holders of these credentials to plan and verify individual programs of professional growth without consulting advisers.

(f) The commission shall apply the provisions of Section 44278 and Section 44279 to clear specialist instruction credentials, services credentials, and designated subjects credentials that are issued for the first time after September 1, 1990.

SEC. 2. Section 44279.7 is added to the Education Code, to read:

44279.7. An individual who holds two or more clear credentials that have renewal requirements shall be allowed, as a condition for the renewal of all of the renewable credentials, to complete one individual program of professional growth whose length does not exceed the requirements for any one of the renewable credentials.

SEC. 3. Sections 1 and 2 of this act shall not become operative if (1) Senate Bill 148 is enacted and becomes effective on or before January 1, 1989, (2) Senate Bill 148 adds Section 44225 to the Education Code, and (3) subdivision (d) of Section 44225 of the Education Code, as set forth in the enacted version of Senate Bill 148, is identical to the version of that subdivision contained in Senate Bill 148 as amended August 1, 1988.

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## CHAPTER 1502

An act to add Chapter 10.4 (commencing with Section 25915) to Division 20 of the Health and Safety Code, relating to asbestos.

[Approved by Governor September 28, 1988 Filed with Secretary of State September 29, 1988.]

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

SECTION 1. Chapter 10.4 (commencing with Section 25915) is added to Division 20 of the Health and Safety Code, to read:

## CHAPTER 10.4. ASBESTOS NOTIFICATION

25915. (a) Notwithstanding any other provision of law, the owner of any building constructed prior to 1979, who knows that the building contains asbestos-containing construction materials, shall provide notice to all employees of that owner working within the building concerning all of the following:

(1) The existence of, conclusions from, and a description or list of the contents of, any survey conducted to determine the existence and location of asbestos-containing construction materials within the building, and information describing when and where the results of the survey are available pursuant to Section 25917.

(2) Specific locations within the building identified by the survey or known to the owner where asbestos-containing construction materials are present in any quantity.

(3) General procedures and handling restrictions necessary to prevent, and, if appropriate, to minimize disturbance, release, and exposure to the asbestos. If detailed handling instructions are necessary to ensure employee safety, the notice required by this section shall indicate where those instructions can be found.

(4) Results of any bulk sample analysis, or air monitoring, or monitoring conducted pursuant to Section 5208 of Title 8 of the California Code of Regulations, conducted for or by the owner or within the owner's control, including reference to sampling and laboratory procedures utilized, and information describing when and where the specific monitoring data and sampling procedures are available pursuant to Section 25917.

(5) Potential health risks or impacts that may result from exposure to the asbestos in the building as identified in surveys or tests referred to in this section, or otherwise known to the owner.

The notice may contain a description and explanation of the health action levels or exposure standards established by the state or federal government. However, if the notice contains this description, the notice shall include, at least, a description and explanation of the no significant risk level established pursuant to Chapter 6.6 (commencing with Section 25249.5) of Division 20, and specified in Section 12711 of Title 22 of the California Code of Regulations, the school abatement clearance level specified in Section 49410.7 of the Education Code, and the action levels established by state and federal Occupational Safety and Health Act regulations.

(b) Notice provided pursuant to this chapter shall be provided in writing to each individual employee, and shall be mailed to other owners designated to receive the notice pursuant to subdivision (a) of Section 25915.5, within 15 days of the receipt by the owner of information identifying the presence or location of asbestos-containing construction materials in the building, and shall be provided annually thereafter. Notice shall be provided to new employees within 15 days of commencement of work in the building, and shall be mailed to any new owner designated to receive the

notice pursuant to subdivision (a) of Section 25915.5 within 15 days of the effective date of the agreement under which a person becomes a new owner.

(c) If the owner has no special knowledge of the information required pursuant to paragraphs (3) and (5), of subdivision (a), the owner shall specifically inform his or her employees in the notice required by this section, that he or she lacks knowledge regarding handling instructions necessary to prevent and minimize release of, and exposure to, asbestos and the potential health impacts resulting from exposure to asbestos in the building, and shall encourage employees to contact local or state public health agencies.

(d) If a person contracting with an owner receives notice pursuant to this chapter, that contractor shall provide a copy of the notice to his or her employees or contractors working within the building.

(e) If the asbestos-containing construction material in the building is limited to an area or areas within the building that:

(1) Are unique and physically defined; and

(2) Contain asbestos-containing construction materials in structural, mechanical, or building materials which are not replicated throughout the building; and

(3) Are not connected to other areas through a common ventilation system;

then, an owner required to give notice to his or her employees pursuant to subdivision (a) may provide that notice only to the employees working within or entering that area or those areas of the building meeting the conditions above.

(f) In those areas of a building where the asbestos-containing construction material is limited to bonded asbestos in the material that composes the surface of walls, ceilings, or floors and where the asbestos fibers are completely encapsulated, if the owner knows that no asbestos fibers are being released or have the potential to be released from that material in its present condition and has no knowledge that other asbestos-containing material is present, then an owner required to give notice pursuant to subdivision (a) shall provide the information required in paragraph (2) of subdivision (a) and may substitute the following notice for the requirements of paragraphs (1), (3), (4), and (5) of subdivision (a):

(1) The existence of, conclusions from, and a description or list of the contents of, that portion of any survey conducted to determine the existence and location of asbestos-containing construction materials within the building that refers to the asbestos materials described in this subdivision, and information describing when and where the results of the survey are available pursuant to Section 25917.

(2) Information to convey that moving, drilling, boring or otherwise disturbing the asbestos-containing construction material identified can present a health risk and, consequently, should not be attempted by an unqualified employee. The notice shall identify the

appropriate person the employee is required to contact if the condition of the asbestos-containing construction material deteriorates.

25915.5. (a) An owner required to give notice to employees pursuant to this chapter, in addition to notifying his or her employees, shall mail, in accordance with this subdivision, a copy of that notice to all other persons who are owners of the building or part of the building, with whom the owner has privity of contract. Receipt of a notice pursuant to this section by an owner, lessee or operator shall constitute knowledge that the building contains asbestos-containing construction materials for purposes of this chapter. Notice to an owner shall be delivered by first-class mail addressed to the person and at the address designated for the receipt of notices under the lease, rental agreement, or contract with the owner.

(b) The delivery of notice under this section or negligent failure to provide that notice shall not constitute a breach of any covenant under the lease or rental agreement, and nothing in this chapter enlarges or diminishes any rights or duties respecting constructive eviction.

(c) No owner who, in good faith, complies with the provisions of this section shall be liable to any other owner for any damages alleged to have resulted from his or her compliance with the provisions of this section.

25916. If any construction, maintenance, or remodeling is conducted in an area of the building area where there is the potential for employees to come into contact with, or release or disturb, asbestos or asbestos-containing construction materials, the owner responsible for the performance of, or contracting for, any construction, maintenance, or remodeling in the area shall post that area with a clear and conspicuous warning notice. The posted warning notice shall read, in print which is readily visible because of its large size and bright color, as follows:

"CAUTION. ASBESTOS. CANCER AND LUNG DISEASE HAZARD. DO NOT DISTURB WITHOUT PROPER TRAINING AND EQUIPMENT."

25917. An owner shall make available, for review and photocopying, to all of his or her employees or those employees' representatives at an accessible place and time, all existing asbestos survey and monitoring data, specific to the building, upon request. This place shall be within the building, and shall be available during employee working hours, including lunch and break periods, if any owner maintains an office or similar facility in the building; if not, the survey and data shall be available at another place, and at a time accessible and convenient to employees and their representatives. Any owner may enter into an agreement with another owner to provide the location where the survey and data is available to employees within one building pursuant to this section.

25917.5. If an asbestos information system or statewide asbestos

register, or both, is established subsequent to the designing of the system and register pursuant to paragraphs (5) and (6) of subdivision (a) of Section 25927, the system or register, or both, as the case may be, shall integrate, be consistent with, and, at a minimum, include all of the requirements of this chapter.

25918. "Asbestos," as used in this chapter, has the same meaning as defined in Section 6501.7 of the Labor Code.

25919. "Asbestos-containing construction material," as used in this chapter, means any manufactured construction material, including structural, mechanical and building material, which contains more than one-tenth of 1 percent asbestos by weight.

25920. "Building," as used in this chapter, means all or part of any "public and commercial building," as defined in Section 2642 of Title 15 of the United States Code, as that section reads on January 1, 1989, except residential dwellings.

25921. "Employee," as used in this chapter, means every person who is required or directed by any employer, to engage in any employment, and who performs that employment other than on a casual or incidental basis in any building subject to this chapter, or any person contracting with an owner who is required or directed to perform services, other than on a casual or incidental basis, in any building subject to this chapter.

25922. "Employee's representative," as used in this chapter, means an employee's union representative, a member of the employee's immediate family, a nonrelated member of the employee's household, and an employee's attorney or a person with power of attorney.

25923. "Owner," as used in this chapter, means an owner, lessee, sublessee, or agent of the owner of a building or part of a building, including, but not limited to, the state or another public entity.

25924. Any owner who knowingly or intentionally fails to comply with the provisions of this chapter, or who knowingly or intentionally presents any false or misleading information to employees, is guilty of a misdemeanor punishable by a fine of up to one thousand dollars ($1,000) or up to one year in the county jail, or both. This section shall become operative on July 1, 1989.

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.

## CHAPTER 1503

An act to add Section 12959 to the Insurance Code, relating to insurance, and making an appropriation therefor.

[Approved by Governor September 28, 1988. Filed with Secretary of State September 29, 1988.]

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

SECTION 1. Section 12959 is added to the Insurance Code, to read:

12959. (a) On January 1, 1990, and on every January 1, thereafter, the commissioner shall publish and distribute a comparison of insurance rates report for those lines of insurance which, in the comissioner's judgment, are of most interest to individual purchasers of personal lines of coverage. The report shall be available to consumers. The distribution shall be designed to make consumers throughout the state aware of the content of the report. This report shall be prepared by the commissioner in a manner designed to provide information useful to consumers so that they may make informed comparisons of coverages and rates.

(b) The submission of any false rate information by any such insurer pursuant to a request of the commissioner for the purpose of compiling comparative data for the report to be published as required in subdivision (a) shall be punishable by a civil fine not to exceed one hundred thousand dollars ($100,000). In determining the level of the fine, the commissioner shall consider the good faith of the insurer and any similar prior violations by the insurer under this code.

SEC. 2. The sum of two hundred thousand dollars ($200,000) is hereby appropriated from the Insurance Fund to the Department of Insurance for the purposes of carrying out Section 12959 of the Insurance Code.

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## CHAPTER 1504

An act to amend Sections 18042 and 24603 of, and to add and repeal Sections 24306 and 24954 of, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor September 28, 1988. Filed with Secretary of State September 29, 1988.]

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

SECTION 1. Section 18042 of the Revenue and Taxation Code is amended to read:

18042. The provisions of Section 1042 of the Internal Revenue Code shall apply to taxable years beginning on or after January 1, 1990, and before January 1, 1995, but shall not apply to both of the following:

(1) Taxable years beginning on or after January 1, 1988, but before January 1, 1990.

(2) Taxable years beginning on or after January 1, 1995.

SEC. 2. Section 24306 is added to the Revenue and Taxation Code, to read:

24306. (a) Section 133 of the Internal Revenue Code relating to securities acquisition loan shall be applicable except as otherwise provided.

(b) (1) This section shall not apply to income years beginning on or after January 1, 1995.

(2) This section shall remain in effect only until December 1, 1995, and as of that date is repealed, unless a later enacted statute, which is enacted before December 1, 1995, deletes or extends that date.

SEC. 3. Section 24603 of the Revenue and Taxation Code is amended to read:

24603. The provisions of Section 404(k) of the Internal Revenue Code relating to dividends paid deduction shall apply to income years beginning on or after January 1, 1990, and before January 1, 1995, but shall not apply to both of the following:

(1) Income years beginning on or after January 1, 1988, but before January 1, 1990.

(2) Income years beginning on or after January 1, 1995.

SEC. 4. Section 24954 is added to the Revenue and Taxation Code, to read:

24954. (a) The provision of Section 1042 of the Internal Revenue Code shall apply.

(b) (1) The provisions of this section shall not apply to income years beginning on or after January 1, 1995.

(2) This section shall remain in effect only until December 1, 1995, and as of that date is repealed, unless a later enacted statute, which is enacted before December 1, 1995, deletes or extends that date.

SEC. 5. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect. However, except as otherwise specifically provided in this act, Sections 2 and 4 of this act shall become operative and be applied to income years beginning on or after January 1, 1990.

# CHAPTER 1505

An act to amend Sections 8102 and 8552 of, and to add Sections 8552.2, 8552.4, 8552.5, 8552.6, 8552.7, and 8552.8 to, the Fish and Game Code, relating to commercial fishing, and making an appropriation therefor.

[Approved by Governor September 28, 1988. Filed with Secretary of State September 29, 1988.]

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

SECTION 1. The Legislature finds and declares that the restricted transfer of permits in the herring roe fishery is necessary to provide an incentive for those no longer wishing to engage in those fisheries due to health, age, or entry into other fisheries or employment to retire from the fishery and to allow those seeking to enter the fishery an opportunity to obtain a permit by making available more permits pursuant to this restricted transfer method than would otherwise become available only through death or forfeiture of the permits.

SEC. 2. Section 8102 of the Fish and Game Code is amended to read:

8102. (a) The Legislature finds and declares that, in some limited entry fisheries, two or more partners may be operating with one of the partners holding the permit to participate in the fishery. The Legislature further finds and declares that undocumented, de facto, family partnerships are a longstanding custom in these fisheries. The Legislature further finds and declares that great hardship results when the permittee partner is no longer able to continue working and leaves the other partner without a permit to continue participating in the fishery.

(b) In any limited entry fishery in which permits are allocated to participants in the fishery, and where the death, incapacity, or retirement of a permittee from that fishery would deprive a working partner of the permittee of the ability to continue to derive a livelihood from that fishery, a permit shall be issued, upon application, to one remaining partner.

(c) A working partner for the purposes of this section shall be a spouse, child (including an adopted child), or sibling of the permittee, whose investment or equity need not be proven by documentation, or a person who can prove an investment or equity in the vessel or gear used in the fishery, and who would otherwise have been eligible for a permit and did not obtain one because he or she was working with or was a partner with the permittee.

(d) The working partner shall also provide substantial evidence of an actual physical working participation aboard the vessel supported by the submission of documents filed with the Franchise Tax Board and supported by trip settlement sheets or similar documents that

demonstrate earnings from that participation. "Trip settlement sheet" means a document prepared after a vessel has completed a fishing trip which displays the costs incurred, revenues received, and profits paid out. Investment or equity alone does not establish that the person is a working partner.

(e) Those existing working partners other than the family relationships specified in subdivision (c) may, not later than February 1, 1984, declare and prove the working partnership in a manner satisfactory to the department and request that the department state the fact of the working partnership upon the permit. Thereafter, a nonfamily working partnership shall be declared, proved, and noted upon any limited entry permit at the first issuance of the permit.

(f) This article does not apply to permits to take herring for roe in California.

SEC. 3. Section 8552 of the Fish and Game Code is amended to read:

8552. (a) It is unlawful to take herring for roe on a vessel unless the operator holds a herring permit issued by the department pursuant to commission regulations. The permit may be transferred pursuant to Sections 8552.2 and 8552.6.

(b) No person may be issued more than one herring permit, and the department shall not issue a herring permit to more than one person except as provided in Section 8552.6.

(c) Herring permits shall only be issued to and shall be held only by a natural person.

(d) Herring permits shall not be used as any form of security for any purpose, including, but not limited to, financial or performance obligations.

(e) The permittee shall be on board the vessel at all times during herring fishing operations, subject only to exceptions provided for in this code and regulations adopted under this code.

SEC. 4. Section 8552.2 is added to the Fish and Game Code, to read:

8552.2. A herring permit may be transferred from a herring permitholder to a nonpermitholder as follows:

(a) The offeror shall mail, by certified or registered mail, to the department and every individual listed on the department's list of maximum point herring fishery participants, his or her offer to transfer his or her herring permit, which offer shall specify the gear type to be used under the herring permit; the name, address, and telephone number of the offeror; and the amount of consideration, if any, sought by the offeror.

(b) Any maximum point fishery participant, as defined in this code and regulations adopted under this code, may accept the offer. The transfer shall be made to the first acceptance received.

(c) The acceptance shall be in writing, mailed by certified or registered mail or delivered personally with a written proof of service by the deliverer to the offeror. A true copy of the offer

accepted shall be filed with the department by the offeror under penalty of perjury and shall be available for public review.

(d) The acceptance is valid only if the person accepting the offer has at least one year or more experience in the California herring fishery using the gear type authorized to be used under the permit offered.

(e) If no acceptance is received by the offeror within 30 days from the day that the offer was mailed, the offeror may offer the permit to individuals possessing the next largest number of experience points and working in descending order therefrom, but only under the same terms and conditions as the permit was originally offered.

(f) If the offeror changes the terms and conditions of his or her offer, the revised offer shall be offered pursuant to subdivision (a).

(g) If the department or the court finds, after notice and hearing, that the offeror of a transfer subject to this section discriminated against any otherwise qualified person transmitting an acceptance or otherwise violated this section, the court or the department may declare the transfer to be null and void.

SEC. 5. Section 8552.4 is added to the Fish and Game Code, to read:

8552.4. Herring permits that are revoked or not renewed may be offered by the department for a drawing to persons having the maximum number of points for experience in the fishery on the first Friday of August of each year.

SEC. 6. Section 8552.5 is added to the Fish and Game Code, to read:

8552.5. The commission shall revoke any herring permit if the holder of the herring permit was convicted of failing to report herring landings or underreported herring landings or failed to correctly file with the department the offer or the acceptance for a permit transferred pursuant to Section 8552.2.

SEC. 7. Section 8552.6 is added to the Fish and Game Code, to read:

8552.6. (a) Notwithstanding Section 8552, a herring permit may be issued to two individuals if (1) both are engaged in the herring roe fishery either by fishing aboard the vessel or by personally participating in the management, administration, and operation of the partnership's herring fishing business and (2) there is a partnership constituting equal, 50 percent, ownership in a herring fishery operation, including a vessel or equipment, and that partnership is demonstrated by any two of the following:

(A) A copy of a federal partnership tax return.

(B) A written partnership agreement.

(C) Joint ownership of a fishing vessel used in the herring fishery as demonstrated on federal vessel license documents.

(b) For purposes of this section, a herring permit does not constitute a herring fishing operation. A herring permit may be transferred to one of the partners to be held thereafter in that partner's name only if there has been a death or retirement of the

other partner or a dissolution of partnership. A transfer under this section shall be authorized only if proof that the partnership has existed for five or more consecutive years is furnished to the department.

SEC. 8. Section 8552.7 is added to the Fish and Game Code, to read:

8552.7. The department shall reissue a herring permit which has been transferred pursuant to Section 8552.2 or 8552.6 upon payment of a transfer fee of one thousand dollars ($1,000) to be paid by the purchaser of the permit. The fees shall be deposited in the Fish and Game Preservation Fund and shall be expended for research and management activities to maintain and enhance herring resources pursuant to subdivision (a) of Section 8052.

SEC. 9. Section 8552.8 is added to the Fish and Game Code, to read:

8552.8. (a) For purposes of this article, the experience points for a person engaged in the herring roe fishery shall be determined by the sum of the following:

(1) One point for each year in the previous 12 years (prior to the current license year) that the person has held a commercial fishing license issued pursuant to Section 7852, not to exceed a maximum of 10 points.

(2) One point for each year, beginning with the 1978–79 herring fishing season, of paid experience as a crewmember in the herring fishery, as determined pursuant to Section 8559, using the type of gear that is authorized under the herring permit to be obtained, not to exceed a maximum of 15 points.

(3) One point for each year that the person was the owner and the operator while fishing for herring of a boat used in the herring fishery.

(b) The department shall maintain a list of all individuals with the maximum number of experience points and shall distribute that list to each herring permittee annually.

(c) A herring permittee may use the department's list and rely upon that list in making offers for transfer of his or her permit until the date of the annual distribution of the new list. On and after the date of the annual distribution, the permittee shall use the new list.

## CHAPTER 1506

An act relating to the State Energy Resources Conservation and Development Commission.

[Approved by Governor September 28, 1988. Filed with Secretary of State September 29, 1988.]

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

SECTION 1. The Legislature finds that recent projections regarding global warming trends raise long-range energy, economic, and environmental planning issues for the State of California. Preliminary studies indicate that global warming is caused in part by energy generation and consumption. These studies also show that global warming will cause significant problems in energy supply and generation, raise the level of the ocean, increase winter flooding and the need for water storage facilities by reducing mountain snowpack, and create other changes in the state's physical environment.

The Legislature therefore finds that the state should study the intensity and effects of global warming in order to anticipate and address adverse impacts to California.

SEC. 2. The State Energy Resources Conservation and Development Commission, in consultation with the State Air Resources Board, the University of California, the Department of Water Resources, and the Department of Food and Agriculture, shall conduct a study and report to the Legislature and the Governor on or before June 1, 1990, on how global warming trends may affect California's energy supply and demand, economy, environment, agriculture, and water supplies.

The study shall include recommendations for avoiding, reducing, and addressing the impacts on the energy supply and demand, economy, environment, agriculture, and water supply which are identified. The commission shall coordinate the study and any research it conducts with the research efforts of federal, state, academic, and industry research projects and may secure funding for the commission's study and research from these sources where feasible.

# CHAPTER 1507

An act to amend Sections 8680.2, 8680.3, 8680.4, 8682.8, 8685, 8685.7, 8685.8, 8686, 8686.3, 8687.2, 8690, 8690.4, and 16418 of, and to add Section 8682.9 to, the Government Code, to add Chapter 5 (commencing with Section 194) to Part 1 of Division 1 of the Revenue and Taxation Code, and to add Chapter 5.8 (commencing with Section 13600) to Part 3 of Division 9 of the Welfare and Institutions Code, relating to natural disaster assistance, and making an appropriation therefor.

[Approved by Governor September 28, 1988. Filed with Secretary of State September 29, 1988.]

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

SECTION 1. This act shall be known and may be cited as the Campbell-Torres-Cortese Natural Disaster Assistance Act Amendments of 1988.

SEC. 1.5. In enacting this act, the Legislature intends the following:

(a) Eligible local agencies shall be provided with state financial assistance to ease the fiscal burden of extraordinary costs incurred by the local agencies as a direct result of responding to or recovering from natural disasters.

(b) (1) State financial assistance shall be provided in accordance with the guidelines and eligibility criteria developed by the Office of Emergency Services and approved by the Department of Finance.

(2) In the event of a major disaster declared by the President of the United States, eligible individuals or families who have disaster-related necessary expenses or serious needs in excess of relief received from all other available sources may be provided with state financial assistance of up to the maximum allowed by this act.

(c) This state financial assistance shall not be used to supplant federal assistance otherwise available in the absence of state financial relief. In the event that the total amount of assistance for eligible claims exceeds the funds made available by this act, the allocations shall be made on a pro rata basis.

SEC. 1.7. Section 8680.2 of the Government Code is amended to read:

8680.2. "Local agency" means any city, city and county, county, school district, or special district.

SEC. 2. Section 8680.3 of the Government Code is amended to read:

8680.3. "Natural disaster" means a fire, flood, storm, tidal wave, earthquake, or other similar public calamity resulting from natural causes or in the case of fire which the Governor determines presents a threat to public safety, by man-made causes.

SEC. 3. Section 8680.4 of the Government Code is amended to

read:

8680.4. "Project" means the repair or restoration, or both, other than normal maintenance, or the replacement of, public real property of a local agency, including, but not limited to, buildings, levees, flood control works, channels, irrigation works, city streets, county roads, bridges, and other public works, except those facilities used solely for recreation purposes, that are damaged or destroyed by a natural disaster. "Project" includes those emergency activities which are undertaken by a local agency in response to the disaster event, as defined in subdivision (a) of Section 8685, and excluding response activities as defined in Section 8690.6. Except as provided in Section 8686.3, the completion of all or part of a project prior to application for funds pursuant to this chapter shall not disqualify the project or any part thereof.

SEC. 3.5. Section 8682.8 of the Government Code is amended to read:

8682.8. When certified by the director, claims of local agencies for payment shall be presented to the Controller for payment out of funds made available therefor. The director may request the Controller to audit any claim to ensure that funds were expended in accordance with the requirements and purposes of this chapter.

SEC. 3.6. Section 8682.9 is added to the Government Code, to read:

8682.9. The director shall adopt regulations to govern the administration of the disaster assistance program authorized by this chapter in accordance with the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3). Initial regulations required by this section shall be adopted by April 1, 1989, and shall not be subject to the review and approval of the Office of Administrative Law.

SEC. 4. Section 8685 of the Government Code is amended to read:

8685. From any money appropriated for that purpose, and subject to the conditions specified in this article, the Director of Emergency Services shall allocate funds to meet the cost of any one or more projects as defined in Section 8680.4. Claims by school districts shall be submitted to the Superintendent of Public Instruction for review and approval, in accordance with instructions developed by the Office of Emergency Services, prior to the allocation of funds by the Director of Emergency Services.

Moneys appropriated for the purposes of this chapter may be used to provide financial assistance for the following local agency and state costs:

(a) Local agency personnel overtime costs and cost of supplies used during eligible disaster response projects, incurred as a result of a state of emergency proclaimed by the Governor, excluding the normal hourly wage costs of regularly assigned emergency services and public safety personnel.

(b) To repair, restore, reconstruct, or replace public facilities

belonging to local agencies damaged as a result of natural disasters.

(c) Matching fund assistance for cost sharing required under federal disaster assistance programs.

(d) State administrative and engineering support required for the implementation and administration of the state disaster assistance program authorized under this chapter.

(e) Indirect costs defined as eligible by the Office of Emergency Services and in accordance with the federal Office of Management and Budget Circular No. A-87, or its successors, as well as any other assistance deemed necessary to carry out the requirements of this chapter.

SEC. 5. Section 8685.7 of the Government Code is amended to read:

8685.7. Any work performed by a state agency at the request of a local agency shall be agreed upon in writing and be subject to the State Contract Act. Work performed by a local agency shall be subject to the law governing the performance of that work by the local agency and any other applicable state or federal law. Neither the state nor any officer or employee thereof shall have any responsibility in connection with any work performed by a local agency.

SEC. 6. Section 8685.8 of the Government Code is amended to read:

8685.8. Under procedures to be prescribed by the director, a local agency may receive an advance of funds to initiate a project. Such advances shall be limited to not more than 90 percent of the estimated state's share of the project, as determined pursuant to Section 8686.

SEC. 7. Section 8686 of the Government Code is amended to read:

8686. Funds appropriated for use under this chapter shall be made available for projects as follows:

(a) For any eligible project, the state share shall amount to no more than 75 percent of total state eligible costs. The state shall make no allocation for any project application resulting in a state share of less than two thousand five hundred dollars ($2,500).

(b) Expenditures incurred by a local agency prior to the effective date of the allocation for work otherwise eligible shall be considered in determining the rate of contribution between the state and the local agency.

SEC. 8. Section 8686.3 of the Government Code is amended to read:

8686.3. Local agencies shall undertake to recover maximum federal participation in funding projects. No funds allocated under this chapter shall be used to supplant federal funds otherwise available in the absence of state financial relief. State contributions for such projects as determined by Section 8686 will be reduced by an amount equal to the amount local agencies would have recovered from federal disaster relief sources if they had applied for that

funding and had executed the eligible projects in conformity with federal requirements. When a local agency applies for federal disaster relief funds, the director shall inform the agency of available state funds.

SEC. 9. Section 8687.2 of the Government Code is amended to read:

8687.2. Notwithstanding Section 8686, whenever the director determines that a local agency to which funds are proposed to be allocated for a public facilities project is financially unable to meet the matching requirements set forth in Section 8686 due to exhaustion of its financial resources because of disaster expenditures, the provisions of Section 8686 may be suspended, and the director may allocate funds to pay all of the cost of the project or that portion of the cost which the director determines is necessary to accomplish the project, taking into consideration the financial ability of the local agency to meet the matching requirements of Section 8686 and the public benefit of the proposed work, less any money provided by the United States or any agency thereof for any portion of the cost of the project.

SEC. 10. Section 8690 of the Government Code is amended to read:

8690. As used in this article:

(a) "Fund" means the Natural Disaster Assistance Fund created by Section 8690.2.

(b) "Public Facilities and Local Agency Disaster Response Account" means the special account established in the fund pursuant to subdivision (a) of Section 8690.4.

(c) "Street and Highway Account" means the special account established in the fund pursuant to subdivision (b) of Section 8690.4.

(d) "Office of Emergency Services Disaster Administration Support Account" means the special account established in the fund pursuant to subdivision (c) of Section 8690.4.

SEC. 11. Section 8690.4 of the Government Code is amended to read:

8690.4. The Controller shall establish the following four special accounts in the Natural Disaster Assistance Fund:

(a) The Public Facilities and Local Agency Disaster Response Account, into which shall be paid all moneys appropriated by the Legislature for allocation for (1) the repair, restoration, reconstruction, or replacement of public facilities belonging to local agencies damaged as a result of natural disasters, (2) matching fund assistance for cost sharing required under federal disaster assistance programs, as specified in subdivisions (b) and (c) of Section 8685, and (3) local agency personnel overtime costs and supplies used during eligible disaster response and recovery activities, including the cost of administering those activities, as specified in subdivisions (a) and (e) of Section 8685.

(b) The Street and Highway Account, into which shall be paid all resources transferred from the Street and Highway Disaster Fund,

any money received from the federal government as reimbursement to any city or county for expenditures from funds allocated, transferred or expended pursuant to this chapter for a street and highway project, any money hereafter appropriated by the Legislature for allocation for street and highway projects, and any income from investment of moneys in the account and payments by local agencies in reimbursement of moneys disbursed from the account including deferred payments with charges, pursuant to Section 8686.8.

(c) The Office of Emergency Services Disaster Administration Support Account, into which shall be paid all moneys appropriated by the Legislature for allocation for (1) state administrative and engineering support required for the implementation and administration of the state disaster assistance program authorized under this chapter or (2) other assistance deemed necessary to carry out the requirements of this chapter, as specified in subdivision (d) of Section 8685.

(d) The Earthquake Emergency Investigations Account, into which shall be paid all moneys appropriated by the Legislature to the Seismic Safety Commission for allocation for the purpose of enabling immediate investigation of damaging earthquakes. Allocations may be made by the commission to assist organizations which have incurred expenses in the course of conducting earthquake investigations. Allocations may be made to cover the following expenses:

(1) Travel, meals, and lodging.

(2) Publishing of findings.

(3) Contractor assistance in the investigation.

(4) Other expenses which the commission may allow as necessary to assist the investigation.

(e) It is the intent of the Legislature that the Public Facilities and Local Agency Disaster Response Account and the Office of Emergency Services Administration Support Account each have an unencumbered balance of one million dollars ($1,000,000) at the beginning of each fiscal year.

In the event that any of these two accounts require additional moneys to meet claims against the account, the Director of Finance may transfer moneys from the Special Fund for Economic Uncertainties to the account in that amount sufficient to pay the amount of the claims exceeding the unencumbered balance in the account, provided that the transfer is not made sooner than 30 days after notification in writing of the necessity therefor is provided to the Joint Legislative Budget Committee.

SEC. 12. All of the assets, liabilities, and surpluses of the accounts of the Natural Disaster Assistance Fund, which are abolished by the amendment of Section 8690.4 of the Government Code by this act, shall, on order of the Director of Finance and as of the effective date of this act, be transferred to one or more of the remaining accounts in the fund in those amounts as determined by the Director of

Finance and shall become assets, liabilities, and surpluses of those accounts. The existing appropriations from any of those abolished accounts shall continue to be available for allocation, encumbrance, and expenditure in the same manner and for the same purposes and periods from the accounts to which the moneys are transferred. Any moneys received by any state agency after the effective date of this act which, by law, would otherwise be required to be deposited in an abolished account, shall on order of the Director of Finance be deposited in that account or those accounts of the National Disaster Assistance Fund designated by the director.

SEC. 13. Section 16418 of the Government Code is amended to read:

16418. (a) The Special Fund for Economic Uncertainties is hereby created in the State Treasury and is continuously appropriated for the purposes of this section. The contingency reserve for economic uncertainties established within the General Fund by Section 12.3 of the Budget Act of 1980 is hereby discontinued, and any balance in that reserve shall be transferred to the Special Fund for Economic Uncertainties. This special fund represents a reserve fund within the meaning of Section 5 of Article XIII B of the California Constitution. Notwithstanding Sections 16310 and 16314, the Controller may transfer as necessary from the Special Fund for Economic Uncertainties or from the special accounts in the General Fund to the General Fund such amounts as are needed to meet cash needs of the General Fund. The Controller shall return all such moneys so transferred without payment of interest as soon as there are sufficient moneys in the General Fund.

(b) The Controller shall transfer from the Special Fund for Economic Uncertainties to the unappropriated balance of the General Fund an amount necessary to eliminate any General Fund deficit as of the end of each fiscal year, commencing as of June 30, 1985. The amount of transfer for each fiscal year shall be determined on the basis of the State of California Preliminary Annual Report--Accrual Basis, for such fiscal year. Any subsequent adjustments shall be determined jointly by the Controller and the Director of Finance.

(c) Notwithstanding Section 13340, moneys in the Special Fund for Economic Uncertainties is hereby continuously appropriated without regard to fiscal years to the Director of Finance for the purpose of allocating funds for disaster relief pursuant to Chapter 5 (commencing with Section 194) of Part 1 of Division 1 of the Revenue and Taxation Code. However, any allocation made by the director pursuant to this subdivision shall not be made sooner than 30 days after notification in writing of the necessity therefor is provided to the Joint Legislative Budget Committee.

(d) For budgeting and accounting purposes, any appropriations heretofore or hereafter made specifically from the Special Fund for Economic Uncertainties, other than appropriations contained in this section, shall be deemed an appropriation from the General Fund.

For year-end reporting purposes, the Controller shall add the balance in the Special Fund for Economic Uncertainties to the balance in the General Fund so as to show the total moneys then available for General Fund purposes.

(e) Notwithstanding Section 13340, there is hereby appropriated from the General Fund, without regard to fiscal years, for transfer by the Controller to the Special Fund for Economic Uncertainties as of the end of each fiscal year, the lesser of the following amount:

(1) The unencumbered balance in the General Fund.

(2) The difference between the state's "appropriations subject to limitation" for the fiscal year then ended and its "appropriation limit" as defined in Section 8 of Article XIII B of the California Constitution and established in the Budget Act for that fiscal year, as jointly estimated by the Legislative Analyst's office and the Department of Finance.

SEC. 14. Chapter 5 (commencing with Section 194) is added to Part 1 of Division 1 of the Revenue and Taxation Code, to read:

## CHAPTER 5. DISASTER RELIEF: TAX DEFERRAL

194. As used in this chapter:

(a) "Eligible county" means a county which meets both of the following requirements:

(1) Has been proclaimed by the Governor to be in a state of emergency.

(2) Has adopted an ordinance providing property tax relief for disaster victims as provided in Section 170.

(b) "Eligible property" means real property and any mobilehome, including any new construction which was completed or any change in ownership which occurred prior to the date of the disaster which meets both of the following requirements:

(1) Is located in an eligible county.

(2) Has sustained substantial disaster damage and the disaster resulted in the issuance of a state of emergency proclamation by the Governor.

"Eligible property" does not include any real property or any mobilehome, whether or not it otherwise qualifies as eligible property, if that real property or mobilehome was purchased or otherwise acquired by a claimant for relief under this chapter after the last date on which the disaster occurred.

(c) "Fair market value" means "full cash value" or "fair market value" as defined in Section 110.

(d) "Next property tax installment payment date" means December 10 or April 10, whichever date occurs first after the last date on which the eligible property was damaged.

(e) "Property tax deferral claim" means a claim filed by the owner of eligible property in conjunction with, or in addition to, the filing of an application for reassessment of that property pursuant to Section 170, which enables the owner to defer payment of the next

installment of taxes on property on the regular secured roll for the current fiscal year, as provided in Section 194.1 or to defer payment of taxes on property on the supplemental roll for the current fiscal year, as provided in Section 194.9.

(f) "Substantial disaster damage," as to real property located in a county declared to be a disaster by the Governor, means, with respect to real property and any mobilehome which has received the homeowner's exemption or is eligible for the exemption as of the most recent March 1, damage amounting to at least 10 percent of its fair market value or five thousand dollars ($5,000), whichever is less; and, with respect to other property, damage to the parcel of at least 20 percent of its fair market value immediately preceding the disaster causing the damage.

194.1. (a) Any owner of eligible property who files on or before the next property tax installment payment date, a claim for reassessment pursuant to Section 170 may apply to the county assessor to defer payment of that installment of property taxes on the regular secured roll for the current fiscal year with respect to that property which are due no later than that date which immediately follows the disaster which resulted in substantial disaster damage. If a timely claim is filed, the payment shall be deferred without penalty or interest until the assessor has reassessed the property and a corrected bill prepared pursuant to Section 170 has been sent to the property owner. Taxes deferred pursuant to this section are due 30 days after receipt by the owner of the corrected tax bill and if unpaid thereafter are delinquent as provided in Section 2610.5 and shall be subject to the penalty provided by law.

(b) If, following reassessment pursuant to subdivision (a), the assessor determines that an owner who applied and was granted a deferral of property taxes did not file the claim in good faith, the owner shall be assessed a delinquency penalty for the nonpayment of the deferred taxes.

(c) This section does not apply to property taxes paid through impound accounts.

194.2. On or before January 15 or May 15, whichever date is sooner, the tax collector of an eligible county shall certify to the Director of Finance the total amount of the most recent installment of property taxes for all eligible property on both the regular secured roll and the supplemental roll for the current fiscal year which were deferred pursuant to Section 194.1.

194.3. If an eligible county has adopted an ordinance in accordance with Section 194.9, the tax collector shall certify to the Director of Finance on or before January 31 or May 31, whichever date is sooner, the total amount of supplemental roll property tax deferral claims submitted pursuant to Section 194.9 to the county by 5 p.m. on the most recent property tax installment payment date.

194.4. After the tax collector of an eligible county has made the applicable certification to the Director of Finance pursuant to Section 194.2, the director shall, within 30 days and after verification,

certify this amount to the Controller for allocation to the county. Upon receipt of certification by the Director of Finance, the Controller shall make the appropriate allocation to the county within 10 working days thereafter.

194.5. On or before December 31 or April 30, whichever date is sooner, each eligible county 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 194.4.

194.6. On or before December 31 or April 30, whichever date is sooner, each eligible county which has adopted an ordinance in accordance with Section 194.9, 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 194.4.

194.8. The allocation of funds to, and the repayment of funds by, counties made pursuant to this chapter shall be subject to review and audit by the Controller.

194.9. Each eligible county may adopt an ordinance to permit the deferral of unpaid nondelinquent current fiscal year supplemental roll taxes on eligible property reassessed pursuant to Chapter 3.5 (commencing with Section 75) of Part 0.5 if the owner files with the assessor a claim for deferral on or before the next property tax installment payment date. Taxes deferred pursuant to this section shall be due on the last day of the month following the month in which the corrected bill is mailed or the delinquent date of the next installment of the original bill whichever is later.

195. The Department of Finance shall establish guidelines in carrying out this chapter. These guidelines shall include a procedure for the review of claims submitted by an eligible county to the Department of Finance.

195.1. Any eligible county may adopt an ordinance providing for the temporary postponement of the second consecutive installment of taxes on property on the regular secured roll until the next property tax installment payment date, and, notwithstanding any other provision of this chapter, also for the further postponement of the preceding installment of taxes on property on the regular secured roll which was deferred pursuant to Section 194.1, until that date. The state shall provide no reimbursement payments to local jurisdictions for the postponement of property taxes pursuant to this section.

SEC. 15. Chapter 5.8 (commencing with Section 13600) is added to Part 3 of Division 9 of the Welfare and Institutions Code, to read:

## CHAPTER 5.8. DISASTER RELIEF GRANTS

13600. (a) The State Department of Social Services may provide state supplemental individual and family grants to meet disaster related necessary expenses or serious needs of individuals or families adversely affected by any major disaster declared by the President of the United States in those cases where individuals or families are

unable to meet those expenses or needs through assistance under the federal Disaster Relief Act, 42 United States Code, Section 5178, or other means.

(b) Grants shall only be made to individuals and families determined to be eligible for the federal individual and family grant program who have suffered losses reimbursable under that program in excess of the maximum federal grant amount.

(c) The State Department of Social Services may make a grant to those individuals and families equal to the difference between the federal grant awarded and the federally eligible appraised loss, not to exceed ten thousand dollars ($10,000) per individual or family.

(d) For purposes of this section, "federally eligible" means only those losses that are eligible under the federal individual and family grant program, without regard to the federal maximum grant.

(e) Application procedures established for the administration of this chapter shall conform to the procedures required in the federal Disaster Relief Act. The State Department of Social Services shall ensure that applicants for relief under this chapter have followed those procedures and that applicants have exhausted all other available means of seeking relief for disaster damage prior to receiving any grants pursuant to this chapter.

13601. There is hereby created in the State Treasury the California Individual and Family Supplemental Grant Fund. Any moneys appropriated to the fund by the Legislature shall be allocated to the State Department of Social Services to provide supplemental individual and family grant assistance. The funds shall not be used to fulfill matching fund requirements for federal disaster assistance, but shall be used to supplement the federal individual and family grant program. Notwithstanding Section 13340 of the Government Code, moneys in this fund are continuously appropriated, without regard to fiscal years, for the purpose of making grants pursuant to this chapter.

SEC. 16. This act shall apply to any local agency which complies with the notice, application, and reporting requirements of Sections 8685.2 and 8685.4 of the Government Code based on a natural disaster occurring on or after January 1, 1988.

# CHAPTER 1508

An act to amend Sections 56100, 56341, 56441.10, 56471, 56600, 56601, 56602, 56604, 56605, 62000.3, 69612, and 69613.1 of, and to add Sections 56201, 56600.5, and 62000.8 to, the Education Code, relating to special education.

[Approved by Governor September 28, 1988. Filed with Secretary of State September 29, 1988 ]

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

SECTION 1. 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 three 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.

SEC. 2. Section 56201 is added to the Education Code, to read:

56201. As a part of the local plan submitted pursuant to Section 56200, each special education local plan area shall describe how specialized equipment and services will be distributed within the local plan area in a manner that minimizes the necessity to serve pupils in isolated sites and maximizes the opportunities to serve pupils in the least restrictive environments.

SEC. 3. Section 56341 of the Education Code is amended to read:

56341. (a) Each meeting to develop, review, or revise the individualized education program of an individual with exceptional needs, shall be conducted by an individualized education program team.

(b) The individualized education program team shall include all of the following:

(1) A representative other than the pupil's teacher designated by administration who may be an administrator, program specialist, or other specialist who is knowledgeable of program options appropriate for the pupil and who is qualified to provide, or supervise the provision of, special education.

(2) The pupil's present teacher. If the pupil does not presently have a teacher, this representative shall be the teacher with the most recent and complete knowledge of the pupil who has also observed the pupil's educational performance in an appropriate setting. If no such teacher is available, this representative shall be a regular classroom teacher referring the pupil, or a special education teacher qualified to teach a pupil of his or her age.

(3) One or both of the pupil's parents, a representative selected by the parent, or both, pursuant to Public Law 94-142.

(c) When appropriate, the team shall also include:

(1) The individual with exceptional needs.

(2) Other individuals, at the discretion of the parent, district, special education local plan area, or county office who possess expertise or knowledge necessary for the development of the individualized education program.

(d) If the team is developing, reviewing, or revising the individualized education program of an individual with exceptional needs who has been assessed for the purpose of that individualized education program, the district, special education local plan area, or county office, shall ensure that a person is present at the meeting who has conducted an assessment of the pupil or who is knowledgeable about the assessment procedures used to assess the pupil and is familiar with the results of the assessment. The person shall be qualified to interpret the results if the results or recommendations, based on the assessment, are significant to the development of the pupil's individualized education program and subsequent placement.

(e) For pupils with suspected learning disabilities, at least one member of the individualized education program team, other than the pupil's regular teacher, shall be a person who has observed the

pupil's educational performance in an appropriate setting. If the child is younger than five years or is not enrolled in a school, a team member shall observe the child in an environment appropriate for a child of that age.

(f) The parent shall have the right to present information to the individualized education program team in person or through a representative and the right to participate in meetings relating to eligibility for special education and related services, recommendations, and program planning.

(g) It is the intent of the Legislature that the individualized education program team meetings be nonadversarial and convened solely for the purpose of making educational decisions for the good of the individual with exceptional needs. However, if the public education agency uses an attorney during any part of the individualized education program meeting, that use shall be governed by the provisions of Section 56507.

SEC. 3.5. Section 56441.10 of the Education Code is amended to read:

56441.10. Early education services provided under this chapter for preschoolers identified as individuals with exceptional needs pursuant to subdivisions (a) to (e), inclusive, of Section 56441.11 shall not be funded pursuant to any of Sections 56740 to 56743, inclusive, unless a waiver of this section is approved by the superintendent.

SEC. 3.7. Section 56471 of the Education Code is amended to read:

56471. (a) The program shall be administered by the State Department of Education.

(b) The department shall establish an advisory committee. This committee will include representatives from local workability projects to ensure ongoing communications.

(c) The superintendent shall develop criteria for awarding grants, funding, and evaluating of workability projects.

(d) Workability project applications shall include, but are not limited to, the following elements:
(1) recruitment, (2) assessment, (3) counseling, (4) preemployment skills training, (5) vocational training, (6) student wages for try-out employment, (7) placement in unsubsidized employment, (8) other assistance with transition to a quality adult life, and (9) utilization of an interdisciplinary advisory committee to enhance project goals.

SEC. 4. Section 56600 of the Education Code is amended to read:

56600. It is the intent of the Legislature to provide for ongoing comprehensive evaluation of special education programs authorized by this part. The Legislature finds and declares that the evaluation of these programs shall be designed to provide the Legislature, the State Board of Education, the State Department of Education, and program administrators at special education local plan area, county, district, and school levels with the information necessary to refine and improve programs, policies, regulations, guidelines, and procedures on a continuing basis, and to assess the overall merits of

these efforts.

SEC. 5. Section 56600.5 is added to the Education Code, to read:

56600.5. (a) The superintendent shall submit to the board, not later than July 1, 1989, an evaluation plan for special education. This plan shall outline a procedure to identify statewide evaluation priorities in special education and strategies to involve the special education local plan areas for their cooperation in conducting the studies.

(b) The plan developed pursuant to subdivision (a) shall be developed in consultation with the Advisory Commission on Special Education and with other groups or individuals the superintendent deems appropriate.

(c) The plan developed pursuant to subdivision (a) shall include, but not be limited to, all of the following:

(1) The identification of outcomes and goals against which programs can be judged.

(2) Questions requiring further research and how they are addressed in the evaluation plan.

(3) Research that has been conducted in these questions to date, including a brief summary of findings.

(4) Potential evaluation methodologies.

(5) The scope and probable duration of the evaluations.

(6) Organizations that could conduct these evaluations.

(7) Funding requirements for the evaluations.

(8) The potential policy implications of the proposed studies.

(d) The evaluation plan developed pursuant to subdivision (a) shall also include provisions for both of the following:

(1) Analyzing the existing eligibility criteria for special education programs and services.

(2) The appropriateness of establishing specific, exit criteria for special education programs, and strengthening the exit process.

SEC. 6. Section 56601 of the Education Code is amended to read:

56601. Each special education local plan area shall submit to the superintendent at least annually an evaluation report in a form and manner prescribed by the superintendent. The reports shall include information necessary for the superintendent to carry out the responsibilities prescribed by Section 56602 and other statistical data, program descriptions, and fiscal information that the superintendent may require.

SEC. 7. Section 56602 of the Education Code is amended to read:

56602. In accordance with a program evaluation plan adopted pursuant to subdivision (e) of Section 56100, the superintendent shall submit to the board, the Legislature, and the Governor, an annual evaluation of the special education programs implemented under this part. This evaluation shall:

(a) Utilize existing information sources including fiscal records, enrollment data, and other descriptive data, and program reviews to gather ongoing information regarding implementation of programs authorized by this chapter.

(b) Utilize existing information to the maximum extent feasible to conduct special evaluation studies of issues of statewide concern. The studies may include, but need not be limited to, all of the following:

(1) Pupil performance. The State Department of Education shall assist special education local plan areas in the development of models of pupil performance in order to determine the success or failure of special education programs and services. As appropriate, special education pupils and parents of special education pupils shall be involved in the development of these models.

(2) Placement of pupils in least restrictive environments.

(3) Degree to which services identified in individualized education programs are provided.

(4) Parent, pupil, teacher, program specialist, resource specialist, and administrator attitudes toward services and processes provided.

(5) Program costs, including, but not limited to:

(A) Expenditures for instructional personnel services, support services, special transportation services, and regionalized services.

(B) Capital outlay costs at the district and school levels, and for special education local plan areas, county offices, state special schools, and nonpublic, nonsectarian schools.

(C) Funding sources at the district, special education local plan area, county office, state special school, and nonpublic, nonsectarian school levels.

(c) Identify the numbers of individuals with exceptional needs, their racial and ethnic data, their classification by designated instructional services, resource specialist, special day class or center, and nonpublic, nonsectarian schools, in accordance with criteria established by the board and consistent with federal reporting requirements.

SEC. 8. Section 56604 of the Education Code is amended to read:

56604. (a) The superintendent shall coordinate the design of evaluations to prevent duplication and to minimize data collection and reporting requirements at the school and district levels.

(b) The State Department of Education shall utilize sampling procedures whenever feasible.

SEC. 9. Section 56605 of the Education Code is amended to read:

56605. The superintendent shall periodically sponsor or conduct workshops and seminars for the education of local education agency personnel assigned to, and responsible for, the evaluation of local special education programs.

SEC. 10. Section 62000.3 of the Education Code is amended to read:

62000.3. The gifted and talented education program shall sunset on June 30, 1988 .

SEC. 11. Section 62000.8 is added to the Education Code, to read:

62000.8. The special education program shall sunset on June 30, 1993.

SEC. 12. Section 69612 of the Education Code is amended to read:

69612. (a) The Legislature hereby recognizes that there is a

growing shortage of high quality classroom teachers, and that certain populations are particularly underrepresented in the teaching profession. The teacher shortage is most serious in particular subject areas, partly due to the shortage of students in these fields who enter the teaching profession. The Legislature also recognizes that many school districts have difficulty recruiting and retaining high quality teachers for pupils with special needs and for schools serving large populations of students from low-income and linguistic minority families.

The Legislature finds that the rising costs of higher education, coupled with a shift in available financial aid from scholarships and grants to loans, make loan repayment options an important consideration in a student's decision to pursue a postsecondary education. The availability of financial aid and loan repayment assistance are often particularly important considerations for students from underrepresented postsecondary student populations in making their educational decisions.

(b) It is the intent of the Legislature that the Assumption Program of Loans for Education be designed to encourage persons to enter into the teaching profession in designated subject matter shortage areas and in schools serving large populations of students from low-income families. It is further the intent of the Legislature in enacting this article to do all of the following:

(1) Provide outstanding postsecondary students, particularly those from populations underrepresented in the teaching profession, with the assurance of financial assistance to encourage them to complete postsecondary education programs leading to teaching credentials, and to seek employment as teachers.

(2) Provide persons who agree to become teacher trainees or teacher interns in a subject matter shortage area with the assurance of financial assistance to encourage them to complete the additional coursework necessary to obtain a teaching credential.

(3) Identify subject matter areas in which there are shortages of teachers and provide incentives for persons to obtain teaching credentials and seek teaching positions in those areas.

(4) Identify schools serving large populations of students from low-income families and provide incentives for persons to obtain teaching credentials and seek teaching positions in those schools.

SEC. 13. Section 69613.1 of the Education Code is amended to read:

69613.1. The Superintendent of Public Instruction shall furnish the Student Aid Commission with all of the following:

(a) A list of teaching fields that have the most critical shortage of teachers. The superintendent shall review this list annually and revise the list as he or she deems necessary.

(b) A list of schools that serve a large population of students from low-income families, as designated for purposes of the National Direct Student Loan Program, or according to other standards the superintendent deems appropriate.

SEC. 14. (a) The Superintendent of Public Instruction shall collect data from special education local plan areas regarding the functions actually performed by program specialists and shall compare those functions to the role specified for program specialists in subdivision (b) of Section 56368 of the Education Code.

(b) On or before June 30, 1989, the Superintendent of Public Instruction shall report the results of the analysis performed pursuant to subdivision (a) to the Governor and the chairs of the appropriate policy and fiscal committees of the Legislature.

SEC. 15. The Legislature hereby declares that the special education program that became inoperative on June 30, 1988, pursuant to Section 62000.3 of the Education Code, shall become operative, as amended by this act, on January 1, 1989.

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 five hundred thousand dollars ($500,000), reimbursement shall be made from the State Mandates Claims Fund.

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## CHAPTER 1509

An act to amend Sections 260, 1803, 1804, 12502, 12511, 12515, and 14900 of, to amend and repeal Section 12804 of, to add Sections 12801, 12804.9, and 40300.2 to, and to add Chapter 7 (commencing with Section 15200) tc Division 6 of, the Vehicle Code, relating to vehicles, and making an appropriation therefor.

[Approved by Governor September 28, 1988. Filed with Secretary of State September 29, 1988 ]

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

SECTION 1. Section 260 of the Vehicle Code is amended to read:

260. (a) A "commercial vehicle" is a vehicle of a type required to be registered under this code used or maintained for the transportation of persons for hire, compensation, or profit or designed, used, or maintained primarily for the transportation of property.

(b) Passenger vehicles which are not used for the transportation of persons for hire, compensation, or profit and housecars are not commercial vehicles. This subdivision shall not apply to Chapter 4 (commencing with Section 6700) of Division 3.

(c) Any vanpool vehicle is not a commercial vehicle.

(d) The definition of a commercial vehicle in this section does not

apply to Chapter 7 (commencing with Section 15200) of Division 6.

SEC. 2. Section 1803 of the Vehicle Code is amended to read:

1803. (a) Every clerk of a court, or judge if there is no clerk, in which a person was convicted of any violation of this code, of any offense involving use or possession of controlled substances under Division 10 (commencing with Section 11000) of the Health and Safety Code, and of any felony offense when a commercial motor vehicle, as defined in subdivision (b) of Section 15210, was involved in or incidental to the commission of the offense, and of any violation of any other statute relating to the safe operation of vehicles, shall prepare within 10 days after conviction and immediately forward to the department at its office at Sacramento an abstract of the record of the court covering the case in which the person was so convicted. If sentencing is not pronounced in conjunction with the conviction, the abstract shall be forwarded to the department within 10 days after sentencing and the abstract shall be certified by the person so required to prepare it to be true and correct.

For the purposes of this section, a forfeiture of bail shall be equivalent to a conviction.

(b) The following violations are not required to be reported under subdivision (a) of this section:

(1) Division 3.5 (commencing with Section 9840).

(2) Section 21113, with respect to parking violations.

(3) Chapter 9 (commencing with Section 22500) of Division 11.

(4) Division 12 (commencing with Section 24000), except Sections 24002, 24004, 24250, 24409, 24604, 24800, 25103, 26707, 27151, 27315, 27360, 27800, and 27801 and Chapter 3 (commencing with Section 26301).

(5) Division 15 (commencing with Section 35000), except Chapter 5 (commencing with Section 35550).

(6) Violations for which a person was cited as a pedestrian or while operating a bicycle.

(7) Division 16.5 (commencing with Section 38000).

(8) Sections 23221, 23223, 23225, and 23226.

(c) If the court impounds a license or orders a person to limit his or her driving pursuant to paragraph (2) of subdivision (a) of Section 23161, subdivision (b) of Section 23166, subdivision (b) of Section 23186, or subdivision (c) of Section 40508, the court shall notify the department concerning the impoundment or limitation on an abstract prepared pursuant to subdivision (a) of this section or on a separate abstract, which shall be prepared within 10 days after the impoundment or limitation was ordered and immediately forwarded to the department at its office in Sacramento.

(d) If the court determines that a prior judgment of conviction of a violation of Section 23152 or 23153 is valid or is invalid on constitutional grounds pursuant to Section 41403, the clerk of the court, or judge if there is no clerk, in which the determination is made shall prepare an abstract of that determination and forward it to the department in the same manner as an abstract of record

pursuant to subdivision (a).

(e) Within 10 days of an order terminating or revoking probation under Section 23167, 23187, or 23207, the clerk of the court, or the judge if there is no clerk, in which the order terminating or revoking probation was entered, shall prepare and immediately forward to the department at its office in Sacramento an abstract of the record of the court order terminating or revoking probation and any other order of the court to the department required by law.

SEC. 3. Section 1804 of the Vehicle Code, as amended by Section 2 of Chapter 1345 of the Statutes of 1985, is amended to read:

1804. The abstract shall be made upon a form furnished or approved by the department and shall contain all necessary information to identify the defendant, the date and nature of the offense, the license plate number of the vehicle involved in the offense, whether the vehicle was transporting a load required to be transported by a driver certified pursuant to Section 12804.1, whether the operator of the vehicle is required to be certified pursuant to Section 12804.3, the date of hearing, and the judgment. The abstract shall also indicate whether the vehicle involved in the offense is a commercial motor vehicle, as defined in subdivision (b) of Section 15210.

SEC. 3.3. Section 1804 of the Vehicle Code, as amended by Section 2 of Chapter 1345 of the Statutes of 1985, is amended to read:

1804. (a) The abstract shall be made upon a form furnished or approved by the department and shall contain all necessary information to identify the defendant, the date and nature of the offense, the license plate number of the vehicle involved in the offense, whether the vehicle was transporting a load required to be transported by a driver certified pursuant to Section 12804.1, whether the operator of the vehicle is required to be certified pursuant to Section 12804.3, the date of hearing, and the judgment. The abstract shall also indicate whether the vehicle involved in the offense is a commercial motor vehicle, as defined in subdivision (b) of Section 15210.

(b) As to any abstract for which the original arrest and final conviction was for a violation of Section 23101 or 23102, as those sections read before January 1, 1982, or Section 23152 or 23153, the abstract shall contain a statement indicating the percentage of alcohol, by weight, in the person's blood whenever that percentage was determined by a chemical test. The information regarding the chemical test shall be compiled if it is available to the clerk of the court. All information required to be compiled pursuant to this subdivision shall be kept confidential in the records of the department pursuant to Section 1808.5. The department may use the information for research and statistical purposes and for determining the eligibility of any person to operate a motor vehicle on the highways of this state. The information shall not be released to any other public or private agency, except for research and statistical summary purposes and, for those purposes, the name and address of

the person and any other identifying information shall not be disclosed.

(c) The Legislature finds and declares that blood-alcohol percentages have valuable research potential in providing statistical summary information on impaired drivers but that a specific blood-alcohol percentage is only an item of evidence for purposes of criminal and licensing sanctions imposed by law. The Legislature recognizes that the accuracy of the determination of a specific blood-alcohol percentage is not the critical determination in a conviction for driving under the influence of an alcoholic beverage if the blood-alcohol percentage exceeds the statutory amount.

SEC. 3.5. Section 12502 of the Vehicle Code is amended to read:

12502. (a) A nonresident over the age of 18 years having in his or her immediate possession a valid driver's license issued by a foreign jurisdiction of which he or she is a resident, may operate a motor vehicle in this state without obtaining a license under this code except as provided in Section 12505.

(b) Any person entitled to the exemption contained in subdivision (a), while operating within this state, a commercial vehicle, as defined in subdivision (b) of Section 15210, or a vehicle otherwise requiring a class 1 or 2 driver's license, shall have in his or her possession a current medical certificate of a type described in subdivision (c) of Section 12804, which has been issued within two years of the date of operation of that vehicle.

SEC. 4. Section 12511 of the Vehicle Code is amended to read:

12511. No person shall have in his or her possession or otherwise under his or her control more than one driver's license.

SEC. 5. Section 12515 of the Vehicle Code is amended to read:

12515. (a) No person under the age of 18 years shall be employed for compensation by another for the purpose of driving a motor vehicle on the highways.

(b) No person under the age of 21 years shall be employed for compensation by another to drive, and no person under the age of 21 years may drive a motor vehicle, as defined in Section 34500 or subdivision (b) of Section 15210, that is engaged in interstate commerce, or any motor vehicle that is engaged in the interstate or intrastate transportation of hazardous material, as defined in Section 353.

SEC. 6. Section 12801 is added to the Vehicle Code, to read:

12801. Notwithstanding any other provision of law, the department shall require every application for a commercial driver's license, as defined in subdivision (a) of Section 15210, to contain the applicant's social security number and any other number or identifier determined to be appropriate by the department.

SEC. 7. Section 12804 of the Vehicle Code is amended to read:

12804. (a) (1) The examination shall include a test of the following:

(A) The applicant's knowledge and understanding of the provisions of this code governing the operation of vehicles upon the

highways.

(B) The applicant's ability to read and understand simple English used in highway traffic and directional signs.

(C) The applicant's understanding of traffic signs and signals, including the bikeway signs, markers, and traffic control devices established by the Department of Transportation.

The applicant shall be required to give an actual demonstration of his or her 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 examination shall also include 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 1 or class 2 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 physician licensed to practice medicine. 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) 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 1. Any combination of vehicles, including the operation of all vehicles under class 2 and class 3.

(2) Class 2. Any bus, any single vehicle with three or more axles, any bus or single vehicle with three or more axles towing another vehicle weighing less than 6,000 pounds gross, and all vehicles covered under class 3.

(3) Class 3. Any of the following:

(A) Any truck tractor or truck tractor and semitrailer combination, as specified in subdivision (h) of Section 36101, when operated in accordance with subdivision (h) of Section 36101.

(B) Any three-axle housecar.

(C) Any three-axle vehicle weighing less than 6,000 pounds gross,

any two-axle vehicle, any three-axle housecar or vehicle towing another vehicle weighing less than 6,000 pounds gross, including when a tow dolly is used between the towing vehicle and a towed motor vehicle.

(D) Any two-axle vehicle weighing 4,000 pounds or more unladen when towing a trailer coach not exceeding 9,000 pounds gross, or towing a trailer or semitrailer not exceeding 9,000 pounds gross, designed and used exclusively for hauling livestock, or towing a trailer not exceeding 9,000 pounds gross used to transport agricultural products from a farm to a processing or handling point, or towing a trailer transporting a boat not exceeding 9,000 pounds gross, when the hauling of livestock or agricultural products or the towing of boats is not for compensation.

(E) Any schoolbus, school pupil activity bus, youth bus, or farm labor vehicle specified in paragraph (1) of subdivision (d).

Class 3 does not include any bus which is not described in subparagraph (E), nor any two-wheel motorcycle or any two-wheel motor-driven cycle.

(4) Class 4. Any two-wheel motorcycle, any two-wheel motor-driven cycle, or any motorized bicycle. Authority to operate vehicles included in a class 4 license may be granted by endorsement on a class 1, 2, or 3 license upon completion of appropriate examination.

(c) Class 1 and class 2 driver's licenses shall be valid for operating class 1 or class 2 vehicles only when 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, otherwise the license shall be valid only for operating class 3 vehicles and class 4 vehicles if so endorsed.

(d) (1) A class 3 license shall be valid for operating any schoolbus, school pupil activity bus, youth bus, or farm labor vehicle when a special driver's certificate to permit the operation of those vehicles is also in the immediate possession of the licensee. A class 3 license shall also be valid for operating any of those vehicles, with no passengers aboard, while receiving behind-the-wheel driver training from a person having in his or her immediate possession a special driver's certificate to permit the operation of the vehicle.

(2) A special driver certificate for the operation of a schoolbus, school pupil activity bus, youth bus, farm labor vehicle, or vehicle requiring operator certification pursuant to Section 12804.1 shall not be valid unless the driver has in his or her immediate possession, a medical certificate issued within the past two years.

(e) The department may accept a certificate of driving experience that is issued by an employer of the applicant, in lieu of a driving test, on class 1 or 2 applications, if the applicant has first qualified for a class 3 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

experience or training 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 4 applications, when the certificate is issued by a law enforcement agency for its officers who operate class 4 vehicles in their duties, if the applicant has met the other examination requirements for the license for which he or she is applying.

(g) Notwithstanding subdivision (b), any person holding a valid California driver's license of any class may operate a motorized bicycle without taking any special examination for the operation of a motorized bicycle, and without having a class 4 endorsement on that license.

(h) Drivers of vanpool vehicles, may operate with class 3 licenses, but shall possess evidence of a medical examination required for a class 2 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.

(i) This section shall remain in effect only until January 1, 1993, and as of that date is repealed, unless a later enacted statute which is enacted on or before January 1, 1993, deletes or extends that date.

SEC. 7.5. Section 12804.9 is added to the Vehicle Code, to read:

12804.9. (a) (1) The examination shall include a test of the following:

(A) The applicant's knowledge and understanding of the provisions of this code governing the operation of vehicles upon the highways.

(B) The applicant's ability to read and understand simple English used in highway traffic and directional signs.

(C) The applicant's understanding of traffic signs and signals, including the bikeway signs, markers, and traffic control devices established by the Department of Transportation.

The applicant shall be required to give an actual demonstration of his or her 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 examination shall also include 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 physician licensed to practice medicine. 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. Any combination of vehicles, including the operation of all vehicles under class B and class C.

(2) Class B. Any bus, any single vehicle with three or more axles or a gross vehicle weight rating of 26,001 or more pounds, any bus or single vehicle with three or more axles or a gross vehicle weight rating of 26,001 or more pounds towing another vehicle weighing less than 6,000 pounds gross, and all vehicles covered under class C.

(3) Class C. Any of the following:

(A) Any truck tractor weighing less than 26,001 pounds gross vehicle weight or truck tractor towing a semitrailer weighing less than 10,000 pounds gross vehicle weight, as specified in subdivision (h) of Section 36101, when operated in accordance with subdivision (h) of Section 36101.

(B) Any two-axle or three-axle housecar.

(C) Any three-axle vehicle weighing less than 6,000 pounds gross, any two-axle vehicle weighing less than 26,001 pounds gross vehicle weight, any three-axle housecar or vehicle towing another vehicle weighing less than 6,000 pounds gross, including when a tow dolly is used between the towing vehicle and a towed motor vehicle.

(D) Any two-axle vehicle weighing 4,000 pounds or more unladen when towing a trailer coach not exceeding 9,000 pounds gross, or towing a trailer or semitrailer not exceeding 9,000 pounds gross, designed and used exclusively for hauling livestock, or towing a trailer not exceeding 9,000 pounds gross used to transport agricultural products from a farm to a processing or handling point, or towing a trailer transporting a boat not exceeding 9,000 pounds gross, when the hauling of livestock or agricultural products or the towing of boats is not for compensation.

(E) Any schoolbus, school pupil activity bus, youth bus, or farm labor vehicle specified in paragraph (1) of subdivision (d).

Class C does not include any bus which is not described in subparagraph (E), nor any two-wheel motorcycle or any two-wheel

motor-driven cycle.

(4) Class M. Any two-wheel motorcycle, any two-wheel motor-driven cycle, or any motorized bicycle. Authority to operate vehicles included in a class M license may be granted by endorsement on a class A, B, or C license upon completion of appropriate examination.

(c) No driver's license or special 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 special driver certificate, except a special construction equipment certificate or any commercial driver 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 M 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 experience that is issued by an employer 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 experience or training 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 M applications, when the certificate is issued by a law enforcement agency for its officers who operate class M vehicles in their duties, if the applicant has met the other examination requirements for the license for which he or she is applying.

(g) Notwithstanding subdivision (b), any person holding a valid California driver's license of any class may operate a motorized bicycle without taking any special examination for the operation of a motorized bicycle, and without having a class M endorsement on that license.

(h) 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.

(i) 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, or M licenses pursuant to this section, to the extent that class A, B, C, or M vehicles under this section fall within the definition of class 1, 2, 3, or 4 vehicles under Section 12804.

SEC. 8. Section 14900 of the Vehicle Code is amended to read:

14900. (a) Except as otherwise provided in Section 15255, upon application for an original driver's license, or for the renewal of a driver's license or for a license to operate a different class of vehicle, there shall be paid the department a fee of ten dollars ($10). The payment of the fee entitles the person paying the fee to make application for a driver's license and to three examinations within a period of 12 months or during the period of an instruction permit issued from the application as provided in Section 12509.

The term "driver's license", as used in this section, includes all licenses of every kind issued under Division 6 (commencing with Section 12500).

(b) Any person who, by reason of physical disabilities, is unable to move about as a pedestrian is exempt from the fee provided in this section, but only in the event the license issued to that person restricts that person to the operation of a self-propelled wheelchair or invalid tricycle.

SEC. 9. Chapter 7 (commencing with Section 15200) is added to Division 6 of the Vehicle Code, to read:

## CHAPTER 7. COMMERCIAL MOTOR VEHICLE SAFETY PROGRAM

### Article 1. Intent

15200. It is the intent of the Legislature, in enacting this chapter, to adopt those standards required of drivers by the Federal Highway Administration of the Department of Transportation, as set forth in the Commercial Motor Vehicle Safety Act of 1986 (Title XII of P.L. 99-570) and to reduce or prevent commercial motor vehicle accidents, fatalities, and injuries by permitting drivers to hold only one license, disqualifying drivers for certain criminal offenses and serious traffic violations, and strengthening licensing and testing standards. This act is a remedial law and shall be liberally construed to promote the public health, safety and welfare. To the extent that this chapter conflicts with general driver licensing provisions, this chapter shall prevail. Where this chapter is silent, the general driver licensing provisions shall apply. It is the further intent of the

Legislature that this program be fee supported, and that the department fully recoup its costs within four years of the program's enactment.

## Article 2. Definitions

15210. Notwithstanding any other provision of this code, as used in this chapter:

(a) "Commercial driver's license" means a driver's license issued by a state or other jurisdiction, in accordance with the standards contained in Part 383 of Title 49 of the Code of Federal Regulations, which authorizes the licenseholder to operate a class or type of commercial motor vehicle.

(b) "Commercial motor vehicle" means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if any of the following apply to the vehicle:

(1) Has a gross combination weight rating of 26,001 or more pounds inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds.

(2) Has a gross vehicle weight rating of 26,001 or more pounds.

(3) Is designed to transport 16 or more passengers, including the driver.

(4) Is used in the transportation of hazardous materials.

(c) "Controlled substance" has the same meaning as defined by the federal Controlled Substances Act (21 U.S.C. Sec. 802).

(d) "Disqualification" means a prohibition against driving a commercial motor vehicle.

(e) "Employer" means any person, including the United States, a state, or political subdivision of a state, who owns or leases a commercial motor vehicle or assigns drivers to operate such a vehicle. A person who employs himself or herself as a commercial vehicle driver is considered to be both an employer and a driver for purposes of this chapter.

(f) "Felony" means an offense under state or federal law that is punishable by death or imprisonment for a term exceeding one year.

(g) "Gross combination weight rating" means the value specified by the manufacturer as the maximum loaded weight of a combination or articulated vehicle. In the absence of a value specified by the manufacturer, gross vehicle weight rating will be determined by adding the gross vehicle weight rating of the power unit and the total weight of the towed units and any load thereon.

(h) "Gross vehicle weight rating" means the value specified by the manufacturer as the maximum loaded weight of a single vehicle, as defined in Section 390.

(i) "Serious traffic violation" includes either of the following:

(1) Excessive speeding, as defined pursuant to the federal Commercial Motor Vehicle Safety Act (P.L. 99-570).

(2) Reckless driving, as defined pursuant to the federal Commercial Motor Vehicle Safety Act (P.L. 99-570).

(3) A violation of any state or local law involving the safe operation of a motor vehicle, arising in connection with a fatal traffic accident.

(4) Any other similar violation of a state or local law involving the safe operation of a motor vehicle, as defined pursuant to the Commercial Motor Vehicle Safety Act (Title XII of P.L. 99-570).

In the absence of a federal definition, existing definitions under this code shall apply.

(j) "State" means a state of the United States or the District of Columbia.

(k) "Tank vehicle" means any commercial motor vehicle that is designed to transport any liquid or gaseous material within a tank that is permanently or temporarily attached to the vehicle or the chassis, including, but not limited to, cargo tanks and portable tanks, as defined in Part 171 of Title 49 of the Code of Federal Regulations. This definition does not include portable tanks having a rated capacity under 1,000 gallons.

## Article 3. Driver Notification Requirements

15220. Any driver of a commercial motor vehicle who has a driver's license issued by the department, and who is convicted of any offense involving the safe operation of a motor vehicle in any other state, shall notify the department, in the manner provided by the department, of the conviction within 30 days of the date of conviction.

15222. Any driver of a commercial motor vehicle, who has a driver's license issued by the department, and who is convicted of any offense involving the safe operation of a motor vehicle, shall notify his or her employer of the conviction, within 30 days of the date of conviction.

15224. Any driver who has a driver's license or privilege suspended, revoked, or canceled by any state for any period, or who is disqualified from driving a commercial motor vehicle for any period, shall notify his or her employer of the suspension, revocation, cancellation, or disqualification, before the end of the business day following the action.

15226. Any driver who is issued an out-of-service order under the federal Motor Carrier Safety Regulations of the United States Department of Transportation (49 C.F.R. 392.5) shall report the issuance to his or her employer within 24 hours.

15228. The driver shall also report the issuance of an out-of-service order described in Section 15226 to the department in the manner provided by the department within 30 days unless the driver requests a review of the order by the United States Department of Transportation. If so, the driver shall report the order to the department within 30 days of an affirmation of the order.

15230. Each person who applies for employment as a driver of a commercial motor vehicle shall provide the employer, at the time of

the application, with the following information for the 10 years preceding the date of application:

(a) A list of the names and addresses of the applicant's previous employers for which the applicant was a driver of a commercial motor vehicle.

(b) The dates the applicant was employed by each employer.

(c) The reason for leaving that employment.

The applicant shall certify that all information furnished is true and complete. An employer may require an applicant to provide additional information.

### Article 4. Employer Responsibilities

15240. No employer shall knowingly allow, permit, or authorize a driver to drive a commercial motor vehicle under either of the following conditions:

(a) The driver has a driver's license or privilege suspended, revoked, or canceled by any state or has been disqualified from operating a commercial motor vehicle.

(b) The driver has more than one driver's license.

15242. An employer who employs himself or herself as a commercial motor vehicle driver shall comply with both the requirements of this chapter pertaining to employers and the requirements of this chapter pertaining to employees.

### Article 5. Commercial Driver's License

15250. (a) No person shall operate a commercial motor vehicle unless that person has in his or her immediate possession a valid commercial driver's license of the appropriate class.

(b) No person may be issued a commercial driver's license until he or she has passed a written and driving test for the operation of a commercial motor vehicle which complies with the minimum federal standards established by the federal Commercial Motor Vehicle Safety Act of 1986 (P.L. 99-570) and Part 383 of Title 49 of the Code of Federal Regulations, and has satisfied all other requirements of that act as well as any other requirements imposed by this code.

(c) The tests shall be prescribed and conducted by or under the direction of the department. The department may allow an employer to administer the driving test part of the examination required under this section if the following conditions are met:

(1) The tests given by the third party are the same as those which would otherwise be given by the department.

(2) The third party has an agreement with the department with at least the following provisions:

(A) Authorization for the Federal Highway Administration, or its representative, and the department, or its representative, to conduct random examinations, inspections, and audits without prior notice.

(B) Permission for the department, or its representative, to conduct onsite inspections at least annually.

(C) A requirement that all third-party examiners meet the same qualification and training standards as the department's examiners, to the extent necessary to conduct the driving skill tests in compliance with the requirements of Part 383 of Title 49 of the Code of Federal Regulations.

(D) Authority for the department to take prompt and appropriate remedial action against the third-party testers if the third-party fails to comply with the standards for the commercial driver license testing program, or with any other term of the third-party contract.

(E) Authorization for the department to charge the employer a fee, as determined by the department, which is sufficient to defray the actual costs incurred by the department for administering and evaluating the employer testing program, and for carrying out any other activities deemed necessary by the department to assure sufficient training for the drivers participating in the program.

(d) Commercial driver license applicants who take and pass driving tests administered by a third party shall provide the department with evidence satisfactory to the department that the applicant has successfully passed the driving tests administered by the third party.

(e) Implementation dates for the issuance of a commercial driver's license pursuant to this chapter may be established by the department as it determines is necessary to accomplish an orderly commercial driver license program.

15255. The department shall study the adequacy of the existing fee structure for the issuance of drivers' licenses in relation to the costs of issuing commercial drivers' licenses and license endorsements as provided in this act. The department shall report to the Legislature, on or before March 1, 1989, its findings and recommendations on changes in the fees necessary to generate sufficient revenues to finance the drivers' license activities provided in this act.

15260. (a) Any applicant for a commercial driver's license who does not successfully complete the air-brake component of the knowledge test, or who does not successfully complete the driving-skill test in a vehicle or combination of vehicles equipped with air brakes, shall, if otherwise qualified, receive a commercial driver's license that restricts the licenseholder from operating a commercial motor vehicle equipped with air brakes.

(b) To remove the restriction described in subdivision (a) from a commercial driver's license, the driver is required to make a new application for a commercial driver's license, and, in addition to any other requirements specified in this code, to successfully complete the air-brake component of the knowledge test prescribed by the department, and to pass the driver-skill test in a vehicle or combination of vehicles equipped with air brakes.

(c) For the purposes of the driving-skill test and the restriction described in this section, air brakes shall include any braking system operating fully or partially on the air-brake principle.

15263. (a) Any applicant for a commercial driver's license who successfully completes the driving-skill test in a vehicle or combination of vehicles equipped with an automatic transmission, shall, if otherwise qualified, receive a commercial driver's license that restricts the licenseholder from operating a commercial motor vehicle or combination of vehicles equipped with a manual transmission.

(b) To remove the restriction described in subdivision (a) from a commercial driver's license, the driver is required to make a new application for a commercial driver's license, and, in addition to any other requirements specified in this code, successfully complete the driving-skill test in a vehicle or combination of vehicles equipped with a manual transmission.

## Article 6. Endorsements

15275. (a) No person may operate a commercial motor vehicle described in this chapter unless that person has in his or her possession a valid commercial driver's license for the appropriate class, and an endorsement issued by the department to permit the operation of the vehicle.

(b) An endorsement to drive vehicles specified in this article shall be issued only to applicants qualified by examinations prescribed by the department and that meet the minimum standards established in Part 383 of Title 49 of the Codes of Federal Regulations.

(c) The department may deny, suspend, revoke, or cancel an endorsement to drive vehicles specified in this article when the applicant does not meet the qualifications for the issuance or retention of the endorsement.

15278. A driver is required to obtain an endorsement issued by the department to operate any commercial motor vehicle which is any of the following:

(a) A double trailer.

(b) A passenger vehicle.

(c) A tank vehicle.

(d) A vehicle carrying hazardous materials.

## Article 7. Sanctions

15300. (a) No driver of a commercial motor vehicle may operate a commercial motor vehicle for a period of one year if the driver is convicted of a first violation of any of the following:

(1) Driving a commercial motor vehicle while under the influence of alcohol or a controlled substance.

(2) Leaving the scene of an accident involving a commercial motor vehicle operated by the driver.

(3) Using a commercial motor vehicle in the commission of any felony.

(b) If any of the above violations occurred while transporting a hazardous material, the period specified in subdivision (a) shall be three years.

15302. No driver of a commercial motor vehicle may operate a commercial motor vehicle for the rest of his or her life if convicted of more than one violation of any of the following:

(a) Driving a commercial motor vehicle while under the influence of alcohol or a controlled substance.

(b) Leaving the scene of an accident involving a commercial motor vehicle operated by the driver.

(c) Using a commercial motor vehicle in the commission of more than one felony arising out of separate occasions of arrest or citation.

(d) Any combination of the above violations.

15304. No driver may operate a commercial motor vehicle for the rest of his or her life who uses a commercial motor vehicle in the commission of a felony involving manufacturing, distributing, or dispensing a controlled substance, or possession with intent to manufacture, distribute, or dispense a controlled substance.

15306. No driver may operate a commercial motor vehicle for a period of 60 days if the person is convicted, on or after January 1, 1992, of a serious traffic violation involving a commercial motor vehicle and the offense occurred within three years of a separate offense of a serious traffic violation, which resulted in a conviction.

15308. No driver may operate a commercial motor vehicle for a period of 120 days if the person is convicted, on or after January 1, 1992, of a serious traffic violation involving a commercial motor vehicle and the offense occurred within three years of two or more separate offenses of serious traffic violations, which resulted in convictions.

15315. (a) The department shall not issue a commercial driver's license to a person during a period in which the person is prohibited from operating a commercial motor vehicle, or the person's driving privilege is suspended, revoked, or canceled.

(b) No commercial driver's license may be issued to a person who has a commercial driver's license issued by any other state unless the person first surrenders the commercial driver's license issued by the other state, which license shall be returned to the issuing state.

15319. The department may execute or make agreements, arrangements, or declarations to carry out this chapter.

SEC. 10. Section 40300.2 is added to the Vehicle Code, to read:

40300.2. Whenever a person is arrested for a violation of this code, or a violation of any other statute required to be reported under Section 1803, the written complaint, notice to appear in court, or other notice of violation, shall indicate whether the vehicle involved in the offense is a commercial motor vehicle, as defined in subdivision (b) of Section 15210.

SEC. 11. Section 3.3 of this bill incorporates amendments to

Section 1804 of the Vehicle Code, as amended by Section 2 of Chapter 1345 of the Statutes of 1985, proposed by both this bill and AB 3681. It shall only become operative if (1) both bills are enacted and become effective January 1, 1989, (2) both bills amend Section 1804 of the Vehicle Code, as amended by Section 2 of Chapter 1345 of the Statutes of 1985, and (3) this bill is enacted after AB 3681, in which case Section 3 of this bill shall not become operative.

SEC. 12. 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, and because this act implements a federal law or regulation and involves only "costs mandated by the federal government," as defined by Section 17513 of the Government Code.

SEC. 13. The sum of five million four hundred seven thousand dollars ($5,407,000), is hereby appropriated to the Department of Motor Vehicles from the Motor Vehicle Account in the State Transportation Fund for the purposes of implementing this act.

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## CHAPTER 1510

An act to amend Sections 33012, 33353.3, 33363, and 33364 of, and to repeal Section 33012 of, the Health and Safety Code, relating to redevelopment.

[Approved by Governor September 28, 1988 Filed with Secretary of State September 29, 1988 ]

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

SECTION 1. Section 33012 of the Health and Safety Code is amended to read:

33012. (a) "Financial burden or detriment" means either of the following:

(1) A net increase in the quality or quantity of a service of the affected taxing entity caused by the redevelopment project.

(2) A loss of property tax revenues by the affected taxing entity produced by a change of ownership or new construction which would have been received, or was reasonably expected to have been received, by the taxing entity if the redevelopment project was not established.

(b) The division of taxes pursuant to Section 33670, by itself, shall not constitute a financial burden or detriment.

(c) This section shall remain in effect only until January 1, 1991, and as of that date is repealed, unless a later enacted statute, which is chaptered before January 1, 1991, deletes or extends that date.

SEC. 2. Section 33353.3 of the Health and Safety Code is amended to read:

33353.3. Within 15 days after receiving notification that a fiscal review committee has been created, and prior to sending a redevelopment plan to the fiscal review committee, the agency shall commence consultations with the fiscal review committee regarding the impact of the proposed redevelopment project upon the affected taxing entities. The purpose of the consultations shall be to identify the fiscal effects of the proposed redevelopment plan upon the affected taxing entities, specify additional information, if any, needed to enable those fiscal effects to be identified and analyzed, and suggest possible provisions in the redevelopment plan which would alleviate or eliminate a financial burden or detriment.

During consultations with the fiscal review committee and affected taxing entities, the agency shall provide all written information it possesses concerning all public or private development which is planned for or taking place in the project area, except records which disclose trade secrets or the financial condition of contractors or potential contractors with the agency.

SEC. 3. Section 33363 of the Health and Safety Code is amended to read:

33363. At the hour set in the notice required by Section 33361 for hearing objections, the legislative body shall proceed to hear all written and oral objections. Before adopting the redevelopment plan the legislative body shall evaluate the report of the agency, the report and recommendation of the project area committee, and all evidence and testimony for and against the adoption of the plan and shall make written findings in response to each written objection of an affected property owner or taxing entity. The legislative body shall respond in writing to the written objections received before or at the noticed hearing, including any extensions thereof, and may additionally respond to written objections that are received after the hearing. The written responses shall describe the disposition of the issues raised. The legislative body shall address the written objections in detail, giving reasons for not accepting specified objections and suggestions. The legislative body shall include a good-faith, reasoned analysis in its response and, for this purpose, conclusionary statements unsupported by factual information shall not suffice.

SEC. 4. Section 33364 of the Health and Safety Code is amended to read:

33364. If no objections in writing have been delivered to the clerk of the legislative body prior to the hour set for the hearing thereon, and if no written objections are presented during the hearing thereon, the legislative body may proceed to adopt the plan at the time set for hearing thereon. If any written objections are delivered or presented, as specified in this article, the legislative body may adopt the plan only after consideration of the objections, and adoption of written findings in response thereto, pursuant to Section 33363 at a subsequent date not less than one week after the time the

hearing on objections is commenced pursuant to Section 33363.

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## CHAPTER 1511

An act to amend Section 8664.8 of, to add Section 8691 to, and to add and repeal Section 8687.5 of, the Fish and Game Code, relating to commercial fishing.

[Approved by Governor September 28, 1988 Filed with Secretary of State September 29, 1988 ]

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

SECTION 1. The Legislature finds that the small existing gill and trammel net fishery for halibut, shark, smelt, and perch within Tomales Bay has been conducted without demonstrable adverse impacts to the bay's resources or fisheries.

The Legislature further finds that recent restrictions on the use of gill and trammel nets in nearshore waters of the open coast outside of Tomales Bay to protect seabirds and marine mammals could result in major increases in gill and trammel net fishing within the limited confines of Tomales Bay which could exceed the sustainable yields of fishery resources there and generate renewed impacts to seabirds and marine mammals and result in impacts to the fishery itself.

The Legislature further finds that extensive public efforts during recent years have been successful in restoring anadromous fish runs within Tomales Bay.

The Legislature further finds and declares that it is vitally important to protect the results from the unique silver salmon and steelhead trout restoration program in Lagunitas Creek, a tributary of Tomales Bay in Marin County.

In order to properly protect the silver salmon and steelhead trout resource, it is essential that the use of gill and trammel nets in Tomales Bay be carefully monitored during the months of August and September.

Therefore, the Legislature declares its intent to provide for the continuation of the existing commercial gill and trammel net fisheries within Tomales Bay by the enactment of Section 8687.5 of the Fish and Game Code, and provide for a modest increase in that fishery while providing greater long-term protections for the diverse resources and fisheries of Tomales Bay.

SEC. 2. Section 8664.8 of the Fish and Game Code is amended to read:

8664.8. (a) Notwithstanding Sections 8685, 8687, 8696, and 8724, set or drift gill or trammel nets shall not be used on or after April 1, 1987, in the following ocean waters, except as provided in subdivision (d):

(1) Between a line extending 245° magnetic from the most

westerly point of the west point of the Point Reyes headlands in Marin County and the westerly extension of the California-Oregon boundary.

(2) In waters which are 40 fathoms or less in depth at mean lower low water between a line extending 245° magnetic from the most westerly point of the west point of the Point Reyes headlands in Marin County and a line extending due east and west magnetic from Duxbury bouy in Marin County.

(b) Notwithstanding Sections 8687, 8696, and 8724, set or drift gill or trammel nets shall not be used in the following ocean waters from April 1, 1987, to March 31, 1988, except as provided in subdivision (d):

(1) In waters which are 20 fathoms or less in depth at mean lower low water between a line extending due east and west magnetic from Duxbury buoy in Marin County and a line extending 225° magnetic from Franklin Point in San Mateo County.

(2) In waters within five nautical miles of the most westerly point of Point San Pedro.

(c) Notwithstanding Sections 8664.5, 8687, 8696, and 8724, set or drift gill or trammel nets shall not be used on and after April 1, 1988, in waters which are 40 fathoms or less in depth at mean lower low water between a line extending 245° magnetic from the most westerly point of the west point of the Point Reyes headlands in Marin County and a line extending 220° magnetic from the mouth of Waddell Creek in Santa Cruz County.

(d) Subdivisions (a), (b), and (c) do not apply to the use of drift gill nets operated under a permit issued by the department in that part of Arcata Bay in Humboldt County lying northeast of the Samoa Bridge during the period from April 1 to September 30, inclusive. The department may issue not more than six permits pursuant to this subdivision. Each permit shall specify the amount and type of gear which may be used under the permit.

(e) Subdivisions (a), (b), and (c) do not apply to the use of set gill nets used pursuant to Article 15 (commencing with Section 8550) of Chapter 2 of Part 3 of Division 6 or regulations adopted under that article or to the use of drift gill nets with a mesh size of 14 inches or more.

(f) (1) Notwithstanding subdivision (b) and Sections 8687, 8696, and 8724, gill or trammel nets shall not be used within three nautical miles of the Farallon Islands, and Noonday Rock buoy in San Francisco County.

(2) If the director determines that the use of set or drift gill or trammel nets is having an adverse impact on any population of any species of sea bird, marine mammal, or fish, the director shall issue an order prohibiting the use of those nets between three nautical miles and five nautical miles of the Farallon Islands and Noonday Rock buoy or any portion of that area. The order shall take effect no later than 48 hours after its issuance. The director shall hold a properly noticed public hearing in a place convenient to the affected area within one week of the effective date of the order to describe

the action taken and shall take testimony as to the effect of the order and determine whether any modification of the order is necessary. Gill and trammel nets used to take fish in District 10 shall be marked at each end with a buoy displaying above its waterline in Arabic numerals at least two inches high, the certificate of vessel registration number issued by the department under Section 7881 for the vessel from which the net is being used. Nets shall be marked at both ends and at least every 250 fathoms between the ends with flags of the same color and at least 144 square inches in size, acceptable to the department.

SEC. 3. Section 8687.5 is added to the Fish and Game Code, to read:

8687.5. (a) Notwithstanding Section 8664.8, in that part of Tomales Bay in District 10 which lies south of a line extending westerly 252° magnetic from the western tip of Tom's Point to the opposite eastern shore of Tomales Point in Marin County, drift and set trammel nets with meshes at least eight inches in length and drift gill nets may be used during the period from April 1 through September 30 only under a revocable, nontransferable permit issued by the department, to take halibut, flounder, shark, skates, rays, smelt, and perch consistent with established season, size, and mesh size limitations for such species.

(b) The total number of permits which may be issued under this section shall not exceed four for each annual season. Two of the permits shall be made available to fishermen operating within Tomales Bay under authority of experimental gear permits during the 1987–88 permit year. Each permit shall specify the amount and type of gear which may be used under the permit.

(c) This section does not apply to the use of set gill nets used within Tomales Bay pursuant to Article 15 (commencing with Section 8550) of Chapter 2 of Part 3 of Division 6 or regulations adopted under that article.

(d) If silver salmon or steelhead trout are incidentally taken in gill or trammel nets during the period August 1 to September 30, inclusive, of 1989 to 1992, inclusive, and the department determines that the incidental take has an adverse impact on the resource, the director shall, pursuant to Section 7710, order an immmediate closure of the fishery.

(e) This section shall remain in effect only until January 1, 1993, and as of that date is repealed unless a later enacted statute, which is enacted before January 1, 1993, deletes or extends that date.

SEC. 4. Section 8691 is added to the Fish and Game Code, to read:

8691. Set gill nets and trammel nets with mesh smaller than 4⅛ inches shall not be used or possessed on any boat taking rockfish or lingcod in ocean waters between a line extending 245° magnetic from the most westerly point of the Point Reyes headlands and a line extending 250° magnetic from the Pigeon Point Lighthouse.

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.

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## CHAPTER 1512

An act to amend Section 9414 of the Government Code, relating to witnesses.

[Approved by Governor September 28, 1988. Filed with Secretary of State September 29, 1988.]

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

SECTION 1. Section 9414 of the Government Code is amended to read:

9414. (a) Any person who does any of the following is guilty of a misdemeanor:

(1) Coerces or attempts to coerce any person not to appear as a witness before any committee.

(2) Deprives, attempts to deprive, or threatens to deprive any other person, or requests any employer to deprive any employee, of lawful employment, when such deprivation, attempt, threat, or request is motivated by the fact that the other person or employee is, was, or may become a witness before a committee.

(b) Any employer or person acting on behalf of an employer who, directly or indirectly, harasses any person employed by that employer, when the harassment is motivated by the fact that the employee is, was, or may be a witness before a committee, is guilty of a misdemeanor.

(c) This section shall not be construed to prevent any employer from discharging an employee for cause nor shall it be construed to prevent a labor union or an agent thereof from requesting the dismissal of an employee when the request is motivated by a cause other than that specified herein.

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.

# CHAPTER 1513

An act to add Section 42285.1 to the Education Code, relating to the Chino Unified School District, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 28, 1988. Filed with Secretary of State September 29, 1988.]

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

SECTION 1. Section 42285.1 is added to the Education Code, to read:

42285.1. (a) For purposes of Section 42285, a necessary small high school includes the Boys Republic High School maintained by the Chino Unified School District in which the majority of the pupils are placed by court order and the enrollment of the school is less than 200 pupils. The amount received by the Chino Unified School District pursuant to this section shall not exceed one hundred eighty thousand dollars ($180,000) annually.

(b) The Chino Unified School District shall submit an annual report to the State Department of Education regarding the necessary small high school as defined in this section. The report shall include, but not be limited to, the number of pupils attending the school, the number of teachers teaching in the school, the number of days that classes were held in the school, and the type of program provided by the district.

SEC. 2. Due to the unique circumstances concerning the Chino Unified 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. 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.

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:

Because the funding authorized by this bill is needed for the 1988–89 school year, it is necessary that this act take effect immediately.

# CHAPTER 1514

An act to amend Sections 260 and 262 of, and to add Sections 262.1, 262.2, 262.3, and 265 to, the Education Code, relating to education.

[Approved by Governor September 28, 1988. Filed with Secretary of State September 29, 1988.]

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

SECTION 1. Section 260 of the Education Code is amended to read:

260. The governing board of a school district shall have the primary responsibility for ensuring that school district programs and activities are free from discrimination based on ethnic group identification, religion, age, sex, color, or physical or mental disability, and for monitoring compliance with any and all rules and regulations promulgated pursuant to Section 11138 of the Government Code.

SEC. 2. Section 262 of the Education Code is amended to read:

262. (a) The governing board of a community college district shall have the primary responsibility for ensuring that community college district programs and activities are free from discrimination based on ethnic group identification, religion, age, sex, color, or physical or mental disability.

(b) The Chancellor's office of the California Community Colleges shall have responsibility for monitoring the compliance of each district with any and all regulations promulgated pursuant to Section 11138 of the Government Code.

SEC. 3. Section 262.1 is added to the Education Code, to read:

262.1. The Chancellor of the California State University and the president of each California State University campus shall have the primary responsibility for ensuring that campus programs and activities are free from discrimination based on ethnic group identification, religion, age, sex, color, or physical or mental disability.

SEC. 4. Section 262.2 is added to the Education Code, to read:

262.2. The President of the University of California and the chancellor of each University of California campus shall have primary responsibility for ensuring that campus programs and activities are free from discrimination based on ethnic group identification, religion, age, sex, color, or physical or mental disability.

SEC. 5. Section 262.3 is added to the Education Code, to read:

262.3. A party to a written complaint of prohibited discrimination may appeal the action taken by the governing board of a school district, the governing board of a community college district, the president of a campus of the California State University, or the chancellor of a campus of the University of California, pursuant to

this article, to the State Department of Education, the Chancellor of the California Community Colleges, the Chancellor of the California State University, or the President of the University of California, as applicable.

SEC. 6. Section 265 is added to the Education Code, to read:

265. Persons who have filed a complaint, pursuant to this chapter, with an educational institution shall be advised by the educational institution that civil law remedies, including, but not limited to, injunctions, restraining orders, or other orders may also be available to the complainants. The educational institution shall make this information available by publication in appropriate informational materials.

SEC. 7. It is the intent of the Legislature that Section 264 of the Education Code, relative to the applicability of Chapter 2 (commencing with Section 200) of Part 1 of the Education Code to the University of California, apply to the sections of the Education Code amended and added by this act.

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## CHAPTER 1515

An act to amend Sections 8956, 8957, and 8959 of the Education Code, relating to education.

[Approved by Governor September 28, 1988. Filed with Secretary of State September 29, 1988.]

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

SECTION 1. Section 8956 of the Education Code is amended to read:

8956. (a) The site for the California State Summer School for the Arts shall be chosen for one year or on a multiyear basis to be determined by the board of trustees by the cost effectiveness of the proposals submitted to the board through a competitive request for proposal procedure. The criteria for selection shall include, but not be limited to, all of the following:

(1) Space requirements of the summer school, including residential space and appropriate facilities for all artistic disciplines offered by the summer school.

(2) Technical, administrative, and support services available to the summer school, submitted with an appropriate budget designating donated services and the costs to the summer school of having other services provided.

(3) Materials, supplies, and equipment available for the exclusive use of the summer school. Materials or equipment which may be used by the host institution during its regular sessions either shall be purchased by the host institution, which may charge the summer school a rental fee for the use of the materials or equipment, or

purchased by the summer school, which shall charge the host institution a rental fee for the use of the materials or equipment during the institution's regular sessions.

(4) Operating funds and in-kind services.

(b) Private institutions, colleges, and universities, appropriate privately owned and operated facilities, and state facilities, including, but not limited to, facilities of the California State University and the University of California, may be used as the site for the summer school. A regional consortium of campuses and adjacent cultural centers operated by nonprofit organizations may be considered as a single site in the selection process.

SEC. 2. Section 8957 of the Education Code is amended to read:

8957. (a) No more than 50 percent of the actual costs of the California State Summer School for the Arts shall be paid with state funds. At least 50 percent of the actual costs of the summer school shall be met with fees and private support.

(b) The board of trustees shall set a tuition fee within a range that corresponds to actual program costs, up to but not exceeding one thousand dollars ($1,000) per session in 1989. The amount of this fee may be increased by the board of trustees up to a 5 percent increase each year thereafter. The board of trustees may award full or partial scholarships on the basis of need and ability. Students unable to pay all or part of the fee may petition the board of trustees for a fee reduction or waiver. The State Department of Education, in conjunction with the board of trustees, shall promulgate rules and regulations regarding fee reduction and waivers, which shall ensure all of the following:

(1) That, to the degree scholarship funds are available, no talented applicant shall be denied admission solely because of inability to pay all or part of the fee.

(2) That any public announcement regarding the summer school program include notification that full scholarships are available, and information regarding the procedure for applying for a scholarship award.

(3) That, pursuant to Section 8953, student participation in the summer school program shall be broadly representative of the socioeconomic and ethnic diversity of the state.

(c) Private support for the California State Summer School for the Arts may be accepted by the board of trustees until such time as a nonprofit foundation may be established to receive private support. Private support may include, but not be limited to, direct grants to the summer school from private corporations or foundations, individual contributions, in-kind contributions, or fundraising benefits conducted by any entity.

SEC. 3. Section 8959 of the Education Code is amended to read:

8959. This chapter shall remain in effect only until January 1, 1995, and as of that date is repealed, unless a later enacted statute, which is chaptered before January 1, 1995, deletes or extends that date.

SEC. 4. (a) The sum of two million nine hundred thousand dollars ($2,900,000) shall be allocated to the California State Summer School for the Arts, from the state appropriations made pursuant to Section 42239 of the Education Code for the relevant fiscal year, as follows:

| | |
|---|---|
| (1) For the 1989–90 fiscal year | $580,000 |
| (2) For the 1990–91 fiscal year | $580,000 |
| (3) For the 1991–92 fiscal year | $580,000 |
| (4) For the 1992–93 fiscal year | $580,000 |
| (5) For the 1993–94 fiscal year | $580,000 |

(b) In the event that, for any fiscal year, at least 50 percent of the actual costs of the California State Summer School for the Arts is not met with fees and private support as required by Section 8957 of the Education Code, of those state funds allocated to the school under this section, that portion which is not matched shall be returned to the State Department of Education for allocation pursuant to Section 42239 of the Education Code.

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## CHAPTER 1516

An act to add and repeal Chapter 13 (commencing with Section 52910) of Part 28 of the Education Code, relating to education.

[Approved by Governor September 29, 1988. Filed with Secretary of State September 29, 1988.]

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

SECTION 1. Chapter 13 (commencing with Section 52910) is added to Part 28 of the Education Code to read:

### CHAPTER 13. CAREER-VOCATIONAL EDUCATION AND TRAINING

52910. The Legislature hereby finds and declares all of the following:

(a) That California's present employment preparation and career education programs need to be strengthened and expanded to meet the needs of employers for a skilled work force and student and employee demands for career-vocational preparation and occupational training, including the use of computers and other technologies.

(b) That changes occurring in California's economy make it imperative that there be available a work force with the personal and occupational skills and knowledge to productively support new economic and technological developments. The Legislature also finds a need to improve coordination among the many service

providers funded by federal and state funds to avoid unnecessary duplication of programs and services.

(c) That it is in the best interest of the state to provide all students with a cohesive and well articulated system of career-vocational preparation and occupational training which prepares students for roles as family members and community members, leaders, and productive workers. The Legislature also finds that the alternative means authorized in subdivision (b) of Section 51225.3 are currently being underutilized by school districts.

(d) That students in California's public schools face inadequate access to quality career-vocational preparation and occupational training programs, and declares that providing high quality curriculum and instruction in this area is a high priority of the state. The Legislature believes that all students should be prepared with basic job entry skills at the completion of their schooling. The Legislature declares that a student's pursuit of career-vocational preparation programs in secondary school and his or her satisfaction of the admission requirements necessary for baccalaureate postsecondary education should not be mutually exclusive.

(e) That every student shall attain a minimum of 12 years of systematic study or its equivalent that effectively prepares the student to enter college, a job, or advanced preparation.

52911. For purposes of this chapter, the following definitions shall apply:

(a) "Applied academic areas" means the subject matter areas of agriculture, business and marketing, consumer and homemaking education, health careers, home economic related occupations, and industrial arts, technical, trade and industrial education and methodologies including, but not limited to, work experience education, cooperative vocational education, and community classroom.

(b) "Applied academic programs" means programs that teach and reinforce academic, technical, and employability skills, necessary for employment or advanced training, in applied academic areas.

52912. (a) Each school district or county office of education maintaining one or more high schools or regional occupational programs and centers that wishes to participate in implementing the career-vocational education and training model state curriculum standards and frameworks may use vocational education funds for this purpose.

(b) These funds may be used for planning and development, revision, or expansion of a locally approved model curriculum that meets the intent of this chapter including, but not limited to, the following:

(1) Identify the applied academic classes in the high school, adult education, and regional occupational center or program that are of sufficient rigor and duration, and include an adequate core of skills, competencies, and student outcomes which will satisfy, in part,

graduation requirements contained in subdivision (a) of Section 51225.3 and Section 51226.

(2) Adopt model curriculum standards for vocational education courses of study in the high schools and regional occupational programs and centers necessary to comply with the entry level employment skills provision of subdivision (b) of Section 51228.

(3) Provide staff development programs for principals, teachers, counselors, other school personnel, and volunteers for the development and implementation of the adopted model curriculum.

(4) Coordinate federal, state, and local public and private sources to improve career-vocational curriculum and instruction and support services. This is intended to include programs aimed at the availability and use of educational technologies.

(5) Make options available for students to participate in work experience education, cooperative vocational education, and community classrooms.

52913. The Superintendent of Public Instruction shall do all of the following:

(a) Disseminate information to secondary school districts, regional occupational programs and classes, and county offices of education to assist in the inventory, development, and implementation of competencies and required student outcomes in applied academic fields.

(b) If requested by a secondary school district, regional occupational program or class, or county office of education, train schoolsite personnel in establishing and implementing an applied academic course or program.

(c) Disseminate information to secondary school districts, regional occupational centers or programs, and county offices of education, regarding districts having policies that provide for the utilization of applied academic classes which satisfy, in part, selected graduation requirements.

(d) Provide technical assistance to the school districts, regional occupational centers or programs, and county offices of education to implement the adopted courses or programs.

(e) Conduct program quality and fiscal reviews to do all of the following:

(1) Ensure that funds allocated pursuant to this chapter are expended for the purposes intended.

(2) Determine the effectiveness of the technical assistance offered and the quality and effectiveness of improvements in the resulting programs from the activities pursuant to this chapter.

(f) Report to the Legislature regarding the improvement in the instructional program resulting from the activities provided for in this chapter.

The initial report to the Legislature shall be submitted on or before January 1, 1990, and the final report to the Legislature shall be submitted on or before January 1, 1991.

52914. This chapter shall remain in effect only until January 1,

1991, and as of that date is repealed, unless a later enacted statute, which is chaptered on or before January 1, 1991, deletes or extends that date.

SEC. 2. The State Department of Education shall receive funding for the purposes of Chapter 13 (commencing with Section 52910) of Part 28 of the Education Code only to the extent that funds may be appropriated in the annual Budget Act or to the extent that other specific appropriations may be made for the purposes of that chapter.

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## CHAPTER 1517

An act to amend Sections 5250.1, 5252, 5254, 5256, 5256.6, 5256.7, 5257, 5258, 5275, 5278, 5352.3, 5402, and 6551 of, to add Section 5402.2 to, and to add Article 4.7 (commencing with Section 5270.10) of Chapter 2 of Part 1 of Division 5 of, the Welfare and Institutions Code, relating to mental health.

[Approved by Governor September 29, 1988. Filed with Secretary of State September 29, 1988.]

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

SECTION 1. The Legislature finds and declares:

(1) There is a shortage of state and local hospital beds suitable for the care of acute psychiatric patients in many counties which has led to the denial or prevention of admission of mentally disordered individuals for appropriate treatment under the Lanterman-Petris-Short Act, including the 72-hour detention provided by Section 5150 of the Welfare and Institutions Code, and to an increasing urgency to discharge patients after a short stay.

(2) There is in at least 29 counties an extreme shortage of mental health emergency services and publicly funded acute psychiatric beds which has resulted in the redirection of long-term psychiatric patients from the mental health system into the criminal justice system or into a state of homelessness.

(3) The state hospital admissions have decreased from 25,000 in 1975 to approximately 6,000 in 1986 and this decrease has been accompanied by a decline in the number of beds allocated for Lanterman-Petris-Short patients and an increase in the number of beds for other patients.

(4) There is also a critical shortage of appropriate 24-hour facilities in many counties which has created the inappropriate use of acute state hospital beds for long-term psychiatric care of the mentally disordered.

(5) A master plan for the utilization of state hospital beds and other available resources on state hospital grounds is essential in order for proposed revisions to the Lanterman-Petris-Short Act to

prove of maximum benefit to the mentally disordered population.

SEC. 2. Section 5250.1 of the Welfare and Institutions Code is amended to read:

5250.1. The professional person in charge of a facility providing intensive treatment, pursuant to Section 5250 or 5270.15, or that person's designee, shall notify the county mental health director, or the director's designee, and the peace officer who made the original written application for 72-hour evaluation pursuant to Section 5150 or a person who is designated by the law enforcement agency that employs the peace officer, that the person admitted pursuant to the application has been released unconditionally if all of the following conditions apply:

(a) The peace officer has requested notification at the time he or she makes the application for 72-hour evaluation.

(b) The peace officer has certified in writing at the time he or she made the application that the person has been referred to the facility under circumstances which, based upon an allegation of facts regarding actions witnessed by the officer or another person, would support the filing of a criminal complaint.

(c) The notice is limited to the person's name, address, date of admission for 72-hour evaluation, date of certification for intensive treatment, and date of release.

If a police officer, law enforcement agency, or designee of the law enforcement agency, possesses any record of information obtained pursuant to the notification requirements of this section, the officer, agency, or designee shall destroy that record two years after receipt of notification.

SEC. 3. Section 5252 of the Welfare and Institutions Code is amended to read:

5252. A notice of certification is required for all persons certified for intensive treatment pursuant to Section 5250 or 5270.15, and shall be in substantially the following form (strike out inapplicable section):

The authorized agency providing evaluation services in the County of _____ has evaluated the condition of:

Name _____

Address _____

Age _____

Sex _____

Marital status _____

We the undersigned allege that the above-named person is, as a result of mental disorder or impairment by chronic alcoholism:

(1) A danger to others.

(2) A danger to himself or herself.

(3) Gravely disabled as defined in paragraph (1) of subdivision (h) or subdivision (*l*) of Section 5008 of the Welfare and Institutions Code.

The specific facts which form the basis for our opinion that the

above-named person meets one or more of the classifications indicated above are as follows:
(certifying persons to fill in blanks) _____

_____

_____

[Strike out all inapplicable classifications.]

The above-named person has been informed of this evaluation, and has been advised of the need for, but has not been able or willing to accept treatment on a voluntary basis, or to accept referral to, the following services:

_____

_____

_____

_____

_____

We, therefore, certify the above-named person to receive intensive treatment related to the mental disorder or impairment by chronic alcoholism beginning this __ day of _____ (Month) , 19__, in the intensive treatment facility herein named _____.

_____
(Date)

Signed _____

Signed _____

Countersigned _____
(Representing facility)

I hereby state that I delivered a copy of this notice this day to the above-named person and that I informed him or her that unless judicial review is requested a certification review hearing will be held within four days of the date on which the person is certified for a period of intensive treatment and that an attorney or advocate will visit him or her to provide assistance in preparing for the hearing or to answer questions regarding his or her commitment or to provide other assistance. The court has been notified of this certification on this day.

Signed _____

SEC. 4. Section 5254 of the Welfare and Institutions Code is amended to read:

5254. The person delivering the copy of the notice of certification to the person certified shall, at the time of delivery, inform the person certified that he or she is entitled to a certification review hearing, to be held within four days of the date on which the person is certified for a period of intensive treatment in accordance with Section 5256 unless judicial review is requested, to determine whether or not probable cause exists to detain the person for intensive treatment related to the mental disorder or impairment by chronic alcoholism. The person certified shall be informed of his or her rights with respect to the hearing, including the right to the

assistance of another person to prepare for the hearing or to answer other questions and concerns regarding his or her involuntary detention or both.

SEC. 5. Section 5256 of the Welfare and Institutions Code is amended to read:

5256. When a person is certified for intensive treatment pursuant to Sections 5250 and 5270.15, a certification review hearing shall be held unless judicial review has been requested as provided in Sections 5275 and 5276. The certification review hearing shall be within four days of the date on which the person is certified for a period of intensive treatment unless postponed by request of the person or his or her attorney or advocate. Hearings may be postponed for 48 hours or, in counties with a population of 100,000 or less, until the next regularly scheduled hearing date.

SEC. 6. Section 5256.6 of the Welfare and Institutions Code is amended to read:

5256.6. If at the conclusion of the certification review hearing the person conducting the hearing finds that there is probable cause that the person certified is, as a result of a mental disorder or impairment by chronic alcoholism, a danger to others, or to himself or herself, or gravely disabled, then the person may be detained for involuntary care, protection, and treatment related to the mental disorder or impairment by chronic alcoholism pursuant to Sections 5250 and 5270.15.

SEC. 7. Section 5256.7 of the Welfare and Institutions Code is amended to read:

5256.7. The person certified shall be given oral notification of the decision at the conclusion of the certification review hearing. As soon thereafter as is practicable, the attorney or advocate for the person certified and the director of the facility where the person is receiving treatment shall be provided with a written notification of the decision, which shall include a statement of the evidence relied upon and the reasons for the decision. The attorney or advocate shall notify the person certified of the certification review hearing decision and of his or her rights to file a request for release and to have a hearing on the request before the superior court as set forth in Article 5 (commencing with Section 5275). A copy of the decision and the certification made pursuant to Section 5250 or 5270.15 shall be submitted to the superior court.

SEC. 8. Section 5257 of the Welfare and Institutions Code is amended to read:

5257. During the period of intensive treatment pursuant to Section 5250 or 5270.15, only if the psychiatrist directly responsible for the person's treatment believes, as a result of his or her personal observations, that the person certified no longer is, as a result of mental disorder or impairment by chronic alcoholism, a danger to others, or to himself or herself, or gravely disabled, then the person's involuntary detention shall end and the person shall be released. If any other professional person who is authorized to release the person

believes the person should be released during the designated period of intensive treatment, and the psychiatrist directly responsible for the person's treatment objects, the matter shall be referred to the medical director of the facility for the final decision. However, if the medical director is not a psychiatrist, he or she shall appoint a designee who is a psychiatrist. If the matter is referred, the person shall be released during the period of intensive treatment only if the psychiatrist making the final decision believes, as a result of his or her personal observations, that the person certified no longer is, as a result of mental disorder or impairment by chronic alcoholism, a danger to others, or to himself or herself, or gravely disabled. Nothing herein shall prohibit either the person remaining at the facility on a voluntary basis or the facility from providing the person with appropriate referral information concerning mental health services.

A person who has been certified for a period of intensive treatment pursuant to Section 5250 shall be released at the end of 14 days unless the patient either:

(a) Agrees to receive further treatment on a voluntary basis.

(b) Is certified for an additional 14 days of intensive treatment pursuant to Article 4.5 (commencing with Section 5260).

(c) Is certified for an additional 30 days of intensive treatment pursuant to Article 4.7 (commencing with Section 5270.10).

(d) Is the subject of a conservatorship petition filed pursuant to Chapter 3 (commencing with Section 5350).

(e) Is the subject of a petition for Postcertification of an Imminently Dangerous Person filed pursuant to Article 6 (commencing with Section 5300).

SEC. 9. Section 5258 of the Welfare and Institutions Code is amended to read:

5258. After the involuntary detention has begun, the total period of detention, including intervening periods of voluntary treatment, shall not exceed the total maximum period during which the person could have been detained, if the person had been detained continuously on an involuntary basis, from the time of initial involuntary detention.

SEC. 10. Article 4.7 (commencing with Section 5270.10) is added to Chapter 2 of Part 1 of Division 5 of the Welfare and Institutions Code, to read:

Article 4.7. Additional Intensive Treatment

5270.10. It is the intent of the Legislature to reduce the number of gravely disabled persons for whom conservatorship petitions are filed and who are placed under the extensive powers and authority of a temporary conservator simply to obtain an additional period of treatment without the belief that a conservator is actually needed and without the intention of proceeding to trial on the conservatorship petition. This change will substantially reduce the

number of conservatorship petitions filed and temporary conservatorships granted under this part which do not result in either a trial or a conservatorship.

5270.12. This article shall be operative only in those counties in which the county board of supervisors, by resolution, authorizes its application and, by resolution, makes a finding that any additional costs incurred by the county in the implementation of this article are funded either by new funding sufficient to cover the costs incurred by the county resulting from this article, or funds redirected from cost savings resulting from this article, or a combination thereof, so that no current service reductions will occur as a result of the enactment of this article. Compliance with this section shall be monitored by the Department of Mental Health as part of their review and approval of county Short-Doyle plans.

5270.15. Upon the completion of a 14-day period of intensive treatment pursuant to Section 5250, the person may be certified for an additional period of not more than 30 days of intensive treatment under both of the following conditions:

(a) The professional staff of the agency or facility treating the person has found that the person remains gravely disabled as a result of a mental disorder or impairment by chronic alcoholism.

(b) The person remains unwilling or unable to accept treatment voluntarily.

Any person certified for an additional 30 days pursuant to this article shall be provided a certification review hearing in accordance with Section 5256 unless a judicial review is requested pursuant to Article 5 (commencing with Section 5275).

The professional staff of the agency or facility providing intensive treatment shall analyze the person's condition at intervals of not to exceed 10 days, to determine whether the person continues to meet the criteria established for certification under this section, and shall daily monitor the person's treatment plan and progress. Termination of this certification prior to the 30th day shall be made pursuant to Section 5270.35.

5270.20. For a person to be certified under this article, a second notice of certification shall be signed by the professional person in charge of the facility providing intensive treatment to the person and by either a physician who shall, if possible, be a board-qualified psychiatrist, or a licensed psychologist who has a doctoral degree in psychology and at least five years of postgraduate experience in the diagnosis and treatment of emotional and mental disorders. The physician or psychologist who signs shall have participated in the evaluation and finding referred to in subdivision (a) of Section 5270.15.

If the professional person in charge is the physician who performed the medical evaluation and finding, or a psychologist, the second person to sign may be another physician or psychologist, unless one is not available, in which case a social worker or a registered nurse who participated in the evaluation and finding shall

sign the notice of certification.

5270.25. A second notice of certification is required for all involuntary intensive treatment, pursuant to this article, and shall be in substantially the form indicated in Section 5252.

5270.30. Copies of the second notice of certification as set forth in Section 5270.25, shall be filed with the court and personally delivered to the person certified. A copy shall also be sent to the person's attorney, to the district attorney, to the public defender, if any, and to the facility providing intensive treatment.

The person certified shall also be asked to designate any individual who is to be sent a copy of the certification notice. If the person certified is incapable of making the designation at the time of certification, that person shall be given another opportunity to designate when able to do so.

5270.35. A certification pursuant to this article shall be for no more than 30 days of intensive treatment, and shall terminate only as soon as the psychiatrist directly responsible for the person's treatment believes, as a result of his or her personal observations, that the person no longer meets the criteria for the certification, or is either prepared to accept voluntary treatment on a referral basis or to remain in the facility providing intensive treatment on a voluntary basis. If any other professional person who is authorized to release the person, believes the person should be released before 30 days have elapsed, and the psychiatrist directly responsible for the person's treatment objects, the matter shall be referred to the medical director of the facility for the final decision. However, if the medical director is not a psychiatrist, he or she shall appoint a designee who is a psychiatrist. If the matter is referred, the person shall be released before 30 days have elapsed only if the psychiatrist believes, as a result of his or her personal observations, that the person no longer meets the criteria for certification, or is prepared to accept voluntary treatment on referral or to remain in the facility providing intensive treatment on a voluntary basis.

Persons who have been certified for 30 days of intensive treatment under this article, shall be released at the end of 30 days unless the patient either:

(a) Agrees to receive further treatment on a voluntary basis.

(b) Is the subject of a conservatorship petition filed pursuant to Chapter 3 (commencing with Section 5350).

(c) Is the subject of a petition for Post-certification of an Imminently Dangerous Person filed pursuant to Article 6 (commencing with Section 5300).

5270.40. Any individual who is knowingly and willfully responsible for detaining a person for more than 30 days in violation of the provisions of Section 5270.35 is liable to that person in civil damages.

5270.45. Whenever a county designates two or more facilities to provide intensive treatment and the person to be treated, his or her family, conservator, or guardian expresses a preference for one

facility, the professional person certifying the person to be treated shall attempt, if administratively possible, to comply with the preference.

5270.50. Notwithstanding Section 5113, if the provisions of Section 5270.35 have been met, the professional person in charge of the facility providing intensive treatment, his or her designee, and the professional person directly responsible for the person's treatment shall not be held civilly or criminally liable for any action by a person released before or at the end of 30 days pursuant to this article.

5270.55. (a) Whenever it is contemplated that a gravely disabled person may need to be detained beyond the end of the 14-day period of intensive treatment and prior to proceeding with an additional 30-day certification, the professional person in charge of the facility shall cause an evaluation to be made, based on the patient's current condition and past history, as to whether it appears that the person, even after up to 30 days of additional treatment, is likely to qualify for appointment of a conservator. If the appointment of a conservator appears likely, the conservatorship referral shall be made during the 14-day period of intensive treatment.

(b) If it appears that with up to 30 days additional treatment a person is likely to reconstitute sufficiently to obviate the need for appointment of a conservator, then the person may be certified for the additional 30 days.

(c) Where no conservatorship referral has been made during the 14-day period and where during the 30-day certification it appears that the person is likely to require the appointment of a conservator, then the conservatorship referral shall be made to allow sufficient time for conservatorship investigation and other related procedures. If a temporary conservatorship is obtained, it shall run concurrently with and not consecutively to the 30-day certification period. The conservatorship hearing shall be held by the 30th day of the certification period. The maximum involuntary detention period for gravely disabled persons pursuant to Sections 5150, 5250 and 5270.15 shall be limited to 47 days. Nothing in this section shall prevent a person from excercising his or her right to a hearing as stated in Sections 5275 and 5353.

5270.60. The State Department of Mental Health shall monitor the implementation of the 30-day additional intensive treatment period pursuant to Section 5402. The department shall include its findings in its program reviews of county mental health programs and shall report its findings to the Legislature.

5270.65. Nothing in this article shall prohibit the professional person in charge of an intensive treatment facility, or a designee, from permitting a person certified for intensive treatment to leave the facility for short periods during the person's intensive treatment.

SEC. 11. Section 5275 of the Welfare and Institutions Code is amended to read:

5275. Every person detained by certification for intensive

treatment shall have a right to a hearing by writ of habeas corpus for his or her release after he or she or any person acting on his or her behalf has made a request for release to either (a) the person delivering the copy of the notice of certification to the person certified at the time of the delivery, or (b) to any member of the treatment staff of the facility providing intensive treatment, at any time during the period of intensive treatment pursuant to Section 5250, 5260, or 5270.10.

Any person delivering a copy of the certification notice or any member of the treatment staff to whom a request for release is made shall promptly provide the person making the request for his or her signature or mark a copy of the form set forth below. The person delivering the copy of the certification notice or the member of the treatment staff, as the case may be, shall fill in his or her own name and the date, and, if the person signs by mark, shall fill in the person's name, and shall then deliver the completed copy to the professional person in charge of the intensive treatment facility, or his or her designee, notifying him or her of the request. As soon as possible, the person notified shall inform the superior court for the county in which the facility is located of the request for release.

Any person who intentionally violates this section is guilty of a misdemeanor.

The form for a request for release shall be substantially as follows:

(Name of the facility) _____ day of _____ 19__

I, _____ (member of the treatment staff, or person delivering the copy of the certification notice), have today received a request for the release of _____ (name of patient) from the undersigned patient on his or her own behalf or from the undersigned person on behalf of the patient.

_____

Signature or mark of patient making request for release

_____

Signature or mark of person making request on behalf of patient

SEC. 12. Section 5278 of the Welfare and Institutions Code is amended to read:

5278. Individuals authorized under this part to detain a person for 72-hour treatment and evaluation pursuant to Article 1 (commencing with Section 5150) or Article 2 (commencing with Section 5200), or to certify a person for intensive treatment pursuant to Article 4 (commencing with Section 5250) or Article 4.5 (commencing with Section 5260) or Article 4.7 (commencing with Section 5270.10) or to file a petition for post-certification treatment for a person pursuant to Article 6 (commencing with Section 5300) shall not be held either criminally or civilly liable for exercising this authority in accordance with the law.

SEC. 13. Section 5352.3 of the Welfare and Institutions Code is amended to read:

5352.3. If the professional person in charge of the facility providing intensive treatment recommends conservatorship pursuant to Section 5352, the proposed conservatee may be held in that facility for a period not to exceed three days beyond the designated period for intensive treatment if the additional time period is necessary for a filing of the petition for temporary conservatorship and the establishment of the temporary conservatorship by the court. The involuntary detention period for gravely disabled persons pursuant to Sections 5150, 5250, and 5170.15 shall not exceed 47 days unless continuance is granted.

SEC. 14. Section 5402 of the Welfare and Institutions Code is amended to read:

5402. The State Department of Mental Health shall collect and publish annually quantitative information concerning the operation of this division including the number of persons admitted for 72-hour evaluation and treatment, 14-day and 30-day periods of intensive treatment, and 180-day post-certification intensive treatment, the number of persons transferred to mental health facilities pursuant to Section 4011.6 of the Penal Code, the number of persons for whom temporary conservatorships are established, and the number of persons for whom conservatorships are established in each county.

Each local mental health director, and each facility providing services to persons pursuant to this division, shall provide the department, upon its request, with any information, records, and reports which the department deems necessary for the purposes of this section. The department shall not have access to any patient name identifiers.

Information published pursuant to this section shall not contain patient name identifiers and shall contain statistical data only.

The department shall make the reports available to medical, legal, and other professional groups involved in the implementation of this division.

SEC. 15. Section 5402.2 is added to the Welfare and Institutions Code, to read:

5402.2. The Director of Mental Health shall develop a master plan for the utilization of state hospital facilities identifying levels of care. The level of care shall be either general acute care, skilled nursing care, subacute, intermediate care, or residential care.

SEC. 16. Section 6551 of the Welfare and Institutions Code is amended to read:

6551. If the court is in doubt as to whether the person is mentally disordered or mentally retarded, the court shall order the person to be taken to a facility designated by the county and approved by the State Department of Mental Health as a facility for 72-hour treatment and evaluation. Thereupon, Article 1 (commencing with Section 5150) of Chapter 2 of Part 1 of Division 5 applies, except that the professional person in charge of the facility shall make a written

report to the court concerning the results of the evaluation of the person's mental condition. If the professional person in charge of the facility finds the person is, as a result of mental disorder, in need of intensive treatment, the person may be certified for not more than 14 days of involuntary intensive treatment if the conditions set forth in subdivision (c) of Section 5250 and subdivision (b) of Section 5260 are complied with. Thereupon, Article 4 (commencing with Section 5250) of Chapter 2 of Part 1 of Division 5 shall apply to the person. The person may be detained pursuant to Article 4.5 (commencing with Section 5260), or Article 4.7 (commencing with Section 5270.10), or Article 6 (commencing with Section 5300) of Part 1 of Division 5 if that article applies.

If the professional person in charge of the facility finds that the person is mentally retarded, the juvenile court may direct the filing in any other court of a petition for the commitment of a minor as a mentally retarded person to the State Department of Developmental Services for placement in a state hospital. In such case, the juvenile court shall transmit to the court in which the petition is filed a copy of the report of the professional person in charge of the facility in which the minor was placed for observation. The court in which the petition for commitment is filed may accept the report of the professional person in lieu of the appointment, or subpoenaing, and testimony of other expert witnesses appointed by the court, if the laws applicable to such commitment proceedings provide for the appointment by court of medical or other expert witnesses or may consider the report as evidence in addition to the testimony of medical or other expert witnesses.

If the professional person in charge of the facility for 72-hour evaluation and treatment reports to the juvenile court that the minor is not affected with any mental disorder requiring intensive treatment or mental retardation, the professional person in charge of the facility shall return the minor to the juvenile court on or before the expiration of the 72-hour period and the court shall proceed with the case in accordance with the Juvenile Court Law.

Any expenditure for the evaluation or intensive treatment of a minor under this section shall be considered an expenditure made under Part 2 (commencing with Section 5600) of Division 5 and shall be reimbursed by the state as are other local expenditures pursuant to that part.

The jurisdiction of the juvenile court over the minor shall be suspended during such time as the minor is subject to the jurisdiction of the court in which the petition for postcertification treatment of an imminently dangerous person or the petition for commitment of a mentally retarded person is filed or under remand for 90 days for intensive treatment or commitment ordered by such court.

# CHAPTER 1518

An act to repeal and add Chapter 6 (commencing with Section 39900) of Part 2 of Division 26 of, and to repeal Sections 39906, 39907, 39908, 39909, 39910, and 39911 of, the Health and Safety Code, relating to acid deposition, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 29, 1988. Filed with Secretary of State September 29, 1988 ]

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

SECTION 1. Chapter 6 (commencing with Section 39900) of Part 2 of Division 26 of the Health and Safety Code is repealed.

SEC. 2. Chapter 6 (commencing with Section 39900) is added to Part 2 of Division 26 of the Health and Safety Code, to read:

## CHAPTER 6. ATMOSPHERIC ACIDITY

39900. This chapter shall be known and may be cited as the Atmospheric Acidity Protection Act of 1988.

39901. The Legislature finds and declares that the deposition of atmospheric acidity resulting from other than natural sources is occurring in various regions of California, and that the continued deposition of this acidity, alone or in combination with other man-made pollutants and naturally occurring phenomena, could have potentially significant adverse effects on public health, the environment, and the economy.

39902. The Legislature further finds and declares that the State Air Resources Board has recently completed a multiyear acid deposition research and monitoring program under the Kapiloff Acid Deposition Act and that the research findings of the state board support the following conclusions with respect to the nature of the problem of deposition of acidity from the atmosphere in California:

(a) Acid atmospheres, in the form of fogs, and dry gases and particles, are found in areas where large numbers of people live and work, and, in many heavily populated areas of California, fogs typically contain acids and acidifying substances that aggravate asthmatic symptoms and may have other adverse health effects.

(b) Acid rain occurs in California in a pattern which generally reflects the spatial distribution of man-made sources of sulfur and nitrogen precursors of acid deposition throughout the state, and can be as much as 100 to 300 times as acidic as rain that falls in unpolluted locations. The acidity of rainfall in the spring and summer can be as high in California as in the eastern United States.

(c) Dry acid deposition due to fog, gases, and particles produced in the atmosphere is relatively more important than wet deposition due to rain or snow in California. While nitric acid, formed in the

atmosphere from emissions of nitrogen oxides and hydrocarbons, is a major constituent of atmospheric acidity in California, sulfuric acid accounts for a significant fraction of acidity within the state.

(d) Organisms in the food chain that supports sport fisheries in Sierra lakes and streams could be diminished by temporary exposures to highly acidic "pulses" during summer storms or snow melt.

(e) Forests adjacent to southern California and on the western slope of the Sierras receive significant exposure to acidity deposited from the atmosphere, and may be adversely affected by the acidity alone, or in combination with other pollutants. Forests may also be damaged indirectly through changes in soil chemistry and by increased susceptibility to insects and disease, as a result of stress on the forest ecosystem caused by the deposition of acidity.

(f) Agricultural crops, which are already known to suffer significant economic damage due to exposure to ozone, may suffer additional damage from exposure to highly acidic fogs and other forms of acid deposition.

(g) Damage to materials such as painted surfaces and treated metals from exposure to high levels of acidity causes significant economic losses in parts of the state.

39903. The Legislature declares that it is the purpose of the program established by this chapter to do all of the following:

(a) Determine the extent to which atmospheric acidity, alone or in combination with other pollutants, adversely affects public health, and the levels and duration of exposure at which those effects may be expected to occur.

(b) Document the long-term trends of all forms of atmospheric acidity deposited in California, the trends in lake and stream chemistry of sensitive watersheds, the quantity and chemical composition of acidic deposition, and the cumulative potential for damage to aquatic and terrestrial ecosystems.

(c) Develop techniques for the early detection of changes in aquatic and terrestrial ecosystems, including the chemistry of soils, which could be expected to precede ecosystem damage due to the deposition of atmospheric acidity, based on the latest scientific research, both in the United States as well as in other countries where the deposition of acidity has caused environmental damage.

(d) Determine the relationship between ambient concentrations of acidity and particles, and variations in atmospheric deposition rates; the relationship between sources of acidic pollutants and the deposition of atmospheric acidity at receptor areas; and the extent of transport and deposition of acid pollutants to mountainous areas and high-elevation watersheds.

(e) Estimate potential economic losses which may be expected to result from the long-term effects of atmospheric acidity, including, but not limited to, impacts on health, worker productivity, materials, fisheries, forests, recreation, and agriculture.

(f) Develop and adopt standards, to the extent supportable by

scientific data, at levels which are necessary and appropriate to protect public health and sensitive ecosystems from adverse effects resulting from atmospheric acidity.

39904. (a) The state board shall adopt and implement an Atmospheric Acidity Protection Program (AAPP), to determine the nature and extent of potential damage to public health and the state's ecosystem which may be expected to result from atmospheric acidity, and to develop measures which may be needed for the protection of public health and sensitive ecosystems within the state.

(b) The program shall commence upon the final compilation of information obtained pursuant to the former Kapiloff Acid Deposition Act, shall incorporate the research results and assessments undertaken pursuant to that act, and shall endeavor to acquire the latest available information on the chemical and biological processes in sensitive ecosystems which preceded the acidification of lakes and streams in other parts of the world.

(c) The Scientific Advisory Committee on Acid Deposition, appointed pursuant to the Kapiloff Acid Deposition Act is continued in existence, and shall actively assist the state board in the development and implementation of the Atmospheric Acidity Protection Program.

39905. In developing the health and ecosystem protection program the state board shall, at a minimum:

(a) Determine the effects of acidic atmospheres on sensitive populations, and the health consequences of prolonged exposure to acidic atmospheres.

(b) Conduct clinical and epidemiological studies to assess the effects on human health of acidic aerosols and fogs in combination with other pollutants.

(c) Analyze data from ongoing acid deposition monitoring programs operated by the state board and the local air pollution control districts, and relate the data to monitored changes in the chemistry of sensitive soils and bodies of water, and results from field exposure studies of economically significant materials.

(d) Characterize major source-receptor links for the deposition of atmospheric acidity using the best available scientific analysis and techniques, and the potential effects on long-term acid deposition trends of current and future air pollution control measures within the state.

(e) Conduct other studies or assessments as needed to carry out the purposes of this chapter.

39906. The state board may require districts, beginning July 1, 1988, and continuing through December 31, 1993, to impose additional variance and permit fees on nonvehicular sources within their jurisdiction.

39907. The additional fees imposed pursuant to Section 39906 may be expended only for the purpose of recovering the costs of acid deposition monitoring and research which is required to provide districts and the state board with the necessary scientific basis for

evaluating the public health and environmental impacts of issuing variances and of issuing and renewing permits for large sources of acid deposition precursors and for determining the feasibility and cost of control measures and air quality management strategies to mitigate the potential adverse effects of existing and increased levels of emissions of acid deposition precursors by large nonvehicular sources of sulfur and nitrogen oxides.

39908. The additional fees imposed pursuant to Section 39906 shall be collected from nonvehicular sources of sulfur and nitrogen oxides which emit 500 tons or more per year of either sulfur or nitrogen oxides.

The additional fees for the issuance of permits shall be set by the state board on a per pound basis at a level which most closely approximates, but does not exceed, the limits established by Section 39909.

In the case of additional fees imposed for the issuance of variances, the fees shall be based on the amount of excess emissions authorized by the variance and the length of time the variance is to remain in effect.

39909. (a) The total amount of funds appropriated by the Legislature from the Motor Vehicle Account in the State Transportation Fund and the California Environmental License Plate Fund to carry out the purposes of this chapter shall not exceed one million five hundred thousand dollars ($1,500,000) for any fiscal year, and shall reflect the level of funding deemed necessary after considering the annual report submitted pursuant to Section 39910.

(b) The total amount of funds collected from additional fees, exclusive of district administrative costs, shall be one million five hundred thousand dollars ($1,500,000) for any fiscal year. However, if the Legislature appropriates a lesser amount in any fiscal year to carry out the purposes of this chapter, the amount of the additional fees shall be reduced to an amount equal to the amount appropriated by the Legislature.

39910. (a) The state board, with the advice and participation of the scientific advisory committee, shall prepare and submit a report to the Legislature and the Governor on an annual basis. The report shall include a description of the activities undertaken pursuant to this chapter, the progress made in accomplishing the purposes of this chapter, as specified in Section 39903, and the level of funding necessary to accomplish additional progress; the findings to date of the atmospheric acidity protection program; future trends in acid deposition in California; and further actions, if any are required, in addition to existing laws, adopted regulations, and ongoing research programs, to control acid deposition and its potential adverse effects.

(b) The state board shall publish and make available to the public the annual report at least 30 days in advance of holding any hearings to consider adoption of the report.

39911. Sections 39906, 39907, 39908, 39909, 39910, and this section, shall remain in effect only until January 1, 1994, and as of that date

are repealed, unless a later enacted statute, which is chaptered before January 1, 1994, deletes or extends that 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.

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 continue without interruption the state's efforts to assess the threat of atmospheric acidity to public health and the state's ecosystems, it is necessary that this act take effect immediately.

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## CHAPTER 1519

An act to amend Section 110 of the Revenue and Taxation Code, relating to taxation.

[Approved by Governor September 29, 1988. Filed with Secretary of State September 29, 1988.]

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

SECTION 1. Section 110 of the Revenue and Taxation Code is amended to read:

110. (a) Except as is otherwise provided in Section 110.1, "full cash value" or "fair market value" means the amount of cash or its equivalent which property would bring if exposed for sale in the open market under conditions in which neither buyer nor seller could take advantage of the exigencies of the other and both with knowledge of all of the uses and purposes to which the property is adapted and for which it is capable of being used and of the enforceable restrictions upon those uses and purposes.

(b) For purposes of determining the "full cash value" or "fair market value" of real property, other than possessory interests, being appraised upon a purchase, "full cash value" or "fair market value" shall be the purchase price paid in the transaction unless it is established by a preponderance of the evidence that the real property would not have transferred for that purchase price in an open market transaction. The purchase price shall, however, be rebuttably presumed to be the "full cash value" or "fair market value" if the terms of the transaction were negotiated at arms length between a knowledgeable transferor and transferee neither of which could take advantage of the exigencies of the other. "Purchase price," as used in this section, means the total consideration provided

by the purchaser or on the purchaser's behalf, valued in money, whether paid in money or otherwise. If a single transaction results in a change in ownership of more than one parcel of real property, the purchase price shall be allocated among those parcels and other assets, if any, transferred based on the relative fair market value of each.

(c) For real property, other than possessory interests, the change of ownership statement required pursuant to Section 480, 480.1, or 480.2, or the preliminary change of ownership statement required pursuant to Section 480.4, shall give any information as the board shall prescribe relative to whether the terms of the transaction were negotiated at "arms length". In the event that the transaction includes property other than real property, the change in ownership statement shall give information as the board shall prescribe disclosing the portion of the purchase price which is allocable to all elements of the transaction. If the taxpayer fails to provide the prescribed information, the rebuttable presumption provided by subdivision (b) shall not apply.

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## CHAPTER 1520

An act relating to homeless persons, and making an appropriation therefor.

[Approved by Governor September 29, 1988. Filed with Secretary of State September 29, 1988.]

I am deleting the $107,000 General Fund appropriation contained in Section 7 of Assembly Bill 4486.

This bill would appropriate $107,000 from the General Fund to assist the counties of Santa Clara and San Diego in developing a plan to coordinate existing homeless programs and to offer specialized counseling and follow-up services to homeless persons.

The demands placed on budget resources require all of us to set priorities. The budget enacted in July 1988 appropriated nearly $44 billion in state funds. This amount is more than adequate to provide the necessary essential services provided for by State Government. It is not necessary to put additional pressure on taxpayer funds for programs that fall beyond the priorities currently provided.

Thus, after reviewing this legislation, I have concluded that its merits do not sufficiently outweigh the need this year for funding top priority programs and continuing a prudent reserve for economic uncertainties.

It is more appropriate to consider funding the provisions of this bill during the budget process for Fiscal Year 1989–90. Only at that time can we review the relative merits of this program in comparison to all other funding projects. The budget process enables us to weigh all demands on the state's revenues and direct our resources to programs, either new or existing, that have the most merit.

GEORGE DEUKMEJIAN, Governor

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

SECTION 1. It is the intent of the Legislature to do both of the following:

(a) Establish model projects in Santa Clara County and in San

Diego County for the coordination of intake services and needs assessment of homeless persons entering the system at current ongoing shelters, and for the comprehensive data collection, case management and stabilization assistance of homeless persons in need of such services.

(b) Promote the current voluntary private and local commitment of homeless service providers in Santa Clara County and in San Diego County by creating a coordinated intake and case management system that will also provide an opportunity for the State of California to serve the homeless on a manageable scale, with a defined target population in a specific geographic location, and by maximizing private provider's expertise, local collaborative data, and innovative service delivery components.

SEC. 2. (a) There is hereby established the Homeless Coordinated Intake System Project, to be administered by the Department of Housing and Community Development for the period commencing January 1, 1989, through December 31, 1991, in the County of Santa Clara and the County of San Diego. The purpose of the project shall be to develop and pilot a plan to coordinate the delivery of local services to the homeless, with a particular focus on data collection and individualized case management. Among the benefits of the project will be development of common intake forms, common data base, and standard case management protocols that may be easily replicated in other cities and counties throughout California.

(b) For purposes of this act, "homeless," with regard to an individual or family, is defined as being without shelter and seeking shelter, and having as the only current alternative the obtaining of shelter from a private or public agency.

(c) For the purpose of this act, "homeless youth" is defined as a minor who is without shelter and has little or no possibility of being reunified with his or her immediate family.

(d) For purposes of this act, "case management" is defined as the process of delivering human services to individuals and families in a planned manner that includes assessment of client needs, linking clients with appropriate community resources, providing clients with appropriate counseling, review of client's progress, termination of service, and completion of a followup process.

SEC. 3. The Department of Housing and Community Development shall do all of the following:

(a) Adopt program guidelines which are necessary for the effective administration of this act.

(b) Approve, no later than three months after submission, an implementation plan for the project to demonstrate a coordinated intake system for systematic delivery of local services to the homeless in Santa Clara County and in San Diego County. The plan shall take into account the demographic composition of the homeless in each county, including adults, youth, and families, and the available services for each one of these homeless groups. The plan shall require

that the following components be included:

(1) The department shall designate the County of Santa Clara and the County of San Diego as the fiscal agents for the Homeless Coordinated Intake System Project, and the counties shall be the fiscal agents upon the adoption of a resolution of acceptance by the board of supervisors in each county. The purpose of the fiscal agents shall be to receive and account for funds appropriated by the state for purposes of the Homeless Coordinated Intake System Project. In addition, the fiscal agent may hire staff, make recommendations throughout the implementation and operation of the project, subcontract, and expend funds as necessary to enable the project to fulfill its goals pursuant to this act.

(2) Each fiscal agent shall receive applications, screen, and select two local homeless agencies and sites to use as designated intake and case management sites for the purposes of the Homeless Coordinated Intake System Project. In selecting the two agencies and sites, each fiscal agent shall give preference to agencies that have a demonstrable record of success in client intake, assessments, and referral, agencies that have a history in working with one or more elements of the homeless population, and agencies that have experience in collaborative interagency projects. Preference shall also be given to those agencies that can provide some level of in-house direct services, such as food, shelter, crisis intervention, or independent living skills training. Agencies selected pursuant to this paragraph shall be exempt from income taxes under paragraph (3) of subdivision (c) of Section 501 of Title 26 of the United States Code.

(3) The fiscal agents in San Diego County and Santa Clara County each shall hire or assign a project manager for no less than 20 hours per week to supervise the overall project and to be responsible for the consistent gathering of data and case management results, both on an ongoing basis and for the purposes of the final report to be submitted to the Legislature.

(4) Each of the four selected agencies and sites shall have a full-time case manager and a full-time intake worker. Volunteers shall be used to supplement the staff.

(5) Each selected agency and site shall have its own computer terminal to track client data, including two centralized information bases: one for client characteristics and followup, and the second for resource inventory data on what services are in existence. Each selected agency and site shall aggregate its client characteristics data periodically, and submit it to the project manager for review. Data shall not be traceable back to specific clients. By the end of the project, each selected agency and site shall compile, analyze, and place in a report format the demographic characteristics of all persons who enter the homeless services system at the designated intake sites. The report shall be submitted to the department and made available to local governmental agencies, in either case at no charge.

(6) The service delivery system at each selected agency and site

shall include four primary components: initial assessments, provision of emergency service or referral service, case management, and uniform information keeping.

(c) Assure that guidelines provide that Santa Clara County and San Diego County assume the following program responsibilities:

(1) The development of the intake forms and client followup methods shall be based, where possible, on elements of existing information systems.

(2) The initial assessment and provision of service or referral shall primarily be provided by an intake worker or a volunteer. If the client requests assistance which only requires up to a few days or emergency assistance, the case shall be closed upon the receipt of the service or referral. The client's registration form shall be filed, with no further followup. Clients who at the initial assessment request, or who appear to need additional assistance, shall be referred to a case manager for a more extensive interview, and a comprehensive assessment of the client's needs and his or her psychosocial history. The client shall then be asked to participate in the development of a case management plan with short- and long-term goals. Agreements on followup shall be secured.

(3) Referrals to appropriate service shall employ the use of standardized written referrals, with the anticipation that a standard referral form will ultimately be adopted by all service providers in the system. Case management referral shall include linkages to employment and training programs, such as the Job Training Partnership Act (P.L. 97-300) and the Greater Avenues for Independence Act of 1985 (Article 3.2 (commencing with Section 11320), Chapter 2, Part 3, Division 9, Welfare and Institutions Code), to promote economic self-sufficiency and family stability.

(4) Cooperation among the four selected project agencies and sites and other community service providers shall be encouraged. Community service providers not selected as an intake site for the purposes of the Homeless Coordinated Intake System Project may refer clients in need of extensive case management to a selected site.

(5) The production of a procedural manual that may be used by any city or county in California desiring to establish a coordinated intake system.

(6) The evaluation of the demonstration project sites, and the production of interim reports of evaluation to be submitted to the Legislature by December 1, 1989, and April 30, 1990, and a final report of evaluation, to be submitted to the Legislature by January 1, 1991. The reports shall provide comments and recommendations regarding the demonstration project, project compliance with the requirements of this section, and a recommendation for future disposition of the project. In addition, the reports shall contain detailed information about the number of clients served on a monthly and annual basis, the kinds of services provided under the case management component, specific examples of the outcomes of services provided, and an assessment of the impact of the project on

the homeless population in Santa Clara County and San Diego County.

(7) Oversight for funds appropriated for the purposes of this act.

SEC. 4. It is the intent of the Legislature that at least one of the four agencies and sites selected shall have expertise, legal authorization, and a history in dealing with homeless youth. Due to the unique needs of the homeless youth population, who often exhibit an extensive history of physical and sexual abuse and who usually refrain for the same reasons from utilizing established adult services, the Homeless Coordinated Intake System Project shall give within its focus of data collection and case management appropriate attention to the homeless youth population.

SEC. 5. The demonstration project is successful if the following outcome measurements are achieved in each county:

(a) By the end of the program, 3,500 unduplicated homeless persons, including youth, children, women, and elderly persons, who entered the homeless services system at the designated intake sites, have received comprehensive intake assessment.

(b) At least 1,200 persons who enter the homeless services system at the designated sites have received or will receive comprehensive, long-range, in-depth case management services.

(c) At least 900 persons receiving comprehensive management services have been or will be linked to other community agencies and services such as health services, employment training programs such as GAIN, tenant workshops and similar kinds of supportive skills training, and the end result of these linkages is that these persons are in the process of becoming self-sufficient and no longer homeless.

(d) By the end of the program, a design and implementation plan for the complete network of all shelter providers in the county will be completed with additional corporate or voluntary funding, or both. Upon its completion, this system shall allow all data collected from standardized intake forms to be entered into a standardized software program. The data shall be sorted and arranged into a useful report on the demogaphics of homeless persons in Santa Clara County and San Diego County.

(e) By the end of the program, the data collected and analyzed will include not only basic demographic information, but also analyses of specific outcomes and results of the case management component, such as the number of recipients who were able to achieve a higher level of self-sufficiency and stability through the pilot program. This analysis shall include the number of clients who found permanent and long-term shelter, the number of clients who found employment, the number of clients who entered into education, training, social service, medical, counseling, or similar assistance programs, the number of clients who remained homeless, and other appropriate data on program outcomes.

(f) By the end of the program, a comprehensive analysis of the nature, intensity, and duration of case management services will be correlated to the specific outcome measurements listed in

subdivision (e) and the demographic intake information in subdivision (a) so as to gain a greater understanding of the cost effectiveness of various intervention programs on various populations among homeless persons.

SEC. 6. Due to the unique circumstances surrounding the lack of accurate, comprehensive data, and other information regarding the homeless in California, and due to the unique need to provide that data and information in conjunction with development of legislation to assist the homeless, 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. 7. The sum of one hundred seven thousand dollars ($107,000) is hereby appropriated from the General Fund to the State Department of Housing and Community Development for expenditure in the 1988–89 fiscal year pursuant to this act. In addition, it is the intent of the Legislature that the sum of five hundred thirty-four thousand dollars ($534,000) be included in the annual Budget Act, in support of this act for the next three fiscal years, in accordance with the following schedule:

| | |
|---|---|
| (a) For the 1989–90 fiscal year | $214,000 |
| (b) For the 1990–91 fiscal year | $214,000 |
| (c) For the 1991–92 fiscal year | $106,000 |

Funds appropriated in support of this act shall be one-third matched in cash or by in-kind services by the County of Santa Clara and the County of San Diego through private, county, or federal funds.

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## CHAPTER 1521

An act to add Sections 17053.20 and 23615 to the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor September 29, 1988. Filed with Secretary of State September 29, 1988.]

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

SECTION 1. This act shall be known, and may be cited as, the Small Employer Health Coverage Incentive Act of 1988.

SEC. 2. The Legislature finds:

(a) That most persons without health coverage operate a business, are employed, or are dependents of employed persons.

(b) That small employers are often less able than larger employers to afford the cost of providing health coverage.

(c) That health care services rendered to persons without health

coverage who are unable to pay for services increases health care costs for those who pay for health services.

(d) That left to face catastrophic losses without health coverage, most uninsured persons must ultimately depend on charity care from health care providers or publicly funded health care in the event of severe illness or injury.

(e) That a prudent means of making health coverage more available is to provide a tax credit to small employers to encourage provision of health coverage by the employer.

SEC. 3. Section 17053.20 is added to the Revenue and Taxation Code, to read:

17053.20. (a) There shall be allowed as a credit against the amount of "net tax" (as defined in Section 17039) an amount equal to the amount determined in subdivision (b) for payments by an eligible employer to provide health coverage for eligible individuals and their dependents.

(b) The amount of the credit allowed by subdivision (a) shall be twenty-five dollars ($25) per month per covered individuals or 25 percent per month of the total amount paid or incurred for such health coverage by the employer during the taxable year, whichever is more, plus twenty-five dollars ($25) per month or 25 percent of the total amount paid or incurred per month per covered individual's dependent or dependents, whichever is more.

(c) To qualify for the credit provided in subdivision (b), an eligible employer must pay or incur at least 75 percent of the monthly premium for health coverage for eligible individuals who elect to have that coverage, or at least 75 percent per month towards health coverage for an eligible individual's dependent or dependents and for which the individual does not pay more than 25 percent, or both. At least annually, the employer shall make participation available to all eligible individuals and to all newly hired individuals within 60 days of the date of employment. Nothing in this section shall require an eligible employer to pay for dependent health coverage in order to qualify for the eligible individual health coverage credit provided herein. Nothing in this section shall prohibit employers from making additional health benefits available to an eligible individual at the employer's or eligible individual's expense.

(d) The credit allowed by this section shall be in lieu of any deduction to which the taxpayer otherwise may be entitled for expenses on which a credit under this section is claimed.

(e) If the credit allowed under this section exceeds the "net tax" for the taxable year, that portion of the credit which exceeds the "net tax" may be carried over to the "net tax" in succeeding taxable years until the credit is used. The credit shall be applied first to the earliest taxable years possible.

(f) Any amount of expenses paid by an employer under this section shall not be included as income to the eligible individual for purposes of the Personal Income Tax Law. If those expenses have

been included in arriving at federal adjusted gross income of the eligible individual, the amount included shall be subtracted in arriving at state adjusted gross income. As used in Section 17071 with respect to the eligible individual, "compensation for services" does not include expenses paid under this section.

(g) With the exception of a husband and wife, if two or more taxpayers share in the expenses eligible for the credit provided by this section, each taxpayer shall be eligible to receive the tax credit in proportion to his or her respective share of the expenses paid or incurred. In the case of a partnership, the tax credit may be divided between the partners pursuant to a written partnership agreement in accordance with Chapter 10 (commencing with Section 17851), which includes Section 704 of the Internal Revenue Code concerning substantial economic effect, relating to partner's distributive share. In the case of a husband or wife who files a separate return, the credit may be taken by either or equally divided between them.

(h) For purposes of this section:

(1) "Eligible employer" means a taxpayer which employs on the average during the tax year no more than 25 eligible individuals in California and which makes the minimum contribution required by this section on behalf of an eligible individual and who has not subsidized or provided health insurance to an eligible individual in the two years immediately preceding the year in which this section becomes effective. An "eligible employer" is not a taxpayer who liquidates the assets of or dissolves the organization of a business, for tax purposes only, in anticipation of becoming eligible for credit allowed under this section and then subsequently reorganizes the business.

(2) "Eligible individual" means all of the following:

(A) An individual who performs services for an eligible employer for an average of at least 35 hours per week for remuneration.

(B) An individual who performs services for an eligible employer for less than 35 hours per week for remuneration, if the eligible employer provides health coverage for that individual and meets all other requirements for the credit under this section.

(C) An owner-operator or a managing partner who provides at least an average of 35 hours per week in personal services to the business for which health coverage is contracted.

(3) "Health coverage" means health coverage that, at a minimum, includes basic health care services for illness or injury provided by a private insurance company holding a valid outstanding certificate of authority from the Insurance Commissioner, a nonprofit hospital service plan qualifying under Chapter 11A (commencing with Section 11491) of Part 2 of Division 2 of the Insurance Code, or a health care service plan as defined under subdivision (f) of Section 1345 of the Health and Safety Code, which is lawfully engaged in providing, arranging, paying for, or reimbursing the cost of personal health services under insurance policies or contracts, medical and hospital service agreements,

membership contracts, in consideration of premiums or other periodic charges payable to it. "Health coverage" may include provisions for cost sharing if the total cost sharing does not exceed 200 percent of the annual premium, and no copayment exceeds 50 percent of the cost of a covered service.

(4) "Basic health care services" means the services defined in subdivision (b) of Section 1345 of the Health and Safety Code, or all of the following benefits:

(A) Inpatient and outpatient hospital services, including inpatient care for a period of at least 120 days of confinement in each calendar year and ancillary services.

(B) Inpatient and outpatient physician services.

(C) Diagnostic and screening tests.

(5) "Dependent" means any person who qualifies as a dependent of the eligible individual for purposes of a health care service plan certified to qualify for the credit allowed under this section.

(6) "Supplemental benefits" means:

(A) Prenatal and well-baby care which meets guidelines established by the American Academy of Pediatrics.

(B) Mental health benefits consisting of at least:

(i) Inpatient hospital care for a mental disorder for not less than 45 days per year.

(ii) Outpatient psychotherapy and counseling for a mental disorder for not less than 20 visits per year.

(i) An eligible employer shall be entitled to an additional five dollar ($5) tax credit per month per covered employee for each of the two supplemental benefits.

(j) The Department of Corporations shall forward to the Franchise Tax Board at least annually, or more frequently upon request, a list of all health care services plans licensed under Section 1353 of the Health and Safety Code which are required to provide the basic health care services defined in subdivision (b) of Section 1345 of the Health and Safety Code. The Department of Insurance shall forward to the Franchise Tax Board at least annually, or more frequently upon request, a list of all insurers authorized to transact disability insurance in this state and nonprofit hospital service plan corporations holding the certificate of authority required by Section 11504 of the Insurance Code.

(k) To be eligible for the credit under this section, each disability insurance policy, health care service plan contract, or nonprofit hospital service plan contract shall be certified as providing the basic health care services described in paragraph (4) of subdivision (h), and, if applicable, either or both of the supplemental benefits of paragraph (6) of subdivision (h), by legal opinion of the plan's counsel, a copy of which shall be provided to each eligible employer to be retained for submission to the Franchise Tax Board upon request.

(*l*) The Legislative Analyst and the Department of Finance shall certify the existence of the following conditions to the Franchise Tax

Board by August 30 of the fiscal year for which the conditions exist:

(1) The Governor's Budget, as enacted and as reflected in the change book, shows that the Special Fund for Economic Uncertainties is funded at 3 percent of the General Fund expenditures.

(2) The Department of Finance projects that the real growth in California personal income will be at least 4 percent.

(m) This section shall become operative and be applied in the computation of taxes for taxable years beginning on or after January 1 of the year following the calendar year in which the certification pursuant to subdivision (*l*) is made, but shall not become operative prior to January 1, 1990. This section shall remain in effect only until January 1 of the fifth year following the year that this section first becomes operative.

SEC. 4. Section 23615 is added to the Revenue and Taxation Code, to read:

23615. (a) There shall be allowed as a credit against the tax (as defined by Section 23606), an amount equal to the amount determined in subdivision (b) for payments made by an eligible employer to provide health coverage for an eligible individual and that individual's dependent.

(b) The amount of the credit allowed by subdivision (a) shall be twenty-five dollars ($25) per month per covered individual or 25 percent of the total amount paid or incurred per month for such health coverage by the employer during the taxable year, whichever is more, plus twenty-five dollars ($25) per month or 25 percent of the total amount paid or incurred per month per covered individual's dependent or dependents.

(c) To qualify for the credit provided in subdivision (b), an eligible employer must pay or incur at least 75 percent of the monthly premium for health coverage for eligible individuals who elect to have that coverage and/or at least 75 percent per month towards health coverage for an eligible individual's dependent or dependents and for which the individual does not pay more than 25 percent. At least annually, the employer shall make participation available to all eligible individuals and to all newly hired individuals within 60 days of the date of employment. Nothing in this section shall require an eligible employer to pay for dependent health coverage in order to qualify for the eligible individual health coverage credit provided herein. Nothing in this section shall prohibit employers from making additional health benefits available to an eligible individual at the employer's or eligible individual's expense.

(d) The credit allowed by this section shall be in lieu of any deduction to which the taxpayer otherwise may be entitled for expenses on which a credit under this section is claimed.

(e) If two or more taxpayers share in the expenses eligible for the credit provided by this section, each taxpayer shall be eligible to receive the tax credit in proportion to its respective share of the

expenses paid or incurred.

(f) If the credit allowed under this section exceeds the taxes imposed by this part (except the minimum franchise tax and the alternative minimum tax) for the income year, that portion of the credit which exceeds those taxes may be carried over to the tax (as defined by Section 23606) in succeeding income years until the credit is used. The credit shall be applied first to the earliest income years possible.

(g) Any amount of expenses paid by an employer under this section shall not be included as income to the eligible individual for purposes of the Personal Income Tax Law. If those expenses have been included in arriving at federal taxable income of the eligible individual, the amount included shall be subtracted in arriving at state taxable income. As used in Section 17071 with respect to the eligible individual, "compensation for services" does not include expenses paid under this section.

(h) For purposes of this section:

(1) "Eligible employer" means a taxpayer which employs on the average during the tax year no more than 25 eligible individuals in California and which makes the minimum contribution required by this section on behalf of an eligible individual, and who has not subsidized or provided health insurance to an eligible individual in the two years immediately preceding the year in which this section becomes effective. An "eligible employer" is not a taxpayer who liquidates the assets of or dissolves the organization of a business, for tax purposes only, in anticipation of becoming eligible for the credit allowed under this section and then subsequently reorganizes the business.

(2) "Eligible individual" means all of the following:

(A) An individual who performs services for an eligible employer for an average of at least 35 hours per week for remuneration.

(B) An individual who performs services for an eligible employer for less than 35 hours if the eligible employer provides health coverage for that individual and meets all other requirements for the credit under this section.

(C) An owner-operator or shareholder who provides at least an average of 35 hours per week in personal services to the business for which health coverage is contracted.

(3) "Health coverage" means health coverage that at a minimum, includes basic health care services for illness or injury provided by a private insurance company holding a valid outstanding certificate of authority from the Insurance Commissioner, a nonprofit hospital service plan qualifying under Chapter 11A (commencing with Section 11491) of Part 2 of Division 2 of the Insurance Code, or a health care service plan as defined under subdivision (f) of Section 1345 of the Health and Safety Code, which is lawfully engaged in providing, arranging, paying for, or reimbursing the cost of personal health services under insurance policies or contracts, medical or hospital service agreements, membership contracts, in consideration

of premiums or other periodic charges payable to it. "Health coverage" may include provisions for cost sharing if the total cost sharing does not exceed 200 percent of the annual premium, and no copayment exceeds 50 percent of the cost of a covered service.

(4) "Basic health care services" means the services defined in subdivision (b) of Section 1345 of the Health and Safety Code, or all of the following benefits:

(A) Inpatient and outpatient hospital services, including inpatient care for a period of at least 120 days of confinement in each calendar year and ancillary services.

(B) Inpatient and outpatient physician services.

(C) Diagnostic and screening tests.

(5) "Dependent" means any person who qualifies as a dependent of the eligible individual for purposes of a health care service plan certified to qualify for the credit allowed under this section.

(6) "Supplemental benefits" means:

(A) Prenatal and well-baby care which meets guidelines established by the American Academy of Pediatrics.

(B) Mental health benefits consisting of at least:

(i) Inpatient hospital care for a mental disorder for not less than 45 days per year.

(ii) Outpatient psychotherapy and counseling for a mental disorder for not less than 20 visits per year.

(i) An eligible employer shall be entitled to an additional five dollar ($5) tax credit per month per covered employee for each of the two supplemental benefits.

(j) The Department of Corporations shall forward to the Franchise Tax Board at least annually, or more frequently upon request, a list of all health care services plans licensed under Section 1353 of the Health and Safety Code which are required to provide the basic health care services defined in subdivision (b) of Section 1345 of the Health and Safety Code. The Department of Insurance shall forward to the Franchise Tax Board at least annually, or more frequently upon request, a list of all insurers authorized to transact disability insurance in this state and nonprofit hospital service plan corporations holding the certificate of authority required by Section 11504 of the Insurance Code.

(k) To be eligible for the credit under this section, each disability insurance policy, health care service plan, or nonprofit hospital service plan contract shall be certified as providing the basic health care services described in paragraph (4) of subdivision (h), and, if applicable, either or both of the supplemental benefits of paragraph (6) of subdivision (h), by legal opinion of the plan's counsel, a copy of which shall be provided to each eligible employer to be retained for submission to the Franchise Tax Board upon request.

(*l*) The Legislative Analyst and the Department of Finance shall certify the existence of the following conditions to the Franchise Tax Board by August 30 of the fiscal year for which the conditions exist:

(1) The Governor's Budget, as enacted and as reflected in the

change book, shows that the Special Fund for Economic Uncertainties is funded at 3 percent of the General Fund expenditures.

(2) The Department of Finance projects that the real growth in California personal income will be at least 4 percent.

(m) This section shall become operative and be applied in the computation of taxes for income years beginning on or after January 1 of the year following the calendar year in which the certification pursuant to subdivision (*l*) is made, but shall not become operative prior to January 1, 1990. This section shall remain in effect only until January 1 of the fifth year following the year that this section first becomes operative.

SEC. 5. At the expiration of the period for which Sections 17053.20 and 23615 of the Revenue and Taxation Code, as added by this act, are operative, the Legislative Analyst shall conduct a study on the impact of the tax credits provided by this act as an incentive for small employers and the self-employed to purchase health insurance. The study shall include the effect of the tax credits on:

(a) The affordability of health insurance policies for small employers and the self-employed.

(b) The availability of health insurance policies for small employers and the self-insured.

(c) State revenues.

(d) Competition and costs in the health care industry.

(e) Subscribers, health care providers, health insurers, and the public.

(f) The Medi-Cal program and MIA program.

The Legislative Analyst shall submit a report of that study to the Legislature on or before December 31 of the year following the last year that Sections 17053.20 and 23615 of the Revenue and Taxation Code, as added by this act, remain in effect.

SEC. 6. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.

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## CHAPTER 1522

An act to amend Section 597 of the Penal Code, relating to animals.

[Approved by Governor September 29, 1988. Filed with Secretary of State September 29, 1988.]

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

SECTION 1. Section 597 of the Penal Code, as amended by Chapter 127 of the Statutes of 1988, is amended to read:

597. (a) Except as provided in subdivision (c) of this section or Section 599c, every person who maliciously and intentionally maims, mutilates, tortures, or wounds a living animal, or maliciously and

intentionally kills an animal , is guilty of an offense punishable by imprisonment in the state prison, or by a fine of not more than twenty thousand dollars ($20,000), or by both the fine and imprisonment, or, alternatively, by imprisonment in the county jail for not more than one year, or by a fine of not more than twenty thousand dollars ($20,000), or by both the fine and imprisonment.

(b) Except as otherwise provided in subdivision (a) or (c), every person who overdrives, overloads, drives when overloaded, overworks, tortures, torments, deprives of necessary sustenance, drink, or shelter, cruelly beats, mutilates, or cruelly kills any animal, or causes or procures any animal to be so overdriven, overloaded, driven when overloaded, overworked, tortured, tormented, deprived of necessary sustenance, drink, shelter, or to be cruelly beaten, mutilated, or cruelly killed; and whoever, having the charge or custody of any animal, either as owner or otherwise, subjects any animal to needless suffering, or inflicts unnecessary cruelty upon the animal, or in any manner abuses any animal, or fails to provide the animal with proper food, drink, or shelter or protection from the weather, or who drives, rides, or otherwise uses the animal when unfit for labor, is, for every such offense, guilty of a misdemeanor.

(c) Every person who maliciously and intentionally maims, mutilates, or tortures any mammal, bird, reptile, amphibian, or fish as described in subdivision (d), is guilty of an offense punishable by imprisonment in the state prison, or by a fine of not more than twenty thousand dollars ($20,000), or by both the fine and imprisonment, or, alternatively, by imprisonment in the county jail for not more than one year, by a fine of not more than twenty thousand dollars ($20,000), or by both the fine and imprisonment.

(d) Subdivision (c) applies to any mammal, bird, reptile, amphibian, or fish which is a creature described as follows:

(1) Endangered species or threatened species as described in Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code.

(2) Fully protected birds described in Section 3511 of the Fish and Game Code.

(3) Fully protected mammals described in Chapter 8 (commencing with Section 4700) of Part 3 of Division 4 of the Fish and Game Code.

(4) Fully protected reptiles and amphibians described in Chapter 2 (commencing with Section 5050) of Division 5 of the Fish and Game Code.

(5) Fully protected fish as described in Section 5515 of the Fish and Game Code.

This subdivision does not supersede or affect any provisions of law relating to taking of the described species, including, but not limited to, Section 12008 of the Fish and Game Code.

(e) For the purposes of subdivision (c), each act of malicious and intentional maiming, mutilating, or torturing a separate specimen of a creature described in subdivision (d) is a separate offense. If any

person is charged with a violation of subdivision (c), the proceedings shall be subject to Section 12157 of the Fish and Game Code.

(f) Upon the conviction of a person charged with a violation of this section by causing or permitting an act of cruelty, as defined in Section 599b, all animals lawfully seized and impounded with respect to the violation by a peace officer, officer of a humane society, or officer of a pound or animal regulation department of a public agency shall be adjudged by the court to be forfeited and shall thereupon be awarded to the impounding officer for proper disposition. A person convicted of a violation of this section by causing or permitting an act of cruelty, as defined in Section 599b, shall be liable to the impounding officer for all costs of impoundment from the time of seizure to the time of proper disposition.

Mandatory seizure or impoundment shall not apply to animals in properly conducted scientific experiments or investigations performed under the authority of the faculty of a regularly incorporated medical college or university of this state.

SEC. 2. Section 597 of the Penal Code, as amended by Chapter 127 of the Statutes of 1988, is amended to read:

597. (a) Except as provided in subdivision (c) of this section or Section 599c, every person who maliciously and intentionally maims, mutilates, tortures, or wounds a living animal, or maliciously and intentionally kills an animal , is guilty of an offense punishable by imprisonment in the state prison, or by a fine of not more than twenty thousand dollars ($20,000), or by both the fine and imprisonment, or, alternatively, by imprisonment in the county jail for not more than one year, or by a fine of not more than twenty thousand dollars ($20,000), or by both the fine and imprisonment.

(b) Except as otherwise provided in subdivision (a) or (c), every person who overdrives, overloads, drives when overloaded, overworks, tortures, torments, deprives of necessary sustenance, drink, or shelter, cruelly beats, mutilates, or cruelly kills any animal, or causes or procures any animal to be so overdriven, overloaded, driven when overloaded, overworked, tortured, tormented, deprived of necessary sustenance, drink, shelter, or to be cruelly beaten, mutilated, or cruelly killed; and whoever, having the charge or custody of any animal, either as owner or otherwise, subjects any animal to needless suffering, or inflicts unnecessary cruelty upon the animal, or in any manner abuses any animal, or fails to provide the animal with proper food, drink, or shelter or protection from the weather, or who drives, rides, or otherwise uses the animal when unfit for labor, is, for every such offense, guilty of a crime punishable as a misdemeanor or as a felony.

(c) Every person who maliciously and intentionally maims, mutilates, or tortures any mammal, bird, reptile, amphibian, or fish as described in subdivision (d), is guilty of an offense punishable by imprisonment in the state prison, or by a fine of not more than twenty thousand dollars ($20,000), or by both the fine and imprisonment, or, alternatively, by imprisonment in the county jail

for not more than one year, by a fine of not more than twenty thousand dollars ($20,000), or by both the fine and imprisonment.

(d) Subdivision (c) applies to any mammal, bird, reptile, amphibian, or fish which is a creature described as follows:

(1) Endangered species or threatened species as described in Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code.

(2) Fully protected birds described in Section 3511 of the Fish and Game Code.

(3) Fully protected mammals described in Chapter 8 (commencing with Section 4700) of Part 3 of Division 4 of the Fish and Game Code.

(4) Fully protected reptiles and amphibians described in Chapter 2 (commencing with Section 5050) of Division 5 of the Fish and Game Code.

(5) Fully protected fish as described in Section 5515 of the Fish and Game Code.

This subdivision does not supersede or affect any provisions of law relating to taking of the described species, including, but not limited to, Section 12008 of the Fish and Game Code.

(e) For the purposes of subdivision (c), each act of malicious and intentional maiming, mutilating, or torturing a separate specimen of a creature described in subdivision (d) is a separate offense. If any person is charged with a violation of subdivision (c), the proceedings shall be subject to Section 12157 of the Fish and Game Code.

(f) Upon the conviction of a person charged with a violation of this section by causing or permitting an act of cruelty, as defined in Section 599b, all animals lawfully seized and impounded with respect to the violation by a peace officer, officer of a humane society, or officer of a pound or animal regulation department of a public agency shall be adjudged by the court to be forfeited and shall thereupon be awarded to the impounding officer for proper disposition. A person convicted of a violation of this section by causing or permitting an act of cruelty, as defined in Section 599b, shall be liable to the impounding officer for all costs of impoundment from the time of seizure to the time of proper disposition.

Mandatory seizure or impoundment shall not apply to animals in properly conducted scientific experiments or investigations performed under the authority of the faculty of a regularly incorporated medical college or university of this state.

SEC. 3. Section 597 of the Penal Code, as amended by Chapter 127 of the Statutes of 1988, is amended to read:

597. (a) Except as provided in subdivision (c) of this section or Section 599c, every person who maliciously and intentionally maims, mutilates, tortures, or wounds a living animal, or maliciously and intentionally kills an animal , is guilty of an offense punishable by imprisonment in the state prison, or by a fine of not more than twenty thousand dollars ($20,000), or by both the fine and imprisonment, or, alternatively, by imprisonment in the county jail

for not more than one year, or by a fine of not more than twenty thousand dollars ($20,000), or by both the fine and imprisonment.

(b) Except as otherwise provided in subdivision (a) or (c), every person who overdrives, overloads, drives when overloaded, overworks, tortures, torments, deprives of necessary sustenance, drink, or shelter, cruelly beats, mutilates, or cruelly kills any animal, or causes or procures any animal to be so overdriven, overloaded, driven when overloaded, overworked, tortured, tormented, deprived of necessary sustenance, drink, shelter, or to be cruelly beaten, mutilated, or cruelly killed; and whoever, having the charge or custody of any animal, either as owner or otherwise, subjects any animal to needless suffering, or inflicts unnecessary cruelty upon the animal, or in any manner abuses any animal, or fails to provide the animal with proper food, drink, or shelter or protection from the weather, or who drives, rides, or otherwise uses the animal when unfit for labor, is, for every such offense, guilty of an offense punishable by imprisonment in the county jail for not more than one year or by a fine of not more than twenty thousand dollars ($20,000), or by both the fine and imprisonment.

(c) Every person who maliciously and intentionally maims, mutilates, or tortures any mammal, bird, reptile, amphibian, or fish as described in subdivision (d), is guilty of an offense punishable by imprisonment in the state prison, or by a fine of not more than twenty thousand dollars ($20,000), or by both the fine and imprisonment, or, alternatively, by imprisonment in the county jail for not more than one year, by a fine of not more than twenty thousand dollars ($20,000), or by both the fine and imprisonment.

(d) Subdivision (c) applies to any mammal, bird, reptile, amphibian, or fish which is a creature described as follows:

(1) Endangered species or threatened species as described in Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code.

(2) Fully protected birds described in Section 3511 of the Fish and Game Code.

(3) Fully protected mammals described in Chapter 8 (commencing with Section 4700) of Part 3 of Division 4 of the Fish and Game Code.

(4) Fully protected reptiles and amphibians described in Chapter 2 (commencing with Section 5050) of Division 5 of the Fish and Game Code.

(5) Fully protected fish as described in Section 5515 of the Fish and Game Code.

This subdivision does not supersede or affect any provisions of law relating to taking of the described species, including, but not limited to, Section 12008 of the Fish and Game Code.

(e) For the purposes of subdivision (c), each act of malicious and intentional maiming, mutilating, or torturing a separate specimen of a creature described in subdivision (d) is a separate offense. If any person is charged with a violation of subdivision (c), the proceedings

shall be subject to Section 12157 of the Fish and Game Code.

(f) Upon the conviction of a person charged with a violation of this section by causing or permitting an act of cruelty, as defined in Section 599b, all animals lawfully seized and impounded with respect to the violation by a peace officer, officer of a humane society, or officer of a pound or animal regulation department of a public agency shall be adjudged by the court to be forfeited and shall thereupon be awarded to the impounding officer for proper disposition. A person convicted of a violation of this section by causing or permitting an act of cruelty, as defined in Section 599b, shall be liable to the impounding officer for all costs of impoundment from the time of seizure to the time of proper disposition.

Mandatory seizure or impoundment shall not apply to animals in properly conducted scientific experiments or investigations performed under the authority of the faculty of a regularly incorporated medical college or university of this state.

SEC. 4. Section 597 of the Penal Code, as amended by Chapter 127 of the Statutes of 1988, is amended to read:

597. (a) Except as provided in subdivision (c) of this section or Section 599c, every person who maliciously and intentionally maims, mutilates, tortures, or wounds a living animal, or maliciously and intentionally kills an animal , is guilty of an offense punishable by imprisonment in the state prison, or by a fine of not more than twenty thousand dollars ($20,000), or by both the fine and imprisonment, or, alternatively, by imprisonment in the county jail for not more than one year, or by a fine of not more than twenty thousand dollars ($20,000), or by both the fine and imprisonment.

(b) Except as otherwise provided in subdivision (a) or (c), every person who overdrives, overloads, drives when overloaded, overworks, tortures, torments, deprives of necessary sustenance, drink, or shelter, cruelly beats, mutilates, or cruelly kills any animal, or causes or procures any animal to be so overdriven, overloaded, driven when overloaded, overworked, tortured, tormented, deprived of necessary sustenance, drink, shelter, or to be cruelly beaten, mutilated, or cruelly killed; and whoever, having the charge or custody of any animal, either as owner or otherwise, subjects any animal to needless suffering, or inflicts unnecessary cruelty upon the animal, or in any manner abuses any animal, or fails to provide the animal with proper food, drink, or shelter or protection from the weather, or who drives, rides, or otherwise uses the animal when unfit for labor, is, for every such offense, guilty of a crime punishable as a misdemeanor or as a felony or alternatively punishable as a misdemeanor or a felony and by a fine of not more than twenty thousand dollars ($20,000).

(c) Every person who maliciously and intentionally maims, mutilates, or tortures any mammal, bird, reptile, amphibian, or fish as described in subdivision (d), is guilty of an offense punishable by imprisonment in the state prison, or by a fine of not more than twenty thousand dollars ($20,000), or by both the fine and

imprisonment, or, alternatively, by imprisonment in the county jail for not more than one year, by a fine of not more than twenty thousand dollars ($20,000), or by both the fine and imprisonment.

(d) Subdivision (c) applies to any mammal, bird, reptile, amphibian, or fish which is a creature described as follows:

(1) Endangered species or threatened species as described in Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code.

(2) Fully protected birds described in Section 3511 of the Fish and Game Code.

(3) Fully protected mammals described in Chapter 8 (commencing with Section 4700) of Part 3 of Division 4 of the Fish and Game Code.

(4) Fully protected reptiles and amphibians described in Chapter 2 (commencing with Section 5050) of Division 5 of the Fish and Game Code.

(5) Fully protected fish as described in Section 5515 of the Fish and Game Code.

This subdivision does not supersede or affect any provisions of law relating to taking of the described species, including, but not limited to, Section 12008 of the Fish and Game Code.

(e) For the purposes of subdivision (c), each act of malicious and intentional maiming, mutilating, or torturing a separate specimen of a creature described in subdivision (d) is a separate offense. If any person is charged with a violation of subdivision (c), the proceedings shall be subject to Section 12157 of the Fish and Game Code.

(f) Upon the conviction of a person charged with a violation of this section by causing or permitting an act of cruelty, as defined in Section 599b, all animals lawfully seized and impounded with respect to the violation by a peace officer, officer of a humane society, or officer of a pound or animal regulation department of a public agency shall be adjudged by the court to be forfeited and shall thereupon be awarded to the impounding officer for proper disposition. A person convicted of a violation of this section by causing or permitting an act of cruelty, as defined in Section 599b, shall be liable to the impounding officer for all costs of impoundment from the time of seizure to the time of proper disposition.

Mandatory seizure or impoundment shall not apply to animals in properly conducted scientific experiments or investigations performed under the authority of the faculty of a regularly incorporated medical college or university of this state.

SEC. 5. (a) Section 2 of this bill incorporates amendments to Section 597 of the Penal Code proposed by both this bill and SB 2136. It shall only become operative if (1) both bills are enacted and become effective January 1, 1989, (2) each bill amends Section 597 of the Penal Code, and (3) AB 4023 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after SB 2136, 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 597

of the Penal Code proposed by both this bill and AB 4023. It shall only become operative if (1) both bills are enacted and become effective January 1, 1989, (2) each bill amends Section 597 of the Penal Code, (3) SB 2136 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 4023 in which case Sections 1, 2, and 4 of this bill shall not become operative.

(c) Section 4 of this bill incorporates, in substantial part, amendments to Section 597 of the Penal Code proposed by this bill, SB 2136, and AB 4023. It shall only become operative if (1) all three bills are enacted and become effective January 1, 1989, (2) all three bills amend Section 597 of the Penal Code, (3) this bill is enacted after SB 2136 and AB 4023, in which case Sections 1, 2, and 3 of this bill shall not become operative.

SEC. 6. It is the express intent of the Legislature that the amendments to Section 597 of the Penal Code made by this act shall not (a) interfere with the existing rights to self-defense and use of force when it is reasonably believed that an animal poses an immediate threat or danger to a person or (b) interfere with any of the laws contained in the Fish and Game Code or the Food and Agricultural Code.

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.

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## CHAPTER 1523

An act to add Section 1936 to the Civil Code, relating to renting.

[Approved by Governor September 29, 1988. Filed with Secretary of State September 29, 1988.]

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

SECTION 1. Section 1936 is added to the Civil Code, to read:

1936. (a) For the purpose of this section, the following definitions shall apply:

(1) "Rental company" means any person or entity in the business of renting passenger vehicles to the public.

(2) "Renter" means any person in any manner obligated under a contract for the lease or hire of a passenger vehicle from a rental company for a period of less than 30 days.

(3) "Authorized driver" means (A) the renter, (B) the renter's spouse if that person is a licensed driver and satisfies the rental company's minimum age requirement, (C) the renter's employer or coworker if they are engaged in business activity with the renter, are

licensed drivers, and satisfy the rental company's minimum age requirement, and (D) any person expressly listed by the rental company on the renter's contract as an authorized driver.

(4) "Damage waiver" means a rental company's agreement not to hold a renter liable for all or any portion of any damage or loss related to the rented vehicle, any loss of use of the rented vehicle, or any storage, impound, towing, or administrative charges.

(5) "Estimated time for replacement" means the number of hours of labor, or fraction thereof, needed to replace damaged vehicle parts as set forth in collision damage estimating guides generally used in the vehicle repair business and commonly known as "crash books."

(6) "Estimated time for repair" means a good faith estimate of the reasonable number of hours of labor, or fraction thereof, needed to repair damaged vehicle parts.

(7) "Passenger vehicle" means a passenger vehicle as defined in Section 465 of the Vehicle Code.

(b) Except as limited by subdivision (c), a rental company and a renter may agree that the renter will be responsible for no more than all of the following:

(1) Physical or mechanical damage to the rented vehicle up to its fair market value, as determined in the customary market for the sale of that vehicle, resulting from collision regardless of the cause of the damage.

(2) Loss due to theft of the rented vehicle up to its fair market value, as determined in the customary market for the sale of that vehicle; however, the renter shall be presumed to have no liability for any loss due to theft if (A), an authorized driver has possession of the ignition key furnished by the rental company or an authorized driver establishes that the ignition key furnished by the rental company was not in the vehicle at the time of the theft and (B) an authorized driver files an official report of the theft with the police or other law enforcement agency within 24 hours of learning of the theft and reasonably cooperates with the rental company and the police or other law enforcement agency in providing information concerning the theft. The presumption set forth in this paragraph is a presumption affecting the burden of proof which the rental company may rebut by establishing that an authorized driver committed or aided and abetted the commission of the theft.

(3) Physical damage to the rented vehicle up to its fair market value, as determined in the customary market for the sale of that vehicle, resulting from vandalism occurring after, or in connection with, the theft of the rented vehicle; however, the renter shall have no liability for any damage due to vandalism if the renter would have no liability for theft pursuant to paragraph (2).

(4) Physical damage to the rented vehicle and loss of use of the rented vehicle as provided in paragraph (5) up to a total of five hundred dollars ($500) resulting from vandalism unrelated to the theft of the rented vehicle.

(5) Loss of use of the rented vehicle if the renter is liable for

damage or loss.

(6) Actual charges for towing, storage, and impound fees paid by the rental company if the renter is liable for damage or loss.

(7) An administrative charge which shall include the cost of appraisal and all other costs and expenses incident to the damage, loss, loss of use, repair, or replacement of the rented vehicle.

(c) The total amount of the renter's liability to the rental company resulting from damage to the rented vehicle shall not exceed the sum of the following:

(1) The estimated cost of parts which the rental company would have to pay to replace damaged vehicle parts. All discounts and price reductions or adjustments that are or will be received by the rental company shall be subtracted from the estimate to the extent not already incorporated in the estimate or otherwise promptly credited or refunded to the renter.

(2) The estimated cost of labor to replace damaged vehicle parts which shall not exceed the product of (A) the rate for labor usually paid by the rental company to replace vehicle parts of the type that were damaged and (B) the estimated time for replacement. All discounts and price reductions or adjustments that are or will be received by the rental company shall be subtracted from the estimate to the extent not already incorporated in the estimate or otherwise promptly credited or refunded to the renter.

(3) (A) The estimated cost of labor to repair damaged vehicle parts which shall not exceed the lesser of the following:

(i) The product of the rate for labor usually paid by the rental company to repair vehicle parts of the type that were damaged and the estimated time for repair.

(ii) The sum of the estimated labor and parts costs determined under paragraphs (1) and (2) to replace the same vehicle parts.

(B) All discounts and price reductions or adjustments that are or will be received by the rental company shall be subtracted from the estimate to the extent not already incorporated in the estimate or otherwise promptly credited or refunded to the renter.

(4) Except as provided in paragraph (5), the loss of use of the rented vehicle which shall not exceed the product of (A) the rental rate stated in the renter's contract, excluding all optional charges, and (B) the total of the estimated time for replacement and the estimated time for repair. For the purpose of converting the estimated time for repair into the same unit of time in which the rental rate is expressed, a day shall be deemed to consist of eight hours.

(5) Under any of the circumstances described in subdivision (f), the rental company's loss of use of the rented vehicle shall not exceed the product of (A) the rental rate stated in the renter's contract, excluding all optional charges and (B) the period from the date of the accident to the date the vehicle is ready to be returned to rental service. This paragraph applies only if the rental company uses its best efforts to effect repairs and return the vehicle to rental service

as soon as practicable.

(6) Actual charges for towing, storage, and impound fees paid by the rental company.

(7) The administrative charge described in paragraph (7) of subdivision (b) shall not exceed (A) fifty dollars ($50) if the total estimated cost for parts and labor is more than one hundred dollars ($100) up to and including five hundred dollars ($500), (B) one hundred dollars ($100) if the total estimated cost for parts and labor exceeds five hundred dollars ($500) up to and including one thousand five hundred dollars ($1,500), and (C) one hundred fifty dollars ($150) if the total estimated cost for parts and labor exceeds one thousand five hundred dollars ($1,500). No administrative charge shall be imposed if the total estimated cost of parts and labor is one hundred dollars ($100) or less.

(d) (1) The total amount of an authorized driver's liability to the rental company, if any, for damage occurring during the authorized driver's operation of the rented vehicle shall not exceed the amount of the renter's liability under subdivision (c).

(2) A rental company shall not recover from the renter and another authorized driver an amount exceeding the renter's liability under subdivision (c).

(3) A rental company shall not recover from the renter or other authorized driver for any item described in subdivision (b) to the extent the rental company obtains recovery from any other person.

(4) This section applies only to the maximum liability of a renter or other authorized driver to the rental company resulting from damage to the rented vehicle and not to the liability of any other person.

(e) (1) Except as provided in subdivision (f), every damage waiver shall provide or, if not expressly stated in writing, shall be deemed to provide that the renter has no liability for any damage, loss, loss of use, or any cost or expense incident thereto.

(2) Except as provided in subdivision (f), every limitation, exception, or exclusion to any damage waiver is void and unenforceable.

(f) A rental company may provide in the rental contract that a damage waiver does not apply under any of the following circumstances:

(1) Damage or loss results from an authorized driver's (A) intentional, willful, wanton, or reckless conduct, (B) operation of the vehicle under the influence of drugs or alcohol in violation of Section 23152 of the Vehicle Code, (C) towing or pushing anything, or (D) operation of the vehicle on an unpaved road if the damage or loss is a direct result of the road or driving conditions;

(2) Damage or loss occurs while the vehicle is (A) used for commercial hire, (B) used in connection with conduct that could be properly charged as a felony, (C) involved in a speed test or contest or in driver training activity, (D) operated by a person other than

an authorized driver, or (E) operated outside of the United States; or

(3) Any authorized driver (A) provided fraudulent information to the rental company or, (B) provided false information and the rental company would not have rented the vehicle if it had instead received true information.

(g) (1) A rental company which offers or provides a damage waiver for any consideration in addition to the rental rate shall clearly and conspicuously disclose the following information in the rental contract or holder in which the contract is placed and, also, in signs posted at the place, such as the counter, where the renter signs the rental contract: (A) the nature of the renter's liability, e.g., liability for all collision damage regardless of cause, (B) the extent of the renter's liability, e.g., liability for damage or loss up to a specified amount, (C) the renter's personal insurance policy may provide coverage for all or a portion of the renter's potential liability, (D) the renter should consult with his or her insurer to determine the scope of insurance coverage, (E) the renter may purchase an optional damage waiver to cover all liability subject to whatever exceptions the rental company expressly lists that are permitted under subdivision (f), and (F) the charge for the damage waiver.

(2) The following is an example, for purposes of illustration and not limitation, of a notice fulfilling the requirements of paragraph (1) for a rental company that imposes liability on the renter for collision damage to the full value of the vehicle:

NOTICE ABOUT
YOUR FINANCIAL RESPONSIBILITY AND
OPTIONAL DAMAGE WAIVER

You are responsible for all collision damage to the rented vehicle even if someone else caused it or the cause is unknown. You are responsible for the cost of repair up to the value of the vehicle, loss of use, and towing, storage, and impound fees.

Your own insurance may cover all or part of your financial responsibility for the rented vehicle. You should check with your insurance company to find out about your coverage.

The rental company will not hold you responsible if you buy damage waiver. But, damage waiver will not protect you if (list exceptions).

The cost of optional damage waiver is $_____ for every (day or week).

(h) Notwithstanding any other provision of law, a rental company may sell damage waiver but shall not charge more than nine dollars ($9) per full or partial 24-hour rental day for damage waiver.

(i) A rental company which disseminates in this state an advertisement containing a rental rate shall include in that advertisement a clearly readable statement of the charge for damage waiver and a statement that damage waiver is optional.

(j) (1) A rental company shall not require the purchase of a damage waiver, optional insurance, or any other optional good or service.

(2) A rental company shall not engage in any unfair, deceptive, or coercive conduct to induce a renter to purchase damage waiver, optional insurance, or any other optional good or service, including conduct such as, but not limited to, refusing to honor the renter's reservation, limiting the availability of vehicles, requiring a deposit, or debiting or blocking the renter's credit card account for a sum equivalent to a deposit if the renter declines to purchase damage waiver, optional insurance, or any other optional good or service.

(k) (1) A rental company shall not seek to recover any portion of any claim arising out of damage to, or loss of, the rented vehicle by processing a credit card charge or causing any debit or block to be placed on the renter's credit card account.

(2) A rental company shall not engage in any unfair, deceptive, or coercive tactics in attempting to recover or in recovering on any claim arising out of damage to, or loss of, the rented vehicle.

(*l*) (1) A rental company shall only advertise, quote, and charge a rental rate that includes the entire amount except taxes and a mileage charge, if any, which a renter must pay to hire or lease the vehicle for the period of time to which the rental rate applies. A rental company shall not charge in addition to the rental rate, taxes, and mileage charge, if any, any fee which must be paid by the renter as a condition of hiring or leasing the vehicle, such as, but not limited to, required fuel or airport surcharges, nor any fee for transporting the renter to the location where the rented vehicle will be delivered to the renter.

(2) In addition to the rental rate, taxes, and mileage charge, if any, a rental company may charge for an item or service provided in connection with a particular rental transaction if the renter could have avoided incurring the charge by choosing not to obtain or utilize the optional item or service. Items and services for which the rental company may impose an additional charge, include, but are not limited to, optional insurance and accessories requested by the renter, service charges incident to the renter's optional return of the vehicle to a location other than the location where the vehicle was hired or leased, and charges for refueling the vehicle at the conclusion of the rental transaction in the event the renter did not return the vehicle with as much fuel as was in the fuel tank at the beginning of the rental. A rental company also may impose an additional charge based on reasonable age criteria established by the rental company.

(3) A rental company shall not charge any fee for authorized drivers in addition to the rental charge for an individual renter.

(4) If a rental company states a rental rate in print advertisement or in a telephonic, in-person, or computer-transmitted quotation, the rental company shall clearly disclose in that advertisement or quotation the terms of any mileage conditions relating to the

advertised or quoted rental rate, including, but not limited to, to the extent applicable, the amount of mileage and gas charges, the number of miles for which no charges will be imposed, and a description of geographic driving limitations within the United States and Canada.

(5) If a rental company delivers a vehicle to a renter at a location other than the location where the rental company normally carries on its business, the rental company shall not charge the renter any amount for the rental for the period before the delivery of the vehicle. If a rental company picks up a rented vehicle from a renter at a location other than the location where the rental company normally carries on its business, the rental company shall not charge the renter any amount for the rental for the period after the renter notifies the rental company to pick up the vehicle.

(m) A renter may bring an action against a rental company for the recovery of damages and appropriate equitable relief for a violation of this section. The prevailing party shall be entitled to recover reasonable attorney's fees and costs.

(n) Any waiver of any of the provisions of this section shall be void and unenforceable as contrary to public policy.

SEC. 2. If any provision of Section 1 of this act or if any application thereof to any person or circumstance is held unconstitutional, the remainder of Section 1 and the application of its provisions to other persons and circumstances shall not be affected thereby.

SEC. 3. Nothing in this measure shall create a new cause of action for damages or other relief against a rental company or any other person or entity as to any transaction between a rental company and a renter occurring before January 1, 1989. Nothing in this measure shall affect or apply to any cause of action accruing independently of this measure before January 1, 1989. This measure and its legislative history shall not be admissible for any purpose before a trier of fact in any action involving a transaction between a rental company and a renter occurring before January 1, 1989.

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## CHAPTER 1524

An act to amend Section 1231.1 of the Public Utilities Code, relating to transportation.

[Approved by Governor September 29, 1988. Filed with Secretary of State September 29, 1988.]

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

SECTION 1. Section 1231.1 of the Public Utilities Code is amended to read:

1231.1. In each annual proposed budget prepared by the

Department of Transportation under Section 165 of the Streets and Highways Code, the sum of one million dollars ($1,000,000) shall be set aside for allocations to the Public Utilities Commission for the purpose of paying to the railroad or street railroad corporations the share of the costs to cities, counties, and cities and counties of maintaining automatic grade-crossing protection. The Public Utilities Commission may recommend a sum greater than one million dollars ($1,000,000) be set aside for allocations to the Public Utilities Commission for the purpose of making those payments, if the Public Utilities Commission finds that the sum of one million dollars ($1,000,000) is not sufficient due to an increase in the number of grade-crossing protection devices, or increase in the cost of maintenance of those devices. The specific amount of the total allocation shall be determined by the California Transportation Commission and shall constitute the amount necessary for that maintenance. In arriving at the amount, the California Transportation Commission shall consult with the Public Utilities Commission. Payment shall be made on the basis of verified claims filed with the Public Utilities Commission by the railroad or street railroad corporation responsible for maintenance of automatic grade-crossing protection. Any amounts not expended by the Public Utilities Commission in any one fiscal year may be credited to subsequent annual allocations.

Funds appropriated for the purposes of this section shall be available for allocation and expenditure without regard to fiscal years.

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## CHAPTER 1525

An act to amend Section 11580 of, and to add Sections 11573.5 and 11575.5 to, the Health and Safety Code, relating to controlled substances.

[Approved by Governor September 29, 1988. Filed with Secretary of State September 29, 1988.]

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

SECTION 1. Section 11573.5 is added to the Health and Safety Code, to read:

11573.5. (a) At the time of application for issuance of a temporary writ pursuant to Section 11573, if proof of the existence of the nuisance depends, in whole or part, upon the affidavits of witnesses who are not peace officers, upon a showing of prior threats of violence or acts of violence by any defendant or other person, the court may issue orders to protect those witnesses, including, but not limited to, nondisclosure of the name, address, or any other information which may identify those witnesses.

(b) A temporary writ issued pursuant to Section 11573 may include closure of the premises pending trial when a prior writ does not result in the abatement of the nuisance. The duration of the writ shall be within the court's discretion. In no event shall the total period of closure pending trial exceed one year. Prior to ruling on a request for closure the court may order that some or all of the rent payments owing to the defendant be placed in an escrow account for a period of up to 90 days or until the nuisance is abated. If the court subsequently orders a closure of the premises, the money in the escrow account shall be used to pay for relocation assistance pursuant to subdivision (d). In ruling upon a request for closure, whether for a defined or undefined duration, the court shall consider all of the following factors:

(1) The extent and duration of the nuisance at the time of the request.

(2) Prior efforts by the defendant to comply with previous court orders to abate the nuisance.

(3) The nature and extent of any effect which the nuisance has upon other persons, such as residents or businesses.

(4) Any effect of prior orders, placing displaced residents' or occupants' rent payments into an escrow account, upon the defendant's efforts to abate the nuisance.

(5) The effect of granting the request upon any resident or occupant of the premises who is not named in the action, including the availability of alternative housing or relocation assistance, the pendancy of any action to evict a resident or occupant, and any evidence of participation by a resident or occupant in the nuisance activity.

(c) In making an order of closure pursuant to this section, the court may order the premises vacated and may issue any other orders necessary to effectuate the closure. However, all tenants who may be affected by the order shall be provided reasonable notice and an opportunity to be heard at all hearings regarding the closure request prior to the issuance of any order.

(d) In making an order of closure pursuant to this section, the court shall order the defendant to provide relocation assistance to any tenant ordered to vacate the premises, provided the court determines that the tenant was not actively involved in the nuisance activity. The relocation assistance ordered to be paid by the defendant shall be in the amount necessary to cover moving costs, security deposits for utilities and comparable housing, adjustment in any lost rent and any other reasonable expenses the court may deem fair and reasonable as a result of the court's order.

(e) At the hearing to order closure pursuant to this section, the court may make the following orders with respect to any displaced tenant not actively involved in the nuisance:

(1) Priority for senior citizens, physically handicapped persons, or persons otherwise suffering from a permanent or temporary disability for claims against money for relocation assistance.

(2) Order the local agency seeking closure pursuant to this section to make reasonable attempts to seek additional sources of funds for relocation assistance to displaced tenants, if deemed necessary.

(3) Appoint a receiver to oversee the disbursement of relocation assistance funds, whose services shall be paid from the escrow fund.

(4) Where a defendant has paid relocation assistance pursuant to subdivision (d), the escrow account under subdivision (b) may be released to the defendant and no appointment under paragraph (4) shall be made.

(f) The remedies set forth pursuant to this section shall be in addition to any other existing remedies for nuisance abatement actions.

SEC. 2. Section 11575.5 is added to the Health and Safety Code, to read:

11575.5. In any action for abatement instituted pursuant to this article, all evidence otherwise authorized by law, including evidence of reputation in a community, as provided in the Evidence Code, shall be admissible to prove the existence of a nuisance.

SEC. 3. Section 11580 of the Health and Safety Code is amended to read:

11580. A violation or disobedience of the injunction or order for abatement is punishable as a contempt of court by a fine of not less than five hundred dollars ($500) nor more than ten thousand dollars ($10,000), or by imprisonment in the county jail for not less than one nor more than six months, or by both.

A contempt may be based on a violation of any court order including failure to pay relocation assistance. Notwithstanding any other provision of law, any fines assessed for contempt shall first be held by the court and applied to satisfaction of the court's order for relocation assistance pursuant to subdivision (d) of Section 11573.5.

Evidence concerning the duration and repetitive nature of the violations shall be considered by the court in determining the contempt penalties.

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## CHAPTER 1526

An act to add Section 199.715 to the Health and Safety Code, relating to AIDS, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 29, 1988. Filed with Secretary of State September 29, 1988.]

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

SECTION 1. Section 199.715 is added to the Health and Safety Code, to read:

199.715. The state department may approve up to 20 pilot

projects to provide housing and food for homeless persons who have AIDS or ARC. The state department may provide funding to a selected number these pilot projects. All approved pilot projects shall enter into a contract with the state department, which shall define the conditions for participation as pilot projects. Notwithstanding Chapter 2 (commencing with Section 1250) and Chapter 3 (commencing with Section 1500) of Division 2, an approved pilot project shall not be required to be licensed if it is organized and operated for the purpose of providing room and board to homeless persons with AIDS or ARC and it is not organized and operated to directly provide medical or nursing care.

The pilot projects shall maintain a written agreement for referral and acceptance of residents with at least one registered nurse case manager, general acute care hospital, and licensed home health agency. The contract requirements for the pilot projects shall include the criteria and protocols which the state department determines are appropriate to assure that the health, safety, and welfare of residents are protected. The state department may additionally provide for or enter into a contract for evaluation and assessment related to the approved pilot projects.

The implementation of these pilot projects shall not be subject to the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

This section shall become inoperative on July 1, 1990, and as of January 1, 1991, is repealed, unless a later enacted statute which becomes effective on or before January 1, 1991, deletes or extends the date on which it becomes inoperative and is repealed.

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:

Due to the increasing severity of the AIDS epidemic and the increasing number of homeless AIDS patients, it is necessary that this act go into immediate effect.

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## CHAPTER 1527

An act to amend Section 597 of the Penal Code, relating to animals.

[Approved by Governor September 29, 1988. Filed with Secretary of State September 29, 1988.]

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

SECTION 1. Section 597 of the Penal Code, as amended by Chapter 127 of the Statutes of 1988, is amended to read:

597. (a) Except as provided in subdivision (c), every person who maliciously and intentionally maims, mutilates, tortures, or wounds

a living animal which is the property of the person or which is the property of another, or maliciously and intentionally kills an animal which is the property of the person or which is the property of another, is guilty of an offense punishable by imprisonment in the state prison, or by a fine of not more than twenty thousand dollars ($20,000), or by both the fine and imprisonment, or, alternatively, by imprisonment in the county jail for not more than one year, or by a fine of not more than twenty thousand dollars ($20,000), or by both the fine and imprisonment.

(b) Except as otherwise provided in subdivision (a) or (c), every person who overdrives, overloads, drives when overloaded, overworks, tortures, torments, deprives of necessary sustenance, drink, or shelter, cruelly beats, mutilates, or cruelly kills any animal, or causes or procures any animal to be so overdriven, overloaded, driven when overloaded, overworked, tortured, tormented, deprived of necessary sustenance, drink, shelter, or to be cruelly beaten, mutilated, or cruelly killed; and whoever, having the charge or custody of any animal, either as owner or otherwise, subjects any animal to needless suffering, or inflicts unnecessary cruelty upon the animal, or in any manner abuses any animal, or fails to provide the animal with proper food, drink, or shelter or protection from the weather, or who drives, rides, or otherwise uses the animal when unfit for labor, is, for every such offense, guilty of a crime punishable as a misdemeanor or as a felony.

(c) Every person who maliciously and intentionally maims, mutilates, or tortures any mammal, bird, reptile, amphibian, or fish as described in subdivision (d), is guilty of an offense punishable by imprisonment in the state prison, or by a fine of not more than twenty thousand dollars ($20,000), or by both the fine and imprisonment, or, alternatively, by imprisonment in the county jail for not more than one year, by a fine of not more than twenty thousand dollars ($20,000), or by both the fine and imprisonment.

(d) Subdivision (c) applies to any mammal, bird, reptile, amphibian, or fish which is a creature described as follows:

(1) Endangered species or threatened species as described in Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code.

(2) Fully protected birds described in Section 3511 of the Fish and Game Code.

(3) Fully protected mammals described in Chapter 8 (commencing with Section 4700) of Part 3 of Division 4 of the Fish and Game Code.

(4) Fully protected reptiles and amphibians described in Chapter 2 (commencing with Section 5050) of Division 5 of the Fish and Game Code.

(5) Fully protected fish as described in Section 5515 of the Fish and Game Code.

This subdivision does not supersede or affect any provisions of law relating to taking of the described species, including, but not limited

to, Section 12008 of the Fish and Game Code.

(e) For the purposes of subdivision (c), each act of malicious and intentional maiming, mutilating, or torturing a separate specimen of a creature described in subdivision (d) is a separate offense. If any person is charged with a violation of subdivision (c), the proceedings shall be subject to Section 12157 of the Fish and Game Code.

(f) Upon the conviction of a person charged with a violation of this section by causing or permitting an act of cruelty, as defined in Section 599b, all animals lawfully seized and impounded with respect to the violation by a peace officer, officer of a humane society, or officer of a pound or animal regulation department of a public agency shall be adjudged by the court to be forfeited and shall thereupon be awarded to the impounding officer for proper disposition. A person convicted of a violation of this section by causing or permitting an act of cruelty, as defined in Section 599b, shall be liable to the impounding officer for all costs of impoundment from the time of seizure to the time of proper disposition.

Mandatory seizure or impoundment shall not apply to animals in properly conducted scientific experiments or investigations performed under the authority of the faculty of a regularly incorporated medical college or university of this state.

SEC. 2. Section 597 of the Penal Code, as amended by Chapter 127 of the Statutes of 1988, is amended to read:

597. (a) Except as provided in subdivision (c) of this section or Section 599c, every person who maliciously and intentionally maims, mutilates, tortures, or wounds a living animal, or maliciously and intentionally kills an animal , is guilty of an offense punishable by imprisonment in the state prison, or by a fine of not more than twenty thousand dollars ($20,000), or by both the fine and imprisonment, or, alternatively, by imprisonment in the county jail for not more than one year, or by a fine of not more than twenty thousand dollars ($20,000), or by both the fine and imprisonment.

(b) Except as otherwise provided in subdivision (a) or (c), every person who overdrives, overloads, drives when overloaded, overworks, tortures, torments, deprives of necessary sustenance, drink, or shelter, cruelly beats, mutilates, or cruelly kills any animal, or causes or procures any animal to be so overdriven, overloaded, driven when overloaded, overworked, tortured, tormented, deprived of necessary sustenance, drink, shelter, or to be cruelly beaten, mutilated, or cruelly killed; and whoever, having the charge or custody of any animal, either as owner or otherwise, subjects any animal to needless suffering, or inflicts unnecessary cruelty upon the animal, or in any manner abuses any animal, or fails to provide the animal with proper food, drink, or shelter or protection from the weather, or who drives, rides, or otherwise uses the animal when unfit for labor, is, for every such offense, guilty of a crime punishable as a misdemeanor or as a felony.

(c) Every person who maliciously and intentionally maims, mutilates, or tortures any mammal, bird, reptile, amphibian, or fish

as described in subdivision (d), is guilty of an offense punishable by imprisonment in the state prison, or by a fine of not more than twenty thousand dollars ($20,000), or by both the fine and imprisonment, or, alternatively, by imprisonment in the county jail for not more than one year, by a fine of not more than twenty thousand dollars ($20,000), or by both the fine and imprisonment.

(d) Subdivision (c) applies to any mammal, bird, reptile, amphibian, or fish which is a creature described as follows:

(1) Endangered species or threatened species as described in Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code.

(2) Fully protected birds described in Section 3511 of the Fish and Game Code.

(3) Fully protected mammals described in Chapter 8 (commencing with Section 4700) of Part 3 of Division 4 of the Fish and Game Code.

(4) Fully protected reptiles and amphibians described in Chapter 2 (commencing with Section 5050) of Division 5 of the Fish and Game Code.

(5) Fully protected fish as described in Section 5515 of the Fish and Game Code.

This subdivision does not supersede or affect any provisions of law relating to taking of the described species, including, but not limited to, Section 12008 of the Fish and Game Code.

(e) For the purposes of subdivision (c), each act of malicious and intentional maiming, mutilating, or torturing a separate specimen of a creature described in subdivision (d) is a separate offense. If any person is charged with a violation of subdivision (c), the proceedings shall be subject to Section 12157 of the Fish and Game Code.

(f) Upon the conviction of a person charged with a violation of this section by causing or permitting an act of cruelty, as defined in Section 599b, all animals lawfully seized and impounded with respect to the violation by a peace officer, officer of a humane society, or officer of a pound or animal regulation department of a public agency shall be adjudged by the court to be forfeited and shall thereupon be awarded to the impounding officer for proper disposition. A person convicted of a violation of this section by causing or permitting an act of cruelty, as defined in Section 599b, shall be liable to the impounding officer for all costs of impoundment from the time of seizure to the time of proper disposition.

Mandatory seizure or impoundment shall not apply to animals in properly conducted scientific experiments or investigations performed under the authority of the faculty of a regularly incorporated medical college or university of this state.

SEC. 3. Section 597 of the Penal Code, as amended by Chapter 127 of the Statutes of 1988, is amended to read:

597. (a) Except as provided in subdivision (c), every person who maliciously and intentionally maims, mutilates, tortures, or wounds a living animal which is the property of the person or which is the

property of another, or maliciously and intentionally kills an animal which is the property of the person or which is the property of another, is guilty of an offense punishable by imprisonment in the state prison, or by a fine of not more than twenty thousand dollars ($20,000), or by both the fine and imprisonment, or, alternatively, by imprisonment in the county jail for not more than one year, or by a fine of not more than twenty thousand dollars ($20,000), or by both the fine and imprisonment.

(b) Except as otherwise provided in subdivision (a) or (c), every person who overdrives, overloads, drives when overloaded, overworks, tortures, torments, deprives of necessary sustenance, drink, or shelter, cruelly beats, mutilates, or cruelly kills any animal, or causes or procures any animal to be so overdriven, overloaded, driven when overloaded, overworked, tortured, tormented, deprived of necessary sustenance, drink, shelter, or to be cruelly beaten, mutilated, or cruelly killed; and whoever, having the charge or custody of any animal, either as owner or otherwise, subjects any animal to needless suffering, or inflicts unnecessary cruelty upon the animal, or in any manner abuses any animal, or fails to provide the animal with proper food, drink, or shelter or protection from the weather, or who drives, rides, or otherwise uses the animal when unfit for labor, is, for every such offense, guilty of a crime punishable as a misdemeanor or as a felony or alternatively punishable as a misdemeanor or a felony and by a fine of not more than twenty thousand dollars ($20,000).

(c) Every person who maliciously and intentionally maims, mutilates, or tortures any mammal, bird, reptile, amphibian, or fish as described in subdivision (d), is guilty of an offense punishable by imprisonment in the state prison, or by a fine of not more than twenty thousand dollars ($20,000), or by both the fine and imprisonment, or, alternatively, by imprisonment in the county jail for not more than one year, by a fine of not more than twenty thousand dollars ($20,000), or by both the fine and imprisonment.

(d) Subdivision (c) applies to any mammal, bird, reptile, amphibian, or fish which is a creature described as follows:

(1) Endangered species or threatened species as described in Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code.

(2) Fully protected birds described in Section 3511 of the Fish and Game Code.

(3) Fully protected mammals described in Chapter 8 (commencing with Section 4700) of Part 3 of Division 4 of the Fish and Game Code.

(4) Fully protected reptiles and amphibians described in Chapter 2 (commencing with Section 5050) of Division 5 of the Fish and Game Code.

(5) Fully protected fish as described in Section 5515 of the Fish and Game Code.

This subdivision does not supersede or affect any provisions of law

relating to taking of the described species, including, but not limited to, Section 12008 of the Fish and Game Code.

(e) For the purposes of subdivision (c) each act of malicious and intentional maiming, mutilating, or torturing a separate specimen of a creature described in subdivision (d) is a separate offense. If any person is charged with a violation of subdivision (c), the proceedings shall be subject to Section 12157 of the Fish and Game Code.

(f) Upon the conviction of a person charged with a violation of this section by causing or permitting an act of cruelty, as defined in Section 599b, all animals lawfully seized and impounded with respect to the violation by a peace officer, officer of a humane society, or officer of a pound or animal regulation department of a public agency shall be adjudged by the court to be forfeited and shall thereupon be awarded to the impounding officer for proper disposition. A person convicted of a violation of this section by causing or permitting an act of cruelty, as defined in Section 599b, shall be liable to the impounding officer for all costs of impoundment from the time of seizure to the time of proper disposition.

Mandatory seizure or impoundment shall not apply to animals in properly conducted scientific experiments or investigations performed under the authority of the faculty of a regularly incorporated medical college or university of this state.

SEC. 4. Section 597 of the Penal Code, as amended by Chapter 127 of the Statutes of 1988, is amended to read:

597. (a) Except as provided in subdivision (c) of this section or Section 599c, every person who maliciously and intentionally maims, mutilates, tortures, or wounds a living animal, or maliciously and intentionally kills an animal , is guilty of an offense punishable by imprisonment in the state prison, or by a fine of not more than twenty thousand dollars ($20,000), or by both the fine and imprisonment, or, alternatively, by imprisonment in the county jail for not more than one year, or by a fine of not more than twenty thousand dollars ($20,000), or by both the fine and imprisonment.

(b) Except as otherwise provided in subdivision (a) or (c), every person who overdrives, overloads, drives when overloaded, overworks, tortures, torments, deprives of necessary sustenance, drink, or shelter, cruelly beats, mutilates, or cruelly kills any animal, or causes or procures any animal to be so overdriven, overloaded, driven when overloaded, overworked, tortured, tormented, deprived of necessary sustenance, drink, shelter, or to be cruelly beaten, mutilated, or cruelly killed; and whoever, having the charge or custody of any animal, either as owner or otherwise, subjects any animal to needless suffering, or inflicts unnecessary cruelty upon the animal, or in any manner abuses any animal, or fails to provide the animal with proper food, drink, or shelter or protection from the weather, or who drives, rides, or otherwise uses the animal when unfit for labor, is, for every such offense, guilty of a crime punishable as a misdemeanor or as a felony or alternatively punishable as a misdemeanor or a felony and by a fine of not more than twenty

thousand dollars ($20,000).

(c) Every person who maliciously and intentionally maims, mutilates, or tortures any mammal, bird, reptile, amphibian, or fish as described in subdivision (d), is guilty of an offense punishable by imprisonment in the state prison, or by a fine of not more than twenty thousand dollars ($20,000), or by both the fine and imprisonment, or, alternatively, by imprisonment in the county jail for not more than one year, by a fine of not more than twenty thousand dollars ($20,000), or by both the fine and imprisonment.

(d) Subdivision (c) applies to any mammal, bird, reptile, amphibian, or fish which is a creature described as follows:

(1) Endangered species or threatened species as described in Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code.

(2) Fully protected birds described in Section 3511 of the Fish and Game Code.

(3) Fully protected mammals described in Chapter 8 (commencing with Section 4700) of Part 3 of Division 4 of the Fish and Game Code.

(4) Fully protected reptiles and amphibians described in Chapter 2 (commencing with Section 5050) of Division 5 of the Fish and Game Code.

(5) Fully protected fish as described in Section 5515 of the Fish and Game Code.

This subdivision does not supersede or affect any provisions of law relating to taking of the described species, including, but not limited to, Section 12008 of the Fish and Game Code.

(e) For the purposes of subdivision (c), each act of malicious and intentional maiming, mutilating, or torturing a separate specimen of a creature described in subdivision (d) is a separate offense. If any person is charged with a violation of subdivision (c), the proceedings shall be subject to Section 12157 of the Fish and Game Code.

(f) Upon the conviction of a person charged with a violation of this section by causing or permitting an act of cruelty, as defined in Section 599b, all animals lawfully seized and impounded with respect to the violation by a peace officer, officer of a humane society, or officer of a pound or animal regulation department of a public agency shall be adjudged by the court to be forfeited and shall thereupon be awarded to the impounding officer for proper disposition. A person convicted of a violation of this section by causing or permitting an act of cruelty, as defined in Section 599b, shall be liable to the impounding officer for all costs of impoundment from the time of seizure to the time of proper disposition.

Mandatory seizure or impoundment shall not apply to animals in properly conducted scientific experiments or investigations performed under the authority of the faculty of a regularly incorporated medical college or university of this state.

SEC. 5. (a) Section 2 of this bill incorporates amendments to Section 597 of the Penal Code proposed by both this bill and AB 2863.

It shall only become operative if (1) both bills are enacted and become effective January 1, 1989, (2) each bill amends Section 597 of the Penal Code, and (3) AB 4023 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 2863, in which case Sections 1, 3, and 4 of this bill shall not become operative.

(b) Section 3 of this bill incorporates, in substantial part, amendments to Section 597 of the Penal Code proposed by both this bill and AB 4023. It shall only become operative if (1) both bills are enacted and become effective January 1, 1989, (2) each bill amends Section 597 of the Penal Code, (3) AB 2863 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 4023 in which case Sections 1, 2, and 4 of this bill shall not become operative.

(c) Section 4 of this bill incorporates, in substantial part, amendments to Section 597 of the Penal Code proposed by this bill, AB 2863, and AB 4023. It shall only become operative if (1) all three bills are enacted and become effective January 1, 1989, (2) all three bills amend Section 597 of the Penal Code, (3) this bill is enacted after AB 2863 and AB 4023, in which case Sections 1, 2, and 3 of this bill shall not become operative.

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## CHAPTER 1528

An act to amend Sections 14501, 14509.2, 14511.7, 14520.5, 14526.5, 14530.5, 14536, 14538, 14542, 14551, 14561, 14570, 14571, 14571.2, 14571.3, 14571.7, 14571.8, 14572, 14572.5, 14573, 14573.5, 14580, 14581, and 14585 of, to add Sections 14520.6 and 14529.5 to, and to repeal Sections 14530.5, 14571.4, 14571.5, and 14576 of, the Public Resources Code, relating to beverage containers, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 29, 1988. Filed with Secretary of State September 29, 1988.]

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

SECTION 1. The Legislature hereby finds and declares that any state official or employee and any private person or entity, when acting to affect scrap values or quantities of materials being recycled, as specified in Section 14529.5 of the Public Resources Code, should not be subject to state antitrust or trade regulation laws.

SEC. 2. Section 14501 of the Public Resources Code is amended to read:

14501. The Legislature finds and declares as follows:

(a) Experience in this state and others demonstrates that financial incentives and convenient return systems assure the efficient and large-scale recycling of beverage containers. Accordingly, it is the

intent of the Legislature to encourage increased, and more convenient, beverage container redemption opportunities for all consumers. These redemption opportunities shall consist of dealer and other shopping center locations, independent and industry operated recycling centers, curbside programs, nonprofit dropoff programs, and other recycling systems that assure all consumers, in every region of the state, the opportunity to return beverage containers conveniently, efficiently, and economically.

(b) California grocery, beer, soft drink, container manufacturing, labor, agriculture, consumer, environmental, government, citizen, recreational, taxpayer, and recycling groups have joined together in calling for an innovative program to generate large-scale redemption and recycling of beverage containers.

(c) This division establishes a beverage container recycling goal of 80 percent, and when the redemption rate for any one type of beverage container falls below 65 percent, the act provides for an increased redemption value.

(d) It is the intent of the Legislature to ensure that every container type proves its own recyclability.

(e) It is the intent of the Legislature to make redemption and recycling convenient to consumers, and the Legislature hereby urges cities and counties, when exercising their zoning authority, to act favorably on the siting of multimaterial recycling centers, reverse vending machines, mobile recycling units, or other types of recycling opportunities, as necessary for consumer convenience, and the overall success of litter abatement and beverage container recycling in the state.

(f) The purpose of this chapter is to create and maintain a marketplace where it is profitable to establish sufficient recycling centers and locations to provide consumers with convenient recycling opportunities through the establishment of minimum redemption values, bonuses, processing fees, and, through the proper application of these elements, to enhance the profitability of recycling centers, recycling locations, and other beverage container recycling programs.

(g) The responsibility to provide convenient, efficient, and economical redemption opportunities rests jointly with manufacturers, distributors, dealers, recyclers, processors, and the Department of Conservation.

(h) It is the intent of the Legislature, in enacting this division, that all empty beverage containers redeemed shall be recycled, and that the responsibilities and regulations of the department shall be determined and implemented in a manner which favors the recycling of redeemed containers, as opposed to their disposal.

(i) Nothing in this division shall be interpreted as affecting the current business practices of scrap dealers or recycling centers, except that, to the extent they function as a recycling center or processor, they shall do so in accordance with this division.

(j) The program established by this division will contribute

significantly to the reduction of the beverage container component of litter in this state.

(k) It is the intent of the Legislature, in enacting this division, to improve beverage container redemption rates by maximizing the total return possible to California consumers. Therefore, the Department of Conservation is encouraged to establish redemption bonus rates at or above a minimum of one-half of one cent ($0.005) per container. The resulting combination of redemption value and redemption bonus would be a minimum of five cents ($0.05) return for every two beverage containers redeemed on beverage container types which fail to achieve a 65-percent redemption rate by July 1, 1989, and thereby incur a two-cent ($0.02) redemption value on January 1, 1990, and a three-cent ($0.03) redemption value for every two beverage containers redeemed on beverage container types which do achieve a 65-percent redemption rate by July 1, 1989, and thereby retain a redemption value of one cent ($0.01).

SEC. 3. Section 14509.2 of the Public Resources Code is amended to read:

14509.2. "Convenience incentive payment" means a special payment, as determined by the department, as an incentive to current or potential recycling centers to establish a recycling center or location meeting the requirements of Section 14571.

SEC. 4. Section 14511.7 of the Public Resources Code is amended to read:

14511.7. "Dropoff or collection program" means any person, association, nonprofit corporation, church, club, or other organization certified by the department, and which accepts or collects empty beverage containers from consumers with the intention to recycle them, or any waste reduction facility that separates beverage containers from the waste stream with the intent to recycle them. "Dropoff or collection program" does not include a certified recycling center, nonprofit dropoff program, or curbside program.

SEC. 5. Section 14520.5 of the Public Resources Code is amended to read:

14520.5. "Recycling location" means a place, mobile unit, reverse vending machine, or other device where a certified recycling center accepts one or more types of empty beverage containers from consumers, and pays or provides the redemption value and any applicable redemption bonus for one or more types of empty beverage containers. For purposes of subdivision (c) of Section 14572, "recycling location" means the aluminum reverse vending machine and does not mean the machine's physical location.

SEC. 6. Section 14520.6 is added to the Public Resources Code, to read:

14520.6. "Noncertified recycler" means an operation which is not certified by the department and which purchases empty beverage containers from consumers, or from dropoff or collection programs.

SEC. 7. Section 14526.5 of the Public Resources Code is amended

to read:

14526.5. "Supermarket" means a full-line, self-service retail store with gross annual sales of two million dollars ($2,000,000), or more, and which sells a line of dry grocery, canned goods, or nonfood items and some perishable items. For purposes of determining which dealers are supermarkets, the department may use any relevant data, including, but not limited to, the information in the Progressive Grocer 1986 Marketing Guidebook and any computer printouts developed in conjunction with the guidebook.

SEC. 8. Section 14529.5 is added to the Public Resources Code, to read:

14529.5. Any action taken by the department, or by any person or entity, affecting scrap values, the quantities of materials being recycled, or the method of invoicing the sale of beverages pursuant to this division is not a violation of the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code) and the Unfair Practices Act (Chapter 4 (commencing with Section 17000) of Part 2 of Division 7 of the Business and Professions Code).

SEC. 9. Section 14530.5 of the Public Resources Code is amended to read:

14530.5. (a) For purposes of entering into contracts for consulting, promotional, or advisory services necessary to implement this division, the requirements of Sections 11042 and 14615 of the Government Code and Sections 10295 and 10318 of the Public Contract Code do not apply to the activities of the department pursuant to this division, except that any sole source contract awarded by the department shall be reviewed and approved by the Department of General Services.

(b) In addition to any regulations which the department is required by statute to adopt, the department may adopt any other rules and regulations pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code which the department determines may be necessary or useful to carry out this division or any of the department's duties or responsibilities imposed pursuant to this division.

(c) The department may prepare, publish, and issue printed pamphlets, promotional materials, and bulletins which the director deems necessary for the dissemination of information to the public concerning the activities of the department pursuant to this division.

SEC. 10. Section 14530.5 of the Public Resources Code is repealed.

SEC. 10.5. Section 14536 of the Public Resources Code is amended to read:

14536. (a) Except as provided in subdivision (b), the director shall adopt, amend, or repeal all rules and regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(b) The director shall adopt regulations, and may adopt

emergency regulations for the purposes of implementing Sections 14538, 14539, 14541, 14550, 14574, and 14591.

Any emergency regulations, if adopted, shall be adopted in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, and for the purposes of that chapter, including Section 11349.6 of the Government Code, the adoption of these regulations 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. Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, any emergency regulations adopted pursuant to this section shall be filed with, but not be repealed by, the Office of Administrative Law and shall remain in effect until revised by the director.

(c) Before adopting any regulations pursuant to this division, the director shall submit the regulations to the committee, if it has been appointed, for its review and comments.

SEC. 11. Section 14538 of the Public Resources Code is amended to read:

14538. The department shall certify the operators of recycling centers pursuant to this section. The director shall adopt, by regulation, a procedure for the self-certification of recycling centers, including standards for certification. These regulations shall require that all information be submitted to the department under penalty of perjury. The regulations shall require, but shall not be limited to requiring, that all of the following conditions be met for certification:

(a) The operator of the recycling centers demonstrates, to the satisfaction of the department, that the operator will operate in accordance with this division.

(b) The operator of the recycling center shall not knowingly pay a redemption value or redemption bonus for, or receive a redemption value or redemption bonus from any processor for, any food or drink packaging material or any beverage container or other product which does not have a redemption value or redemption bonus established pursuant to Section 14560 or 14581.

(c) The operator of a recycling center shall take those actions which satisfy the department to prevent the payment of a redemption value or redemption bonus for any food or drink packaging material or any beverage container or other product which does not have a redemption value established pursuant to Section 14560.

(d) Unless exempted pursuant to subdivision (b) or (c) of Section 14572, the operator of a recycling center shall accept, and pay at least the redemption value and applicable redemption bonus for, all empty beverage containers, regardless of type.

(e) The operator of the recycling center shall notify the department promptly of any change in the nature of his or her operations which conflicts with information submitted in the

operator's application for certification.

(f) The operator of a certified recycling center, or any person having paid any amount above the scrap value for aluminum, as listed in the American Metals Market publication, or having paid for glass and plastic an amount above the amount identified as the portion of the processing fee which are the costs for the recycler, as specified in paragraphs (1) and (2) of subdivision (a) of Section 14575, as determined by the department, shall be subject to an audit of empty beverage container redemptions by the department, in a manner determined by the department, to insure that the operator is complying with this division and all regulations adopted pursuant to this division.

SEC. 12. Section 14542 of the Public Resources Code is amended to read:

14542. On or before January 10, 1989, and on or before each January 10 thereafter, the department shall submit a report to the Governor and Legislature containing all of the following:

(a) An analysis of the progress made during the previous year toward obtaining the recycling goal of at least 80 percent established in subdivision (c) of Section 14501.

(b) Recommendations of other containers, if any, which, in the opinion of the department or the committee, should be considered for inclusion in this division.

(c) A report on the status of beverage container recycling opportunities throughout the state, together with any recommendations on methods to enhance the opportunities for all consumers in every region of the state to return beverage containers conveniently, efficiently, and economically.

(d) An analysis of the total amount of funds used for program administration and for payment to recyclers and an analysis of how litter abatement and recycling education funds are distributed and used.

SEC. 13. Section 14551 of the Public Resources Code is amended to read:

14551. (a) The department shall establish reporting periods for the reporting of redemption rates and recycling rates, and each reporting period shall be six months, except that the first reporting period shall be the three-month period from October 1, 1987, to December 31, 1987. The department shall determine all of the following for each reporting period and shall issue a report on its determinations, within 70 days of the end of each reporting period:

(1) Sales of beverages in aluminum beverage containers, nonaluminum metal beverage containers, glass beverage containers, plastic beverage containers, and other beverage containers in this state, including refillable beverage containers.

(2) Returns for recycling, and returns not for recycling, of empty aluminum beverage containers, nonaluminum metal beverage containers, glass beverage containers, plastic beverage containers, and other beverage containers in this state, including refillable

beverage containers returned to distributors pursuant to Section 14572. These numbers shall be calculated using the average current weights of beverage containers, as determined and reported by the department. To these numbers shall be added and separately reported the following, if greater than, or equal to, zero:

(A) All empty postfilled aluminum, glass, and plastic food or drink packaging materials sold in the state, returned for recycling, and reported by weight to the department which do not have a redemption value less the number specified in subparagraph (B).

(B) The number of beverage containers which comprise the first five percentage points of the redemption rate without including the empty postfilled aluminum, glass, and plastic food or drink packaging materials sold in the state, returned for recycling and reported by weight to the department which do not have a redemption value.

(3) An aluminum beverage container redemption rate, the numerator of which shall be the number of empty aluminum beverage containers returned, including refillable aluminum beverage containers and empty postfilled aluminum food or drink packaging material included in paragraph (2), and the denominator of which shall be the number of aluminum beverage containers sold in this state.

(4) An aluminum beverage container recycling rate, the numerator of which shall be the number of empty aluminum beverage containers returned for recycling, including refillable aluminum beverage containers, and the denominator of which shall be the number of aluminum beverage containers sold in this state.

(5) A nonaluminum metal beverage container redemption rate, the numerator of which shall be the number of empty nonaluminum metal beverage containers returned, and the denominator of which shall be the number of nonaluminum metal beverage containers sold in this state.

(6) A nonaluminum metal beverage container recycling rate, the numerator of which shall be the number of empty nonaluminum beverage containers returned for recycling, including refillable nonaluminum metal beverage containers, and the denominator of which shall be the number of nonaluminum metal beverage containers sold in this state.

(7) A glass beverage container redemption rate, the numerator of which shall be the number of empty glass beverage containers returned, including refillable glass beverage containers and empty postfilled, food or drink packaging materials included in paragraph (2), and the denominator of which shall be the number of glass beverage containers sold in this state.

(8) A glass beverage container recycling rate, the numerator of which shall be the number of empty glass beverage containers returned for recycling, including refillable glass beverage containers, and the denominator of which shall be the number of glass beverage containers sold in this state.

(9) A plastic beverage container redemption rate, the numerator

of which shall be the number of empty plastic beverage containers returned, including refillable plastic beverage containers and empty postfilled food or drink packaging materials included in paragraph (2), and the denominator of which shall be the number of plastic beverage containers sold in this state.

(10) A plastic beverage container recycling rate, the numerator of which shall be the number of empty plastic beverage containers returned for recycling, including refillable plastic beverage containers, and the denominator of which shall be the number of plastic beverage containers sold in this state.

(11) A redemption rate for other beverage containers, the numerator of which shall be the number of empty beverage containers other than those containers specified in paragraphs (1) to (10), inclusive, returned, and the denominator of which shall be the number of beverage containers, other than those containers specified in paragraphs (1) to (10), inclusive, sold in this state.

(12) A recycling rate for other beverage containers, the numerator of which shall be the number of empty beverage containers other than those containers specified in paragraphs (1) to (10), inclusive, returned for recycling, and the denominator of which shall be the number of beverage containers, other than those containers specified in paragraphs (1) to (10), inclusive, sold in this state.

(13) The department may define categories of other beverage containers, and report a redemption rate and a recycling rate for each such category of other beverage containers.

(b) The department shall determine the manner of collecting the information for the reports specified in subdivision (a), including establishing procedures, to protect any proprietary information concerning the sales and purchases.

SEC. 14. Section 14561 of the Public Resources Code, as amended by Chapter 170 of the Statutes of 1988, is amended to read:

14561. (a) (1) A manufacturer shall clearly indicate on every beverage container sold or offered for sale by that beverage manufacturer in this state the message "CA Redemption Value" or "California Redemption Value," by either printing or embossing the beverage container or by securely affixing a clear and prominent stamp, label, or other device to the beverage container.

(2) On and after January 1, 1989, a manufacturer may affix the message "CA Cash Refund" or "California Cash Refund" on a beverage container sold or offered for sale by that beverage manufacturer, instead of the message specified in paragraph (1), but the message shall be affixed in the manner prescribed in paragraph (1).

(3) Any refillable beverage container sold or offered for sale is exempt from this subdivision. However, any beverage manufacturer or container manufacturer may place upon, or affix to, a refillable beverage container, any message which they deem appropriate relating to the refund value of the container.

(b) On and after January 1, 1990, a manufacturer of wine and distilled spirit cooler beverages shall clearly indicate on every container thereof sold or offered for sale by that beverage manufacturer in this state the message specified in subdivision (a) by either printing or embossing the beverage container or by securely affixing a clear and prominent stamp, label, or other device to the beverage container.

(c) No person shall offer to sell, or sell to a consumer a beverage container subject to subdivision (a) which has not been labeled pursuant to this section, except for a refillable beverage container which is exempt from labeling.

(d) On and after January 1, 1990, no person shall offer to sell, or sell to a consumer a beverage container subject to subdivision (b) which has not been labeled pursuant to this section, except for a refillable beverage container which is exempt from labeling.

(e) The department may require that any beverage container intended for sale in this state be printed, embossed, stamped, labeled, or otherwise marked with a universal product code or similar machine-readable indicia.

(f) Any container labeled with the message specified in subdivision (a) or (b) shall have the minimum redemption value established pursuant to Section 14560, which shall be paid by the distributor to the department pursuant to Section 14574.

SEC. 15. Section 14570 of the Public Resources Code is amended to read:

14570. (a) Every dealer shall identify, by a clear and conspicuous sign posted at the dealer's place of business, the address and major cross streets, as provided by the department, of at least the recycling center, location, or locations, nearest to the dealer, which redeems all types of empty beverage containers at one location during at least 30 hours per week with a minimum of five hours of operation occurring during periods other than from Monday to Friday, from 9:00 a.m. to 5:00 p.m.

(b) Notwithstanding subdivision (a), the department may require a certified recycling center to operate not more than 15 hours of those 30 hours per week other than during 9:00 a.m. to 5:00 p.m. if the department determines it is necessary to further the goals of this division as specified in Section 14501. Prior to acting under this subdivision, the department shall conduct a public hearing and consider consumer convenience as well as the economic impact on the certified recycling center.

SEC. 16. Section 14571 of the Public Resources Code is amended to read:

14571. (a) Except as otherwise provided in this chapter, there shall be at least one certified recycling center or location within every convenience zone which accepts and pays the redemption value and applicable redemption bonus, if any, at one location for all types of empty beverage containers during at least 30 hours per week with a minimum of five hours of operation occurring during periods

other than from Monday to Friday, from 9:00 a.m. to 5:00 p.m.

(b) For purposes of this section, if the recycling center is staffed and is not a reverse vending machine, a center is "open for business" if all of the following requirements are met:

(1) An employee of the certified recycling center or location is present during the hours of operation and available to the public to accept containers and to pay the redemption values and applicable redemption bonus.

(2) A sign having a minimum size of two feet by two feet is posted at the certified recycling center or location indicating that the center or location is open. Where allowed by local zoning requirements or where zoning restrictions apply, the sign shall be of the maximum allowable size.

(3) The prices paid, by weight or per container, are posted at the location.

(c) For the purpose of this section, if the recycling center consists of reverse vending machines or other unmanned automated equipment, the center is "open for business" if the equipment is properly functioning, accepting all types of empty beverage containers at the recycling location, and paying posted refunds no less than the minimums required by this division.

SEC. 17. Section 14571.2 of the Public Resources Code is amended to read:

14571.2. The department shall continuously assist dealers and recyclers to establish certified recycling locations within each convenience zone. This assistance includes, but is not limited to, providing information to companies and organizations interested in operating recycling in the convenience zone; providing dealers with names of prospective recyclers for the convenience zone and providing recyclers with the names of dealers in need of a recycler for a convenience zone; providing dealers and recyclers with information on grants, advertising funds, and other resources available; and providing recyclers with advice regarding appearance and image of the recycling center and the efficient handling and transportation of recycled beverage containers.

SEC. 18. Section 14571.3 of the Public Resources Code is amended to read:

14571.3. (a) The department shall offer an option to retain the redemption bonus to a recycling center which, on or before October 1, 1987, established a recycling location accepting all types of beverage containers in that zone. The department may allow the recycling location to retain the redemption bonus for two to five years, at the department's discretion, for the purpose of capitalizing recycling equipment. The department shall authorize the recycling location to retain the redemption bonus for a length of time based upon the economic feasibility of developing the particular recycling location and the relative volume of material at the particular recycling location.

(b) The department shall continuously assist any certified

recycler to achieve greater service to the public in an economical and cost-effective manner. This assistance shall include, but not be limited to, advice on all of the following:

(1) Methods to enhance public participation in recycling.

(2) The most beneficial location, siting, and image of a recycling location.

(3) Methods to reduce costs and optimize efficiencies of existing resources.

(c) The department shall conduct regular, unannounced inspections of certified recycling centers for the purpose of determining that the requirements of this division are satisfied. The department shall assess civil penalties pursuant to subdivision (c) of Section 14591 for violations at certified recycling centers.

SEC. 19. Section 14571.4 of the Public Resources Code is repealed.

SEC. 20. Section 14571.5 of the Public Resources Code is repealed.

SEC. 21. Section 14571.7 of the Public Resources Code is amended to read:

14571.7. On or before March 1, 1989, in any convenience zone where a recycling location or locations were initially established, but where the location or locations cease to operate in accordance with Section 14571, the department shall notify all dealers within that convenience zone that a recycling location is required to be established within 120 days. After March 1, 1989, the department shall notify all dealers within that zone that a recycling location is required to be established within 90 days. The department shall offer a convenience incentive payment and the retention of the redemption bonus to one recycling location only. If, within 45 days of the notification, no recycling location has been established which satisfies the requirements of Section 14571, the department shall notify all dealers within that zone, and one or more dealers within that zone shall establish, or cause to be established, a recycling location. If, within 120 days of the initial notification, no recycling location has been established, all dealers within that zone shall, until a recycling location has been established, do one of the following:

(a) Offer to redeem all types of beverage containers.

(b) Pay to the California Beverage Container Recycling Fund the sum of one hundred dollars ($100) per day until a recycling location is established.

SEC. 22. Section 14571.8 of the Public Resources Code is amended to read:

14571.8. (a) If the department determines that Section 14571 cannot be fulfilled in a particular convenience zone due to local zoning or dealer's leasehold restrictions for leases in effect on January 1, 1987, and that these factors are beyond the control of the department and the dealer, the department may establish an alternative minimum convenience requirement for that convenience zone which shall not conflict with the purposes of this

division. No lease entered into by a dealer after January 1, 1987, may contain a leasehold restriction that prohibits or results in the prohibition of the establishment of a recycling location.

(b) The director may grant an exemption to the requirements of Section 14571 for an individual convenience zone only if all of the following conditions are met:

(1) The exemption will not significantly decrease the ability of consumers to conveniently return beverage containers for the redemption value.

(2) The volume of beverage containers redeemed in the convenience zone is below the statewide average.

(3) The exemption will further the purposes of this division.

(4) The department conducts a public hearing for purposes of taking testimony on whether or not to provide an exemption from Section 14571.

(5) The exemption will prevent the creation of excessive recycling locations which would result in severe adverse local market conditions for recycled materials.

(c) Upon request of a city or county, the director may grant an exemption from the requirements of Section 14571 for the location of an individual nonprofit recycling center, or for a curbside recycling program, if the conditions established under subdivision (b) are met and, for an exemption granted for a curbside recycling program, the program recycles all types of beverage containers from households at least once every two weeks.

(d) The total number of exemptions granted by the director under this section shall not exceed 10 percent of the total number of convenience zones identified by the department pursuant to this section.

(e) The department shall annually prepare and submit to the Governor and the Legislature a report on curbside recycling programs and on the potential need for exemption authority additional to that provided by subdivision (d).

SEC. 23. Section 14572 of the Public Resources Code, as amended by Chapter 320 of the Statute of 1988, is amended to read:

14572. (a) Except as provided in subdivisions (b) and (c), a certified recycling center shall accept from any consumer or dropoff or collection program any empty beverage container, and shall pay to the consumer or dropoff or collection program the redemption value and any applicable redemption bonus of the beverage container. The center may pay the redemption value and any applicable redemption bonus based on the weight of returned containers.

(b) A recycling center or recycling location may refuse to pay any redemption bonus for a beverage container to a consumer under either of the following circumstances:

(1) If the beverage container is returned to any mechanical device which accepts empty beverage containers and issues a cash refund or redeemable credit slip of not less than the redemption

value of the container. The exemption provided by this paragraph shall apply only to beverage containers returned on or before April 1, 1989.

(2) If the recycling center or location was established or caused to be established solely pursuant to Section 14571.3 or 14571.7, or pursuant to Section 14571.4 or 14571.5, as those sections read on January 1, 1988, and the department authorizes retention of the redemption bonus pursuant to Section 14571.3 or 14571.7, or pursuant to Section 14571.4 or 14571.5, as those sections read on January 1, 1988.

(c) Any recycling center, nonprofit dropoff program, or processor which was certified by the department as of June 30, 1988, which was in existence on January 1, 1986, and which refused, as of January 1, 1986, to accept at a particular location a certain type of empty beverage container may continue to refuse to accept at the location the type or types of empty beverage containers that the recycling center, nonprofit dropoff program, or processor refused to accept as of January 1, 1986. Any certified recycling center which refuses, pursuant to this subdivision, to accept a certain type or types of empty beverage containers shall pay to the consumer the full redemption bonus for containers accepted and is not eligible to receive convenience incentive payments unless the center agrees to accept all types of empty beverage containers. This subdivision does not preclude the certified recycling center from retaining the redemption bonus or receiving a convenience incentive payment for beverage containers redeemed at locations which do accept all types of containers. Any recycling center which is certified after June 30, 1988, shall accept all beverage container types after January 1, 1989.

(d) The department shall terminate the authorization for retention of the redemption bonus pursuant to Section 14571.7, or an authorization granted pursuant to Section 14571.5, as that section read on January 1, 1988, if another recycling location is willing to redeem containers to satisfy the requirements of Section 14571 within the convenience zone without retaining the redemption bonus.

(e) Only a certified recycling center may pay the redemption value or the redemption bonus to consumers, or dropoff or collection programs. No person shall pay a noncertified recycling center an amount which exceeds the scrap value for aluminum, as listed in the American Metals Market publication, or an amount for glass and plastic which exceeds the amount identified as the portion of the processing fee which are the costs for the recycler, as specified, in paragraphs (1) and (2) of subdivision (a) of Section 14571, as determined by the department.

(f) This section does not affect curbside programs under contract with cities or counties.

SEC. 24. Section 14572.5 of the Public Resources Code is amended to read:

14572.5. A certified recycling center, other than a reverse vending machine, shall accept from any consumer or any dropoff or

collection program and pay the applicable refund value or deposit for any refillable empty beer and other malt beverage container. The certified recycling center shall return, or cause to be returned, the refillable beer and other malt beverage container to the beer and other malt beverage distributor or any willing purchaser, who shall then pay the refund value or the deposit to the center. The beer and other malt beverage distributor or other purchaser shall also negotiate a handling fee with the recycling center for the return of these containers.

SEC. 25. Section 14573 of the Public Resources Code is amended to read:

14573. The department shall pay to a processor, for every empty beverage container received by the processor from a certified recycling center, curbside program, dropoff or collection program, or nonprofit dropoff program, with proof of the delivery, the sum of all of the following amounts:

(a) The redemption value.

(b) The applicable redemption bonus.

(c) Two and one-half percent of the redemption value for administrative costs.

(d) The processing fee established pursuant to Section 14575.

The department shall make this payment within two working days of the date the department is notified of the delivery or within the time determined by the department to be necessary and adequate. The payment shall be made in the form and manner which the department may prescribe.

SEC. 26. Section 14573.5 of the Public Resources Code is amended to read:

14573.5. Except as provided in Section 14573.6, a processor shall pay to a certified recycling center, dropoff or collection program, curbside program, or nonprofit dropoff program, for all types of empty beverage containers, by type of beverage container, received by the processor from recycling center, curbside program, dropoff or collection program, or nonprofit dropoff program, the sum of all of the following amounts:

(a) The redemption value.

(b) The applicable redemption bonus.

(c) One percent of the redemption value for administrative costs.

(d) The portion of the processing fee established pursuant to Section 14575 representing the actual cost and financial return incurred by the recycling center, as determined by the department.

The processor shall make this payment within two working days of the date the processor receives these empty beverage containers, or within the time which the department determines to be necessary and adequate. A processor may authorize a redemption center to crush and compact beverage containers before the processor receives the containers.

SEC. 27. Section 14576 of the Public Resources Code is repealed.

SEC. 28. Section 14580 of the Public Resources Code is amended

to read:

14580. (a) The department shall deposit all amounts paid as redemption values by distributors pursuant to Section 14574, processing fees paid pursuant to Section 14575, civil penalties or fines paid pursuant to Section 14541 or subdivision (c) of Section 14591, and all other revenues received into the California Beverage Container Recycling Fund, which is hereby created in the State Treasury. Notwithstanding Section 13340 of the Government Code, the moneys in the California Beverage Container Recycling Fund are hereby continuously appropriated to the department for expenditure without regard to fiscal year for the following purposes:

(1) The payment of redemption values to processors pursuant to Section 14573.

(2) Except as provided in subdivision (b), for costs necessary to the administration of this division.

(3) For a reserve for contingencies in the following amount:

(A) During 1987, a reasonable and prudent amount, as determined by the department, but not more than five million dollars ($5,000,000).

(B) During each calendar year after 1987, the reserve shall not be greater than an amount equal to one-fourth of the total amount paid to processors pursuant to Section 14573 during the preceding calendar year, plus any interest earned on hat amount.

(b) On and after July 1, 1989, the moneys in the fund may be expended by the department for the administration of this division only upon appropriation by the Legislature in the annual Budget Act.

(c) After all of the expenditures pursuant to subdivisions (a) and (b) have been made, the balance remaining in the fund shall be deposited in the Redemption Bonus Account, which is hereby created as a subaccount in the California Beverage Container Recycling Fund. Notwithstanding Section 13340 of the Government Code, the moneys in the Redemption Bonus Account are hereby continuously appropriated to the department, without regard to fiscal year, for the purposes specified in Section 14581.

SEC. 29. Section 14581 of the Public Resources Code is amended to read:

14581. (a) The department shall calculate the redemption bonus amount, pursuant to subdivision (b), by deducting the following amounts from the Redemption Bonus Account, for which purpose the department may expend money from the Redemption Bonus Account in the following order of priority:

(1) The department shall expend 10 percent of the amount deposited in the Redemption Bonus Account during the previous three months for urban, rural, and recreational litter abatement and recycling activities and for contracts with statewide private nonprofit entities for recycling information, education, and promotion. The funds for urban, rural, and recreational litter abatement and recycling activities shall be expended by contract

with local conservation organizations. Three-quarters of this 10 percent shall be expended in the form of grants, as specified by the department, to certified community conservation corps, either existing or those established in the future, designated by a city or a city and county to perform litter abatement, recycling, and related activities, if the city or the city and county has a population, as determined by the last federal census, of more than 250,000 persons. Any grants provided pursuant to this paragraph shall not comprise more than 75 percent of the annual budget of a community conservation corps.

(2) The department may expend up to 25 percent of the amount deposited in the Redemption Bonus Account during the previous three months for making convenience incentive payments, pursuant to Section 14585, until June 30, 1990, and may expend up to 20 percent of the amount deposited in the Redemption Bonus Account during the previous three months for making convenience incentive payments from July 1, 1990, until January 1, 1993.

(3) After making the expenditures specified in paragraphs (1) and (2), the department may expend, until June 30, 1990, up to 5 percent of the amount deposited in the Redemption Bonus Account during the previous three months for contracts with certified recycling centers located in convenience zones for advertising and promotion.

(b) The department shall calculate the redemption bonus amount using the balance remaining in the Redemption Bonus Account after deducting the amounts specified in subdivision (a).

(1) The department shall calculate the redemption bonus at least quarterly, except that the department may revise any redemption bonus to account for seasonal variations in beverage container sales and redemptions, to prevent funds accumulated during a high sales period from providing disproportionately high redemption bonuses during a low redemption period, or to prevent funds accumulated during a low sales period from providing disproportionately low redemption bonuses during a high redemption period.

(2) Notwithstanding any other provision of this section, the department shall pay out, as a redemption bonus, any amount deposited in the account within six months after receipt to ensure the payment of maximum redemption bonuses to processors compatible with the level of funds available in the Redemption Bonus Account.

(3) From the remaining balance in the Redemption Bonus Account, the department shall determine the redemption bonus by dividing the balance in the Redemption Bonus Account by the number of containers redeemed during the previous quarter or other period determined pursuant to paragraph (1). The department shall calculate the redemption bonus so that all funds shall be passed entirely to processors in a prompt and efficient manner and that the redemption bonus amount will further the purposes of this division.

(4) The redemption bonus shall be reviewed by the committee every three months.

(5) The department may round any redemption bonus to the nearest one-tenth or one-quarter of a cent.

SEC. 30. Section 14585 of the Public Resources Code is amended to read:

14585. (a) The department shall develop guidelines and criteria for issuing convenience incentive payments solely to assist in establishing recycling locations in convenience zones without sufficient recycling locations pursuant to Chapter 6 (commencing with Section 14570). The department may establish a convenience incentive payment if the payment meets all of the following:

(1) The payment shall be set by the department at the minimum level determined by the department to be sufficient to establish convenience in the convenience zone pursuant to Chapter 6 (commencing with Section 14570).

(2) The department may revise the payment upon finding that the previous payment is inadequate, and shall revise the payment upon finding that the previous payment is excessive, to establish convenience in the convenience zone pursuant to Chapter 6 (commencing with Section 14570).

(3) The department may require the operators of the recycling locations to maintain daily records of redemptions at the locations, and may require the locations to take any other steps necessary for the department to ensure that the operators do not receive an excessive convenience incentive payment.

(4) The department may make convenience incentive payments to the operators of recycling locations through processors or directly, at the department's discretion, in the same manner as the department pays redemption values, redemption bonuses, and processing fees to recycling locations.

(5) On and after January 1, 1989, the department shall not make convenience incentive payments to more than one certified recycling center in a convenience zone. When two or more convenience zones overlap by more than one-half mile, the department shall offer a single convenience incentive payment to cover the affected convenience zones. This convenience incentive payment shall not be split between the affected zones. The department shall stop making convenience incentive payments if another recycling center is willing to certify operation within the convenience zone without receiving payments pursuant to this section.

(6) If a convenience incentive payment to a certified recycling center located in a convenience zone exceeds eight hundred dollars ($800) per month, the department shall review the convenience zone to determine if the convenience zone should be exempted pursuant to Section 14571.8.

(b) The department shall conduct a study on use of each of the payment mechanisms authorized by subdivision (b) and on use of

bonds, grants, and loans authorized by Section 14584 and report to the Legislature on or before January 1, 1989, on the effectiveness of each of these mechanisms.

(c) The department may authorize prepayment of convenience incentive payments to recycling centers pursuant to subdivision (a) for periods of up to one year at a time.

SEC. 31. 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 five hundred thousand dollars ($500,000), reimbursement shall be made from the State Mandates Claims Fund.

SEC. 32. 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 fiscal integrity of the California Beverage Container Recycling and Litter Reduction Act, and the fiscal solvency of recyclers, thereby protecting public health and safety and the environment by encouraging the recycling of beverage containers, it is necessary that this act take effect immediately.

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## CHAPTER 1529

An act to amend Section 4400 of the Health and Safety Code, and to amend Section 14581 of the Public Resources Code, relating to water pollution, and making an appropriation therefor.

[Approved by Governor September 29, 1988. Filed with Secretary of State September 29, 1988.]

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

SECTION 1. Section 4400 of the Health and Safety Code is amended to read:

4400. For the purpose of this article the term "garbage" includes any or all of the following:

(a) Garbage.
(b) Swill.
(c) Refuse.
(d) Cans.
(e) Bottles.
(f) Paper.
(g) Vegetable matter.
(h) Carcass of any dead animal.

(i) Offal from any slaughter pen or butcher shop.
(j) Trash.
(k) Rubbish.
(*l*) Radioactive waste materials.
(m) Discarded, nonbiodegradable materials including plastics or damaged or broken marine equipment.

SEC. 2. Section 14581 of the Public Resources Code is amended to read:

14581. (a) The department shall calculate the redemption bonus amount, pursuant to subdivision (b), by deducting the following amounts from the Redemption Bonus Account, for which purpose the department may expend money from the Redemption Bonus Account:

(1) The department shall expend 10 percent of the amount deposited in the Redemption Bonus Account during the previous three months for urban, rural, aquatic, and recreational litter abatement and recycling activities. These funds shall be expended by contract with local conservation organizations. Three-quarters of this 10 percent shall be expended in the form of grants, as specified by the department, to certified community conservation corps, either existing or those established in the future, designated by a city or a city and county to perform litter abatement, recycling, and related activities, if the city or the city and county has a population, as determined by the last federal census, of more than 250,000 persons. Any grants provided pursuant to this paragraph shall not comprise more than 75 percent of the annual budget of a community conservation corps.

(2) The department shall expend 10 percent of the amount deposited in the Redemption Bonus Account during the previous three months for recycling information, education, and promotion. These funds shall be expended by entering into contracts with public or private agencies, and at least 50 percent of the funds shall be expended by entering into contracts with statewide nonprofit private agencies.

(3) The department may expend up to 20 percent of the amount deposited in the Redemption Bonus Account during the previous three months for convenience incentive payments pursuant to Section 14585 in 1987 and 1988, and the department may expend up to 10 percent for those purposes in 1989 and 1990.

(b) The department shall calculate the redemption bonus amount using the balance remaining in the Redemption Bonus Account after deducting the amounts specified in subdivision (a).

(1) The department shall calculate the redemption bonus at least quarterly, except that the department may revise any redemption bonus to account for seasonal variations in beverage container sales and redemptions, to prevent funds accumulated during a high sales period from providing disproportionately high redemption bonuses during a low redemption period, or to prevent funds accumulated during a low sales period from providing disproportionately low

redemption bonuses during a high redemption period.

(2) Notwithstanding any other provision of this section, the department shall pay out, as a redemption bonus, any amount deposited in the account within six months after receipt to ensure the payment of maximum redemption bonuses to processors compatible with the level of funds available in the Redemption Bonus Account.

(3) From the remaining balance in the Redemption Bonus Account, the department shall determine the redemption bonus by dividing the balance in the Redemption Bonus Account by the number of containers redeemed during the previous quarter or other period determined pursuant to paragraph (1). The department shall calculate the redemption bonus so that all funds shall be passed entirely to processors in a prompt and efficient manner and that the redemption bonus amount will further the purposes of this division.

(4) For the first two quarters, beginning October 1, 1987, and ending March 31, 1988, the redemption bonus shall be determined by the department after consultation with the committee.

(5) The department may round any redemption bonus to the nearest one-tenth or one-quarter of a cent.

SEC. 3. Section 14581 of the Public Resources Code is amended to read:

14581. (a) The department shall calculate the redemption bonus amount, pursuant to subdivision (b), by deducting the following amounts from the Redemption Bonus Account, for which purpose the department may expend money from the Redemption Bonus Account:

(1) The department shall expend 10 percent of the amount deposited in the Redemption Bonus Account during the previous three months for urban, rural, aquatic, and recreational litter abatement and recycling activities, and for the purpose of carrying out the study required by Section 14545. These funds shall be expended by contract with local conservation organizations. Three-quarters of this 10 percent shall be expended in the form of grants, as specified by the department, to certified community conservation corps, either existing or those established in the future, designated by a city or a city and county to perform litter abatement, recycling, and related activities, if the city or the city and county has a population, as determined by the last federal census, of more than 250,000 persons. Any grants provided pursuant to this paragraph shall not comprise more than 75 percent of the annual budget of a community conservation corps.

(2) The department shall expend 10 percent of the amount deposited in the Redemption Bonus Account during the previous three months for recycling information, education, and promotion. These funds shall be expended by entering into contracts with public or private agencies, and at least 50 percent of the funds shall be expended by entering into contracts with statewide nonprofit

private agencies.

(3) The department may expend up to 20 percent of the amount deposited in the Redemption Bonus Account during the previous three months for convenience incentive payments pursuant to Section 14585 in 1987 and 1988, and the department may expend up to 10 percent for those purposes in 1989 and 1990.

(b) The department shall calculate the redemption bonus amount using the balance remaining in the Redemption Bonus Account after deducting the amounts specified in subdivision (a).

(1) The department shall calculate the redemption bonus at least quarterly, except that the department may revise any redemption bonus to account for seasonal variations in beverage container sales and redemptions, to prevent funds accumulated during a high sales period from providing disproportionately high redemption bonuses during a low redemption period, or to prevent funds accumulated during a low sales period from providing disproportionately low redemption bonuses during a high redemption period.

(2) Notwithstanding any other provision of this section, the department shall pay out, as a redemption bonus, any amount deposited in the account within six months after receipt to ensure the payment of maximum redemption bonuses to processors compatible with the level of funds available in the Redemption Bonus Account.

(3) From the remaining balance in the Redemption Bonus Account, the department shall determine the redemption bonus by dividing the balance in the Redemption Bonus Account by the number of containers redeemed during the previous quarter or other period determined pursuant to paragraph (1). The department shall calculate the redemption bonus so that all funds shall be passed entirely to processors in a prompt and efficient manner and that the redemption bonus amount will further the purposes of this division.

(4) For the first two quarters, beginning October 1, 1987, and ending March 31, 1988, the redemption bonus shall be determined by the department after consultation with the committee.

(5) The department may round any redemption bonus to the nearest one-tenth or one-quarter of a cent.

SEC. 4. Section 14581 of the Public Resources Code is amended to read:

14581. (a) The department shall calculate the redemption bonus amount, pursuant to subdivision (b), by deducting the following amounts from the Redemption Bonus Account, for which purpose the department may expend money from the Redemption Bonus Account in the following order of priority:

(1) The department shall expend 10 percent of the amount deposited in the Redemption Bonus Account during the previous three months for urban, rural, aquatic, and recreational litter abatement and recycling activities, for contracts with statewide private nonprofit entities for recycling information, education, and

promotion. The funds for urban, rural, and recreational litter abatement and recycling activities shall be expended by contract with local conservation organizations. Three-quarters of this 10 percent shall be expended in the form of grants, as specified by the department, to certified community conservation corps, either existing or those established in the future, designated by a city or a city and county to perform litter abatement, recycling, and related activities, if the city or the city and county has a population, as determined by the last federal census, of more than 250,000 persons. Any grants provided pursuant to this paragraph shall not comprise more than 75 percent of the annual budget of a community conservation corps.

(2) The department may expend up to 25 percent of the amount deposited in the Redemption Bonus Account during the previous three months for making convenience incentive payments, pursuant to Section 14585, until June 30, 1990, and may expend up to 20 percent of the amount deposited in the Redemption Bonus Account during the previous three months for making convenience incentive payments from July 1, 1990, until January 1, 1993.

(3) After making the expenditures specified in paragraphs (1) and (2), the department may expend, until June 30, 1990, up to 5 percent of the amount deposited in the Redemption Bonus Account during the previous three months for contracts with certified recycling centers located in convenience zones for advertising and promotion.

(b) The department shall calculate the redemption bonus amount using the balance remaining in the Redemption Bonus Account after deducting the amounts specified in subdivision (a).

(1) The department shall calculate the redemption bonus at least quarterly, except that the department may revise any redemption bonus to account for seasonal variations in beverage container sales and redemptions, to prevent funds accumulated during a high sales period from providing disproportionately high redemption bonuses during a low redemption period, or to prevent funds accumulated during a low sales period from providing disproportionately low redemption bonuses during a high redemption period.

(2) Notwithstanding any other provision of this section, the department shall pay out, as a redemption bonus, any amount deposited in the account within six months after receipt to ensure the payment of maximum redemption bonuses to processors compatible with the level of funds available in the Redemption Bonus Account.

(3) From the remaining balance in the Redemption Bonus Account, the department shall determine the redemption bonus by dividing the balance in the Redemption Bonus Account by the number of containers redeemed during the previous quarter or other period determined pursuant to paragraph (1). The department shall calculate the redemption bonus so that all funds shall be passed entirely to processors in a prompt and efficient

manner and that the redemption bonus amount will further the purposes of this division.

(4) The redemption bonus shall be reviewed by the committee every three months.

(5) The department may round any redemption bonus to the nearest one-tenth or one-quarter of a cent.

SEC. 5. Section 14581 of the Public Resources Code is amended to read:

14581. (a) The department shall calculate the redemption bonus amount, pursuant to subdivision (b), by deducting the following amounts from the Redemption Bonus Account, for which purpose the department may expend money from the Redemption Bonus Account in the following order of priority:

(1) The department shall expend 10 percent of the amount deposited in the Redemption Bonus Account during the previous three months for urban, rural, aquatic, and recreational litter abatement and recycling activities, for contracts with statewide private nonprofit entities for recycling information, education, and promotion, and for the purpose of carrying out the study required by Section 14545. The funds for urban, rural, and recreational litter abatement and recycling activities shall be expended by contract with local conservation organizations. Three-quarters of this 10 percent shall be expended in the form of grants, as specified by the department, to certified community conservation corps, either existing or those established in the future, designated by a city or a city and county to perform litter abatement, recycling, and related activities, if the city or the city and county has a population, as determined by the last federal census, of more than 250,000 persons. Any grants provided pursuant to this paragraph shall not comprise more than 75 percent of the annual budget of a community conservation corps.

(2) The department may expend up to 25 percent of the amount deposited in the Redemption Bonus Account during the previous three months for making convenience incentive payments, pursuant to Section 14585, until June 30, 1990, and may expend up to 20 percent of the amount deposited in the Redemption Bonus Account during the previous three months for making convenience incentive payments from July 1, 1990, until January 1, 1993.

(3) After making the expenditures specified in paragraphs (1) and (2), the department may expend, until June 30, 1990, up to 5 percent of the amount deposited in the Redemption Bonus Account during the previous three months for contracts with certified recycling centers located in convenience zones for advertising and promotion.

(b) The department shall calculate the redemption bonus amount using the balance remaining in the Redemption Bonus Account after deducting the amounts specified in subdivision (a).

(1) The department shall calculate the redemption bonus at least quarterly, except that the department may revise any redemption

bonus to account for seasonal variations in beverage container sales and redemptions, to prevent funds accumulated during a high sales period from providing disproportionately high redemption bonuses during a low redemption period, or to prevent funds accumulated during a low sales period from providing disproportionately low redemption bonuses during a high redemption period.

(2) Notwithstanding any other provision of this section, the department shall pay out, as a redemption bonus, any amount deposited in the account within six months after receipt to ensure the payment of maximum redemption bonuses to processors compatible with the level of funds available in the Redemption Bonus Account.

(3) From the remaining balance in the Redemption Bonus Account, the department shall determine the redemption bonus by dividing the balance in the Redemption Bonus Account by the number of containers redeemed during the previous quarter or other period determined pursuant to paragraph (1). The department shall calculate the redemption bonus so that all funds shall be passed entirely to processors in a prompt and efficient manner and that the redemption bonus amount will further the purposes of this division.

(4) The redemption bonus shall be reviewed by the committee every three months.

(5) The department may round any redemption bonus to the nearest one-tenth or one-quarter of a cent.

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.

SEC. 7. (a) Section 3 of this bill incorporates amendments to Section 14581 of the Public Resources Code proposed by both this bill and SB 2101. It shall only become operative if (1) both bills are enacted and become effective January 1, 1989, (2) each bill amends Section 14581 of the Public Resources Code, and (3) SB 1730 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after SB 2101, in which case Sections 2, 4, and 5 of this bill shall not become operative.

(b) Section 4 of this bill incorporates amendments to Section 14581 of the Public Resources Code proposed by both this bill and SB 1730. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1989, (2) each bill amends Section 14581 of the Public Resources Code, and (3) this bill is enacted after SB 1730, in which case Section 14581 of the Public Resources Code, as amended by SB 1730, shall remain operative only until the operative date of this bill, at which time Section 4 of this bill shall become operative, and Sections 2, 3, and 5 of this bill shall not become operative.

(c) Section 5 of this bill incorporates amendments to Section 14581 of the Public Resources Code proposed by this bill, SB 2101, and SB 1730. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 1989, (2) all three bills amend Section 14581 of the Public Resources Code, and (3) this bill is enacted after SB 2101 and SB 1730, in which case Section 14581 of the Public Resources Code as amended by SB 1730 shall remain operative only until the operative date of this bill at which time Section 5 of this bill shall become operative and Sections 2, 3 and 4 of this bill shall not become operative.

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## CHAPTER 1530

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

[Approved by Governor September 29, 1988. Filed with Secretary of State September 30, 1988.]

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

SECTION 1. Notwithstanding any other provision of law, the unencumbered balance of the funds appropriated in subdivision (d) of Section 29 of Chapter 1440 of the Statutes of 1985, is available for expenditure through June 30, 1989, for allocation by the California Transportation Commission to the Department of Transportation for capital outlay for intercity rail passenger service, including the acquisition of rail cars and equipment.

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 that funds may be reappropriated pursuant to this act prior to their reversion, it is necessary that this act take effect immediately.

# CHAPTER 1531

An act to amend Section 1632 of the Civil Code, relating to contracts.

[Approved by Governor September 29, 1988. Filed with Secretary of State September 30, 1988.]

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

SECTION 1. Section 1632 of the Civil Code is amended to read:

1632. (a) Any person engaged in a trade or business who negotiates primarily in the Spanish language orally or in writing in the course of entering into:

(1) A contract or agreement subject to the provisions of Title 2 (commencing with Section 1801) of, and Chapter 2b (commencing with Section 2981) and Chapter 2d (commencing with Section 2985.7) of Title 14 of, Part 4 of Division 3;

(2) A loan or extension of credit secured other than by real property, or unsecured, for use primarily for personal, family or household purposes;

(3) A lease, sublease, rental contract or agreement, or other term of tenancy contract or agreement, for a period of longer than one month, covering a dwelling, an apartment, or mobilehome, or other dwelling unit normally occupied as a residence; or

(4) Notwithstanding paragraph (2), a loan or extension of credit for use primarily for personal, family or household purposes where such loan or extension of credit is subject to the provisions of Article 7 (commencing with Section 10240) of Chapter 3 of Part 1 of Division 4 of the Business and Professions Code, or Division 7 (commencing with Section 18000), or Division 9 (commencing with Section 22000) or Division 10 (commencing with Section 24000) of the Financial Code; or

(5) A contract or agreement, containing a statement of fees or charges, entered into for the purpose of obtaining legal services, when the person who is engaged in business is currently licensed to practice law pursuant to Chapter 4 (commencing with Section 6000) of Division 3 of the Business and Professions Code;

shall, deliver to the party to such contract or agreement and prior to the execution thereof, an unexecuted Spanish-language translation of the contract or agreement, except that for a loan subject to this part and to the provisions of Article 7 (commencing with Section 10240) of Chapter 3 of Part 1 of Division 4 of the Business and Professions Code, the delivery of a Spanish-language translation of the statement to borrower required by Section 10240 of the Business and Professions Code, shall be deemed compliance with this subdivision. At the time and place where a contract or agreement described in this paragraph is entered into, a Spanish-language notice shall be provided to the lessee or tenant.

(b) Provision by a supervised financial organization of a Spanish-language translation of the disclosures required by Regulation M or Regulation Z, and, if applicable, Division 7 (commencing with Section 18000) or Division 9 (commencing with Section 22000) or Division 10 (commencing with Section 24000) of the Financial Code, prior to the execution of the contract shall also be deemed compliance with the requirements of subdivision (a) with regard to the original contract or agreement.

(1) "Regulation M" and "Regulation Z" mean any rule, regulation, or interpretation promulgated by the Board of Governors of the Federal Reserve System and any interpretation or approval issued by an official or employee duly authorized by the board to issue interpretations or approvals dealing with, respectively, consumer leasing or consumer lending, pursuant to the Federal Truth in Lending Act, as amended (15 U.S.C. 1601 et seq.).

(2) As used in this section, "supervised financial organization" means a bank, savings association (as defined in Section 5102 of the Financial Code), credit union, or holding company, affiliate, or subsidiary thereof, or any person subject to Article 7 (commencing with Section 10240) of Chapter 3 of Part 1 of Division 4 of the Business and Professions Code, or Division 7 (commencing with Section 18000) or Division 9 (commencing with Section 22000) or Division 10 (commencing with Section 24000) of the Financial Code.

(c) At the time and place where a contract or agreement described in paragraph (1) or (2) of subdivision (a) is entered into, a Spanish-language notice shall be conspicuously displayed to the effect that the person described in subdivision (a) is required to provide an unexecuted Spanish-language contract or agreement, or a Spanish-language translation of the disclosures required by law, as the case may be. If a person described in subdivision (a) does business at more than one location or branch, the requirements of this section shall apply only with respect to the location or branch at which the Spanish language is used.

(d) The term "contract" or "agreement," as used in this section, means the document creating the rights and obligations of the parties and includes any subsequent document making substantial changes in the rights and obligations of the parties. The term "contract" or "agreement" does not include any subsequent documents authorized or contemplated by the original document such as periodic statements, sales slips or invoices representing purchases made pursuant to a credit card agreement, a retail installment contract or account or other revolving sales or loan account, memoranda of purchases in an add-on sale, or refinancing of a purchase as provided by, or pursuant to, the original document.

The term "contract" or "agreement" does not include a home improvement contract as defined in Sections 7151.2 and 7159 of the Business and Professions Code, nor does it include plans, specifications, description of work to be done and materials to be used, or collateral security taken or to be taken for the retail buyer's

obligation contained in a contract for the installation of goods by a contractor licensed pursuant to Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code, if such home improvement contract or installation contract is otherwise a part of a contract described in subdivision (a).

Matters ordinarily incorporated by reference in contracts or agreements as described in paragraph (3) of subdivision (a), including but not limited to rules and regulations governing a tenancy and inventories of furnishings to be provided by the person described in subsection (a) are not included in the term "contract" or "agreement."

(e) This section shall not apply to any person engaged in a trade or business who negotiates primarily in the Spanish language as described by subdivision (a) if the party with whom he or she is negotiating is a buyer of goods or services, or receives a loan or extension of credit, or enters an agreement obligating himself or herself as a tenant, lessee, or sublessee, or similarly obligates himself or herself by contract or lease, and such party negotiates the terms of the contract, lease, or other obligation through his or her own interpreter.

As used in this subdivision, "his or her own interpreter" means a person, not a minor, able to speak fluently and read with full understanding the English and Spanish languages, and who is not employed by, or whose service is made available through, the person engaged in the trade or business.

(f) The terms of the contract or agreement which is executed in English shall determine the rights and obligations of the parties. However, the Spanish-language translation of the contract or the disclosures required by subdivision (b) shall be admissible in evidence only to show that no contract was entered into because of a substantial difference in the material terms and conditions of the contract and the translation.

(g) Upon a failure to comply with the provisions of this section, the person aggrieved may rescind the contract or agreement in the manner provided by this chapter. When the contract for a consumer credit sale or consumer lease which has been sold and assigned to a financial institution is rescinded pursuant to this subdivision, the consumer shall make restitution to and have restitution made by the person with whom he made the contract, and shall give notice of rescission to the assignee. Notwithstanding that the contract was assigned without recourse, the assignment shall be deemed rescinded and the assignor shall promptly repurchase the contract from the assignee.

(h) A person engaged in a trade or business may submit to the Department of Consumer Affairs and the department shall then verify the accuracy of Spanish-language translations of contracts, agreements, disclosures required by subdivision (b), and notices.

(i) Notwithstanding any other provision of law, the liability of the Department of Consumer Affairs and its employees in verification of

the translation of contracts from English to Spanish is limited to misrepresentations in such translations and the liability of the Department of Consumer Affairs and employees is controlled by Sections 815.2 and 822.2 of the Government Code.

(j) No advertisement, announcement, publication or other representation either oral or written that a contract or agreement translation from English to Spanish has been verified by the Department of Consumer Affairs may be made by any person, business or employee utilizing such translated contracts or agreements.

(k) Immediately upon the enactment of this provision the Department of Consumer Affairs shall prepare a schedule of fees for translation verification as set forth herein.

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## CHAPTER 1532

An act to add and repeal Section 120224.4 of the Public Utilities Code, relating to transit development boards.

[Approved by Governor September 29, 1988. Filed with Secretary of State September 30, 1988.]

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

SECTION 1. Section 120224.4 is added to the Public Utilities Code, to read:

120224.4. (a) The Legislature finds and declares that the award of purchase contracts by the board under competitive bid procedures may not be feasible for products and materials which are undergoing rapid technological changes or for the introduction of new technologies into board operations, and that in these circumstances it is in the public interest to consider the broadest possible range of competing products and materials available, fitness of purpose, manufacturer's warranty, and other similar factors in addition to price in the award of these contracts.

(b) Notwithstanding Section 120222 the board may, after a finding by a two-thirds vote that a particular procurement qualifies under subdivision (g), direct that the procurement be conducted through competitive negotiation under this section. For purposes of this section, competitive negotiation includes, but is not limited to, all of the following requirements:

(1) The request for proposals shall be prepared and submitted to an adequate number of qualified sources, as determined by the board, to permit reasonable competition consistent with the nature and requirements of the procurement. In addition, notice of the request for proposals shall be published at least twice in a newspaper of general circulation, at least 10 days before the date for receipt of the proposals.

(2) The request for proposals shall identify all significant evaluation factors, including price, and their relative importance.

(3) The board shall provide reasonable procedures for technical evaluation of the proposals received, identification of qualified sources, and selection for contract award.

(4) Contract awards shall be made to the qualified proposer whose proposal will be most advantageous to the board, with price and all other factors considered.

(c) The board may reject any and all proposals and request new proposals, at its discretion.

(d) Prior to making an award, the board shall prepare a price analysis and shall find that the final negotiated price is fair and reasonable based upon comparable procurements in the marketplace.

(e) Upon making an award to a qualified proposer, the board, upon request, shall make available to all other proposers and to the public, an analysis of the award which provides the basis for the selection of that particular qualified proposal.

(f) Any proposer may protest any acquisition conducted in accordance with this section by filing with the board, within 10 days after receiving notice of the recommended award, exclusive of Saturdays and Sundays, a full and complete written statement specifying in detail the grounds of the protest and the facts supporting the protest, and shall be granted an opportunity to appear before the board prior to the final award.

(g) This section applies only to the purchase by the board of specialized rail transit equipment, computers, telecommunications equipment, fare collection equipment, microwave equipment, and other related electronic equipment and apparatus, and of rail cars. This section does not apply to contracts for construction or for the procurement of any product available in substantial quantities to the general public.

(h) This section shall remain in effect only until January 1, 1994, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1994, deletes or extends that date.

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## CHAPTER 1533

An act to amend Sections 777, 10009, 12822, and 16481 of, and to add Sections 777.1, 10009.1, 12822.1, and 16481.1 to, the Public Utilities Code, relating to public utilities.

[Approved by Governor September 29, 1988. Filed with Secretary of State September 30, 1988.]

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

SECTION 1. Section 777 of the Public Utilities Code is amended to read:

777. (a) Whenever an electrical, gas, heat, or water corporation furnishes individually metered residential service to residential occupants in a multiunit residential structure, mobilehome park, or permanent residential structures in a labor camp, as defined in Section 17008 of the Health and Safety Code, where the owner, manager, or operator is listed by the corporation as the customer of record, the corporation shall make every good faith effort to inform the residential occupants, by means of a notice, when the account is in arrears, that service will be terminated at least 10 days prior to termination. The notice shall further inform the residential occupants that they have the right to become customers, to whom the service will then be billed, without being required to pay any amount which may be due on the delinquent account.

(b) The corporation is not required to make service available to the residential occupants unless each residential occupant agrees to the terms and conditions of service and meets the requirements of law and the corporation's rules and tariffs. However, if one or more of the residential occupants are willing and able to assume responsibility for the entire account to the satisfaction of the corporation, or if there is a physical means, legally available to the corporation, of selectively terminating service to those residential occupants who have not met the requirements of the corporation's rules and tariffs, the corporation shall make service available to those residential occupants who have met those requirements.

(c) Where prior service for a period of time is a condition for establishing credit with the corporation, residence and proof of prompt payment of rent or other credit obligation acceptable to the corporation for that period of time is a satisfactory equivalent.

(d) Any residential occupant who becomes a customer of the corporation pursuant to this section whose periodic payments, such as rental payments, include charges for residential electrical, gas, heat, or water service, where those charges are not separately stated, may deduct from the periodic payment each payment period all reasonable charges paid to the corporation for those services during the preceding payment period.

SEC. 2. Section 777.1 is added to the Public Utilities Code, to read:

777.1. (a) Whenever an electrical, gas, heat, or water corporation furnishes residential service to residential occupants through a master meter in a multiunit residential structure, mobilehome park, or permanent residential structures in a labor camp, as defined in Section 17008 of the Health and Safety Code, where the owner, manager, or operator is listed by the corporation as the customer of record, the corporation shall make every good faith effort to inform the residential occupants, by means of a written

notice posted on the door of each residential unit at least 15 days prior to termination, when the account is in arrears, that service will be terminated on a date specified in the notice. If it is not reasonable or practicable to post the notice on the door of each residential unit, the corporation shall post two copies of the notice in each accessible common area and at each point of access to the structure or structures. The notice shall further inform the residential occupants that they have the right to become customers, to whom the service will then be billed, without being required to pay any amount which may be due on the delinquent account. The notice also shall specify, in plain language, what the residential occupants are required to do in order to prevent the termination or reestablish service; the estimated monthly cost of service; the title, address, and telephone number of a representative of the corporation who can assist the residential occupants in continuing service; and the address and telephone number of a legal services project, as defined in Section 6213 of the Business and Professions Code, which has been recommended by the local county bar association. The notice shall be in English and, to the extent practical, in any other language that the corporation determines is the primary language spoken by a significant number of the residential occupants.

(b) The corporation is not required to make service available to the residential occupants unless each residential occupant or a representative of the residential occupants agrees to the terms and conditions of service and meets the requirements of law and the corporation's rules and tariffs. However, if one or more of the residential occupants or the representative of the residential occupants are willing and able to assume responsibility for subsequent charges to the account to the satisfaction of the corporation, or if there is a physical means, legally available to the corporation, of selectively terminating service to those residential occupants who have not met the requirements of the corporation's rules and tariffs or for whom the representative of the residential occupants is not responsible, the corporation shall make service available to those residential occupants who have met those requirements or on whose behalf those requirements have been met.

(c) Where prior service for a period of time or other demonstration of credit worthiness is a condition for establishing credit with the corporation, residence and proof of prompt payment of rent or other credit obligation during that period of time acceptable to the corporation is a satisfactory equivalent.

(d) Any residential occupant who becomes a customer of the corporation pursuant to this section whose periodic payments, such as rental payments, include charges for residential electrical, gas, heat, or water service, where those charges are not separately stated, may deduct from the periodic payment each payment period all reasonable charges paid to the corporation for those services during the preceding payment period.

(e) Whenever a corporation furnishes residential service subject

to subdivision (a), the corporation may not terminate that service in any of the following situations:

(1) During the pendency of an investigation by the corporation of a customer dispute or complaint.

(2) When the customer has been granted an extension of the period for payment of a bill.

(3) For an indebtedness owed by the customer to any other person or corporation or when the obligation represented by the delinquent account or other indebtedness was incurred with a person or corporation other than the electrical, gas, heat, or water corporation demanding payment therefor.

(4) When a delinquent account relates to another property owned, managed, or operated by the customer.

(5) When a public health or building officer certifies that termination would result in a significant threat to the health or safety of the residential occupants or the public.

(f) Notwithstanding any other provision of law, and in addition to any other remedy provided by law, if the owner, manager, or operator, by any act or omission, directs, permits, or fails to prevent a termination of service while any residential unit receiving that service is occupied, the residential occupant, the representative of the residential occupants may commence an action for the recovery of all of the following:

(1) Reasonable costs and expenses incurred by the residential occupant or the representative of the residential occupants related to restoration of service.

(2) Actual damages related to the termination of service.

(3) Reasonable attorney's fees of the residential occupants, the representative of the residential occupants, or each of them, incurred in the enforcement of this section, including, but not limited to, enforcement of a lien.

(g) Notwithstanding any other provision of law, and in addition to any other remedy provided by law, if the owner, manager, or operator, by any act or omission, directs, permits, or fails to prevent a termination of service while any residential unit receiving that service is occupied, the corporation may commence an action for the recovery of all of the following:

(1) Delinquent charges accruing prior to the expiration of the notice prescribed by subdivision (a).

(2) Reasonable costs incurred by the corporation related to the restoration of service.

(3) Reasonable attorney's fees of the corporation incurred in the enforcement of this section or in the collection of delinquent charges, including, but not limited to, enforcement of a lien.

If the court finds that the owner, manager, or operator has paid the amount in arrears prior to termination, the court shall allow no recovery of any charges, costs, damages, expenses, or fees under this subdivision from the owner, manager, or operator.

An abstract of any money judgment entered pursuant to

subdivision (f) or (g) shall be recorded pursuant to Section 697.310 of the Code of Civil Procedure.

(h) No termination of service subject to this section may be effected without compliance with this section, and any service wrongfully terminated shall be restored without charge to the residential occupants or customer for the restoration of the service. In the event of a wrongful termination by the corporation, the corporation shall, in addition, be liable to the residential occupants or customer for actual damages resulting from the termination and for the costs of enforcement of this section, including, but not limited to, reasonable attorney's fees, if the residential occupants or the representative of the residential occupants made a good faith effort to have the service continued without interruption.

(i) The commission shall adopt rules and orders necessary to implement this section and shall liberally construe this section to accomplish its purpose of ensuring that service to residential occupants is not terminated due to nonpayment by the customer unless the corporation has made every reasonable effort to continue service to the residential occupants. The rules and orders shall include, but are not limited to, reasonable penalties for a violation of this section, guidelines for assistance to residents in the enforcement of this section, and requirements for the notice prescribed by subdivision (a), including, but not limited to, clear wording, large and bold face type, and comprehensive instructions to ensure full notice to the resident.

(j) Nothing in this section broadens or restricts any authority of a local agency that existed prior to January 1, 1989, to adopt an ordinance protecting a residential occupant from the involuntary termination of residential public utility service.

(k) This section preempts any statute or ordinance permitting punitive damages against any owner, manager, or operator on account of an involuntary termination of residential public utility service or permitting the recovery of costs associated with the formation, maintenance, and termination of a tenant's association.

(*l*) For purposes of this section, "representative of the residential occupants" does not include a tenants' association.

SEC. 3. Section 10009 of the Public Utilities Code is amended to read:

10009. (a) Whenever a public utility furnishes individually metered residential light, heat, water, or power to residential occupants in a multiunit residential structure, mobilehome park, or permanent residential structures in a labor camp, as defined in Section 17008 of the Health and Safety Code, where the owner, manager, or operator is listed by the public utility as the customer of record, the public utility shall make every good faith effort to inform the residential occupants, by means of a notice, when the account is in arrears, that service will be terminated in 10 days. The notice shall further inform the residential occupants that they have the right to become customers of the public utility without being

required to pay the amount due on the delinquent account.

(b) The public utility is not required to make service available to the residential occupants unless each residential occupant agrees to the terms and conditions of service, and meets the requirements of law and the public utility's rules. However, if one or more of the residential occupants are willing and able to assume responsibility for the entire account to the satisfaction of the public utility, or if there is a physical means, legally available to the public utility, of selectively terminating service to those residential occupants who have not met the requirements of the public utility's rules, the public utility shall make service available to the residential occupants who have met those requirements.

(c) Where prior service for a period of time is a condition for establishing credit with the public utility, residence and proof of prompt payment of rent or other obligation acceptable to the public utility for that period of time is a satisfactory equivalent.

(d) Any residential occupant who becomes a customer of the public utility pursuant to this section whose periodic payments, such as rental payments, include charges for residential light, heat, water, or power, where these charges are not separately stated, may deduct from the periodic payment each payment period all reasonable charges paid to the public utility for those services during the preceding payment period.

SEC. 4. Section 10009.1 is added to the Public Utilities Code, to read:

10009.1. (a) Whenever a public utility furnishes light, heat, water, or power to residential occupants through a master meter in a multiunit residential structure, mobilehome park, or permanent residential structures in a labor camp, as defined in Section 17008 of the Health and Safety Code, where the owner, manager, or operator is listed by the public utility as the customer of record, the public utility shall make every good faith effort to inform the residential occupants, by means of a written notice posted on the door of each residential unit at least 15 days prior to termination, when the account is in arrears, that service will be terminated on a date specified in the notice. If it is not reasonable or practicable to post the notice on the door of each residential unit, the public utility shall post two copies of the notice in each accessible common area and at each point of access to the structure or structures. The notice shall further inform the residential occupants that they have the right to become utility customers, to whom the service will then be billed, without being required to pay the amount due on the delinquent account. The notice also shall specify, in plain language, what the residential occupants are required to do in order to prevent the termination or reestablish service; the estimated monthly cost of service; the title, address, and telephone number of a representative of the public utility who can assist the residential occupants in continuing service; and the address and telephone number of a legal services project, as defined in Section 6213 of the Business and

Professions Code, which has been recommended by the local county bar association. The notice shall be in English and, to the extent practical, in any other language that the public utility determines is the primary language spoken by a significant number of the residential occupants.

(b) The public utility is not required to make service available to the residential occupants unless each residential occupant or a representative of the residential occupants agrees to the terms and conditions of service, and meets the requirements of law and the public utility's rules. However, if one or more of the residential occupants or the representative of the residential occupants are willing and able to assume responsibility for subsequent charges to the account to the satisfaction of the public utility, or if there is a physical means, legally available to the public utility, of selectively terminating service to those residential occupants who have not met the requirements of the public utility's rules or for whom the representative of the residential occupants is not responsible, the public utility shall make service available to the residential occupants who have met those requirements or on whose behalf those requirements have been met.

(c) Where prior service for a period of time or other demonstration of credit worthiness is a condition for establishing credit with the public utility, residence and proof of prompt payment of rent or other credit obligation during that period of time acceptable to the public utility is a satisfactory equivalent.

(d) Any residential occupant who becomes a customer of the public utility pursuant to this section whose periodic payments, such as rental payments, include charges for residential light, heat, water, or power, where these charges are not separately stated, may deduct from the periodic payment each payment period all reasonable charges paid to the public utility for those services during the preceding payment period.

(e) Whenever a public utility furnishes residential service subject to subdivision (a), the public utility may not terminate that service in any of the following situations:

(1) During the pendency of an investigation by the public utility of a customer dispute or complaint.

(2) When the customer has been granted an extension of the period for payment of a bill.

(3) For an indebtedness owed by the customer to any other public agency or when the obligation represented by the delinquent account or other indebtedness was incurred with any public agency other than the public utility.

(4) When a delinquent account relates to another property owned, managed, or operated by the customer.

(5) When a public health or building officer certifies that termination would result in a significant threat to the health or safety of the residential occupants or the public.

(f) Notwithstanding any other provision of law, and in addition to

any other remedy provided by law, if the owner, manager, or operator, by any act or omission, directs, permits, or fails to prevent a termination of service while any residential unit is occupied, the residential occupant or the representative of the residential occupants may commence an action for the recovery of all of the following:

(1) Reasonable costs and expenses incurred by the residential occupant or the representative of the residential occupants related to restoration of service.

(2) Actual damages related to the termination of service.

(3) Reasonable attorney's fees of the residential occupants, the representative of the residential occupants, or each of them, incurred in the enforcement of this section, including, but not limited to, enforcement of a lien.

(g) Notwithstanding any other provision of law, and in addition to any other remedy provided by law, if the owner, manager, or operator, by any act or omission, directs, permits, or fails to prevent a termination of service while any residential unit receiving that service is occupied, the corporation may commence an action for the recovery of all of the following:

(1) Delinquent charges accruing prior to the expiration of the notice prescribed by subdivision (a).

(2) Reasonable costs incurred by the corporation related to the restoration of service.

(3) Reasonable attorney's fees of the corporation incurred in the enforcement of this section or in the collection of delinquent charges, including, but not limited to, enforcement of a lien.

If the court finds that the owner, manager, or operator has paid the amount in arrears prior to termination, the court shall allow no recovery of any charges, costs, damages, expenses, or fees under this subdivision from the owner, manager, or operator.

An abstract of any money judgment entered pursuant to subdivision (f) or (g) shall be recorded pursuant to Section 697.310 of the Code of Civil Procedure.

(h) No termination of service subject to this section may be effected without compliance with this section, and any service wrongfully terminated shall be restored without charge to the residential occupants or customer for the restoration of the service. In the event of a wrongful termination by the public utility, the public utility shall, in addition, be liable to the residential occupants or customer for actual damages resulting from the termination and for the costs of enforcement of this section, including, but not limited to, reasonable attorney's fees, if the residential occupants or the representative of the residential occupants make a good faith effort to have the service continued without interruption.

(i) The public utility shall adopt rules and regulations necessary to implement this section and shall liberally construe this section to accomplish its purpose of ensuring that service to residential occupants is not terminated due to nonpayment by the customer

unless the public utility has made every reasonable effort to continue service to the residential occupants. The rules and regulations shall include, but are not limited to, guidelines for assistance to actual users in the enforcement of this section and requirements for the notice prescribed by subdivision (a), including, but not limited to, clear wording, large and bold face type, and comprehensive instructions to ensure full notice to the actual user.

(j) Nothing in this section broadens or restricts any authority of a local agency that existed prior to to January 1, 1989, to adopt an ordinance protecting a residential occupant from the involuntary termination of residential public utility service.

(k) This section preempts any statute or ordinance permitting punitive damages against any owner, manager, or operator on account of an involuntary termination of residential public utility service or permitting the recovery of costs associated with the formation, maintenance, and termination of a tenant's association.

(*l*) For purposes of this section, "representative of the residential occupants" does not include a tenants' association.

SEC. 5. Section 12822 of the Public Utilities Code is amended to read:

12822. (a) Whenever a district furnishes individually metered residential light, heat, water, or power to residential occupants in a multiunit residential structure, mobilehome park, or permanent residential structures in a labor camp, as defined in Section 17008 of the Health and Safety Code, where the owner, manager, or operator is listed by the district as the customer of record of the service, the district shall make every good faith effort to inform the residential occupants, by means of a notice, when the account is in arrears, that service will be terminated in 10 days. The notice shall further inform the residential occupants that they have the right to become customers of the district without being required to pay the amount due on the delinquent account.

(b) The district is not required to make service available to the residential occupants unless each residential occupant agrees to the terms and conditions of service, and meets the requirements of the district's rules. However, if one or more of the residential occupants are willing and able to assume responsibility for the entire account to the satisfaction of the district, or if there is a physical means, legally available to the district, of selectively terminating service to those residential occupants who have not met the requirements of the district's rules, the district shall make service available to the residential occupants who have met those requirements.

(c) Where prior service for a period of time is a condition for establishing credit with the district, residence and proof of prompt payment of rent or other credit obligation acceptable to the district for that period of time is a satisfactory equivalent.

(d) Any residential occupant who becomes a customer of the district pursuant to this section whose periodic payments, such as rental payments, include charges for residential light, heat, water, or

power, where these charges are not separately stated, may deduct from the periodic payment each payment period all reasonable charges paid to the district for those services during the preceding payment period.

SEC. 6. Section 12822.1 is added to the Public Utilities Code, to read:

12822.1. (a) Whenever a district furnishes residential light, heat, water, or power to residential occupants through a master meter in a multiunit residential structure, mobilehome park, or permanent residential structures in a labor camp, as defined in Section 17008 of the Health and Safety Code, where the owner, manager, or operator is listed by the district as the customer of record of the service, the district shall make every good faith effort to inform the residential occupants, by means of a written notice posted on the door of each residential unit at least 15 days prior to termination, when the account is in arrears, that service will be terminated on a date specified in the notice. If it is not reasonable or practicable to post the notice on the door of each residential unit, the district shall post two copies of the notice in each accessible common area and at each point of access to the structure or structures. The notice shall further inform the residential occupants that they have the right to become customers, to whom the service will then be billed, of the district without being required to pay the amount due on the delinquent account. The notice also shall specify, in plain language, what the residential occupants are required to do in order to prevent the termination or reestablish service; the estimated monthly cost of service; the title, address, and telephone number of a representative of the district who can assist the residential occupants in continuing service; and the address and telephone number of a legal services project, as defined in Section 6213 of the Business and Professions Code, which has been recommended by the local county bar association. The notice shall be in English and, to the extent practical, in any other language that the district determines is the primary language spoken by a significant number of the residential occupants.

(b) The district is not required to make service available to the residential occupants unless each residential occupant or a representative of the residential occupants agrees to the terms and conditions of service, and meets the requirement of law and the district's rules. However, if one or more of the residential occupants or the representative of the residential occupants are willing and able to assume responsibility for subsequent charges to the account to the satisfaction of the district, or if there is a physical means, legally available to the district, of selectively terminating service to those residential occupants who have not met the requirements of the district's rules or for whom the representative of the residential occupants is not responsible, the district shall make service available to the residential occupants who have met those requirements or on whose behalf those requirements have been met.

(c) Where prior service for a period of time, or other demonstration of credit worthiness is a condition for establishing credit with the district, residence and proof of prompt payment of rent or other credit obligation during that period of time acceptable to the district is a satisfactory equivalent.

(d) Any residential occupant who becomes a customer of the district pursuant to this section whose periodic payments, such as rental payments, include charges for residential light, heat, water, or power, where these charges are not separately stated, may deduct from the periodic payment each payment period all reasonable charges paid to the district for those services during the preceding payment period.

(e) Whenever a district furnishes residential service subject to subdivision (a), the district may not terminate that service in any of the following situations:

(1) During the pendency of an investigation by the district of a customer dispute or complaint.

(2) When the customer has been granted an extension of the period for payment of a bill.

(3) For an indebtedness owed by the customer to any other public agency or when the obligation represented by the delinquent account or other indebtedness was incurred with any public agency other than the district.

(4) When a delinquent account relates to another property owned, managed, or operated by the customer.

(5) When a public health or building officer certifies that termination would result in a significant threat to the health or safety of the residential occupants or the public.

(f) Notwithstanding any other provision of law, and in addition to any other remedy provided by law, if the owner, operator, or manager, by any act or omission, directs, permits, or fails to prevent a termination of service while any residential unit is occupied, the residential occupant or the representative of the residential occupants may commence an action for the recovery of all of the following:

(1) Reasonable costs and expenses incurred by the residential occupant or the representative of the residential occupants related to restoration of service.

(2) Actual damages related to the termination of service.

(3) Reasonable attorney's fees of the residential occupants, the representative of the residential occupants, or each of them, incurred in the enforcement of this section, including, but not limited to, enforcement of a lien.

(g) Notwithstanding any other provision of law, and in addition to any other remedy provided by law, if the owner, manager, or operator, by any act or omission, directs, permits, or fails to prevent a termination of service while any residential unit receiving that service is occupied, the corporation may commence an action for the recovery of all of the following:

(1) Delinquent charges accruing prior to the expiration of the notice prescribed by subdivision (a).

(2) Reasonable costs incurred by the corporation related to the restoration of service.

(3) Reasonable attorney's fees of the corporation incurred in the enforcement of this section or in the collection of delinquent charges, including, but not limited to, enforcement of a lien.

If the court finds that the owner, manager, or operator has paid the amount in arrears prior to termination, the court shall allow no recovery of any charges, costs, damages, expenses, or fees under this subdivision from the owner, manager, or operator.

An abstract of any money judgment entered pursuant to subdivision (f) or (g) shall be recorded pursuant to Section 697.310 of the Code of Civil Procedure.

(h) No termination of service subject to this section may be effected without compliance with this section, and any service wrongfully terminated shall be restored without charge to the residential occupants or customer for the restoration of the service. In the event of a wrongful termination by the district, the district shall, in addition, be liable to the residential occupants or customer for actual damages resulting from the termination and for the costs of enforcement of this section, including, but not limited to, reasonable attorney's fees, if the residential occupants or the representative of the residential occupants make a good faith effort to have the service continued without interruption.

(i) The district shall adopt rules and regulations necessary to implement this section and shall liberally construe this section to accomplish its purpose of ensuring that service to the residential occupants is not terminated due to nonpayment by the customer unless the district has made every reasonable effort to continue service to the residential occupants. The rules and regulations shall include, but are not limited to, guidelines for assistance to actual users in the enforcement of this section and requirements for the notice prescribed by subdivision (a), including, but not limited to, clear wording, large and bold face type, and comprehensive instructions to ensure full notice to the actual user.

(j) Nothing in this section broadens or restricts any authority of a local agency that existed prior to January 1, 1989, to adopt an ordinance protecting a residential occupant from the involuntary termination of residential public utility service.

(k) This section preempts any statute or ordinance permitting punitive damages against any owner, manager, or operator on account of an involuntary termination of residential public utility service or permitting the recovery of costs associated with the formation, maintenance, and termination of a tenant's association.

(*l*) For purposes of this section, "representative of the residential occupants" does not include a tenants' association.

SEC. 7. Section 16481 of the Public Utilities Code is amended to read:

16481. (a) Whenever a district furnishes individually metered residential light, heat, water, or power to residential occupants in a multiunit residential structure, mobilehome park, or permanent residential structures in a labor camp, as defined in Section 17008 of the Health and Safety Code, where the owner, manager, or operator is listed by the district as the customer of record, the district shall make every good faith effort to inform the residential occupants, by means of a notice, when the account is in arrears, that service will be terminated in 10 days. The notice shall further inform the residential occupants that they have the right to become customers of the district without being required to pay the amount due on the delinquent account.

(b) The district is not required to make service available to the residential occupants unless each residential occupant agrees to the terms and conditions of service, and meets the requirements of the district's rules. However, if one or more of the residential occupants are willing and able to assume responsibility for the entire account to the satisfaction of the district, or if there is a physical means, legally available to the district, of selectively terminating service to those residential occupants who have not met the requirements of the district's rules, the district shall make service available to the residential occupants who have met those requirements.

(c) Where prior service for a period of time is a condition for establishing credit with the district, residence and proof of prompt payment of rent or other credit obligation acceptable to the district for that period of time is a satisfactory equivalent.

(d) Any residential occupant who becomes a customer of the district pursuant to this section whose periodic payments, such as rental payments, include charges for residential light, heat, water, or power, where these charges are not separately stated, may deduct from the periodic payment each payment period all reasonable charges paid to the district for those services during the preceding payment period.

SEC. 8. Section 16481.1 is added to the Public Utilities Code, to read:

16481.1. (a) Whenever a district furnishes residential light, heat, water, or power to residential occupants through a master meter in a multiunit residential structure, mobilehome park, or permanent residential structures in a labor camp, as defined in Section 17008 of the Health and Safety Code, where the owner, manager, or operator is listed by the district as the customer of record, the district shall make every good faith effort to inform the residential occupants, by means of a written notice posted on the door of each residential unit at least 15 days prior to termination, when the account is in arrears, that service will be terminated on a date specified in the notice. If it is not reasonable or practicable to post the notice on the door of each residential unit, the district shall post two copies of the notice in each common area and at each point of access to the structure or structures. The notice shall further inform the residential occupants

that they have the right to become customers, to whom the service will be billed, of the district without being required to pay the amount due on the delinquent account. The notice also shall specify, in plain language, what the residential occupants are required to do in order to prevent the termination or reestablish service; the estimated monthly cost of service; the title, address, and telephone number of a representative of the district who can assist the residential occupants in continuing service; and the address and telephone number of a legal services project, as defined in Section 6213 of the Business and Professions Code, which has been recommended by the local county bar association. The notice shall be in English and, to the extent practical, in any other language that the district determines is the primary language spoken by a significant number of the residential occupants.

(b) The district is not required to make service available to the residential occupants unless each residential occupant or a representative of the residential occupants agrees to the terms and conditions of service, and meets the requirements of law and the district's rules. However, if one or more of the residential occupants or the representative of the residential occupants are willing and able to assume responsibility for subsequent charges to the account to the satisfaction of the district, or if there is a physical means, legally available to the district, of selectively terminating service to those residential occupants who have not met the requirements of the district's rules or for whom the representative of the residential occupants is not responsible, the district shall make service available to the residential occupants who have met those requirements or on whose behalf those requirements have been met.

(c) Where prior service for a period of time or other demonstration of credit worthiness is a condition for establishing credit with the district, residence and proof of prompt payment of rent or other credit obligation during that period of time acceptable to the district is a satisfactory equivalent.

(d) Any residential occupant who becomes a customer of the district pursuant to this section whose periodic payments, such as rental payments, include charges for residential light, heat, water, or power, where these charges are not separately stated, may deduct from the periodic payment each payment period all reasonable charges paid to the district for those services during the preceding payment period.

(e) Whenever a district furnishes residential service subject to subdivision (a), the district may not terminate that service in any of the following situations:

(1) During the pendency of an investigation by the district of a customer dispute or complaint.

(2) When the customer has been granted an extension of the period for payment of a bill.

(3) For an indebtedness owed by the customer to any other public agency or when the obligation represented by the delinquent

account or other indebtedness was incurred with any public agency other than the district.

(4) When a delinquent account relates to another property owned, managed, or operated by the customer.

(5) When a public health or building officer certifies that termination would result in a significant threat to the health or safety of the residential occupants or the public.

(f) Notwithstanding any other provision of law, and in addition to any other remedy provided by law, if the owner, operator, or manager, by any act or omission, directs, permits, or fails to prevent a termination of service while any residential unit is occupied, the residential occupant or the representative of the residential occupants may commence an action for the recovery of all of the following:

(1) Reasonable costs and expenses incurred by the residential occupant or the representative of the residential occupants related to restoration of service.

(2) Actual damages related to the termination of service.

(3) Reasonable attorney's fees of the residential occupants, the representative of the residential occupants, or each of them, incurred in the enforcement of this section, including, but not limited to, enforcement of a lien.

(g) Notwithstanding any other provision of law, and in addition to any other remedy provided by law, if the owner, manager, or operator, by any act or omission, directs, permits, or fails to prevent a termination of service while any residential unit receiving that service is occupied, the corporation may commence an action for the recovery of all of the following:

(1) Delinquent charges accruing prior to the expiration of the notice prescribed by subdivision (a).

(2) Reasonable costs incurred by the corporation related to the restoration of service.

(3) Reasonable attorney's fees of the corporation incurred in the enforcement of this section or in the collection of delinquent charges, including, but not limited to, enforcement of a lien.

If the court finds that the owner, manager, or operator has paid the amount in arrears prior to termination, the court shall allow no recovery of any charges, costs, damages, expenses, or fees under this subdivision from the owner, manager, or operator.

An abstract of any money judgment entered pursuant to subdivision (f) or (g) shall be recorded pursuant to Section 697.310 of the Code of Civil Procedure.

(h) No termination of service subject to this section may be effected without compliance with this section, and any service wrongfully terminated shall be restored without charge to the residential occupants or customer for the restoration of the service. In the event of a wrongful termination by the district, the district shall, in addition, be liable to the residential occupants or customer for actual damages resulting from the termination and for the costs

of enforcement of this section, including, but not limited to, reasonable attorney's fees, if the residential occupants or the representative of the residential occupants make a good faith effort to have the service continued without interruption.

(i) The district shall adopt rules and regulations necessary to implement this section and shall liberally construe this section to accomplish its purpose of ensuring that service to the residential occupants is not terminated due to nonpayment by the customer unless the district has made every reasonable effort to continue service to the residential occupants. The rules and regulations shall include, but are not limited to, guidelines for assistance to actual users in the enforcement of this section and requirements for the notice prescribed by subdivision (a), including, but not limited to, clear wording, large and bold face type, and comprehensive instructions to ensure full notice to the actual users.

(j) Nothing in this section broadens or restricts any authority of a local agency that existed prior to January 1, 1989, to adopt an ordinance protecting a residential occupant from the involuntary termination of residential public utility service.

(k) This section preempts any statute or ordinance permitting punitive damages against any owner, manager, or operator on account of an involuntary termination of public utility service or permitting the recovery of costs associated with the formation, maintenance, and termination of a tenant's association.

(*l*) For purposes of this section, "representative of the residential occupants" does not include a tenants' association.

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.

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## CHAPTER 1534

An act to add Article 9 (commencing with Section 674) to Chapter 3 of Part 2 of Division 1 of the Revenue and Taxation Code, relating to taxation.

[Approved by Governor September 29, 1988. Filed with Secretary of State September 30, 1988 ]

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

SECTION 1. Article 9 (commencing with Section 674) is added to Chapter 3 of Part 2 of Division 1 of the Revenue and Taxation Code, to read:

Article 9. Consultant Contracts

674. All contracts for the performance of appraisal work for assessors by any individual who is not an employee of the state, any county, or any city shall be entered into only after at least two competitive bids and shall be entered into either on a fixed fee basis or on the basis of an hourly rate with a maximum dollar amount .

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because this act does not mandate a new program or higher level of service on local government. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Chapter 4 (commencing with Section 17550) of Part 7 of Division 4 of Title 2 of the Government Code.

SEC. 3. This act shall apply to contracts entered into on and after January 1, 1989.

SEC. 4. It is the intent of the Legislature that the provisions of this act shall have no effect upon the constitutional, statutory, and regulatory mandates for determining "full cash value" or "fair market value" and it shall remain the primary responsibility of assessors to ensure that appraisals and enrolled values are neither overstated nor understated.

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## CHAPTER 1535

An act to add Chapter 2 (commencing with Section 2000) to Division 2.5 of the Welfare and Institutions Code, relating to youth centers and youth shelters.

[Approved by Governor September 29, 1988. Filed with Secretary of State September 30, 1988 ]

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

SECTION 1. Chapter 2 (commencing with Section 2000) is added to Division 2.5 of the Welfare and Institutions Code, to read:

### CHAPTER 2. YOUTH CENTER AND YOUTH SHELTER BOND ACT OF 1988

#### Article 1. General Provisions

2000. This chapter shall be known and may be cited as the Youth Center and Youth Shelter Bond Act of 1988.

2001. For purposes of this chapter:

(a) "Acquiring" means obtaining ownership of an existing facility in fee simple for use as a youth center or youth shelter.

(b) "Altering" or "renovating" means making modifications to an

existing facility which are necessary for cost-effective use as a youth center or youth shelter, including restoration, repair, expansion, and all related physical improvements.

(c) "Applicant" means any local agency or nonprofit private agency or organization, and any joint venture of public and nonprofit private agencies or organizations.

(d) "Constructing" means the purchase or building of a new facility, including the costs of land acquisition and architectural and engineering fees.

(e) "Department" means the Department of the Youth Authority.

(f) "Equipment" means tangible personal property having a useful life of more than one year and an acquisition cost of three hundred dollars ($300) or more.

(g) "Fund" means the 1988 County Correctional Facility Capital Expenditure and Youth Facility Bond Fund, created pursuant to Section 4496.10 of the Penal Code.

(h) "Nonprofit" means an institution or organization which is owned and operated by one or more corporations or associations with no part of the net earnings benefiting any private shareholder or individual.

(i) "Programs" means a variety of services and activities provided in a youth center, including, but not limited to, recreation, health and fitness, delinquency prevention such as antigang programs and how-to resistance to peer group pressures, counseling for such problems as drug and alcohol abuse and suicide, citizenship and leadership development, and youth employment.

(j) "Services" means those services provided in youth shelters, including, but not limited to, food, shelter, counseling, outreach, basic health screening, referral and linkage to other services offered by public and private agencies, and long-term planning for reunification with the family or in a suitable home where family reunification is not possible.

(k) "Youth center" means a facility where children, ages 6 to 17, inclusive, come together for programs and activities.

(*l*) "Youth shelter" means a facility that provides a variety of services to homeless minors living on the street to assist them with their immediate survival needs and to help reunite them with their parents or, as a last alternative, find a suitable home.

Article 2. Youth Center and Youth Shelter Bond Act Program

2010. Money in the 1988 County Correctional Facility Capital Expenditure and Youth Facility Bond Fund created pursuant to Section 4496.10 of the Penal Code shall, upon appropriation by the Legislature, be available, for allocation, upon the request of the Director of the Department of the Youth Authority and for the purposes specified in this chapter.

2011. The department shall, upon appropriation pursuant to

Section 2010, make awards to public or private nonprofit agencies or joint ventures, or both, for the purpose of acquiring, renovating, constructing, and purchasing equipment for youth centers or youth shelters. This chapter shall not apply to institutions of a type under the jurisdiction of the department prior to the operative date of this act adding this section.

2012. (a) A recipient of a contract for the acquisition of a facility to be used as a youth center or youth shelter shall assure that the facility will be used for that purpose for at least 10 years from the date of acquisition.

(b) A recipient of a contract for the construction of a facility to be used as a youth center or youth shelter shall assure the department the facility will be used for that purpose for at least 20 years after completion of construction.

(c) A recipient of a contract for the renovation of an existing facility to be used as a youth center or youth shelter shall assure the department the facility will be used for that purpose for the following periods:

(1) Not less than three years from the date the contract terminates, where the amount of the award does not exceed thirty thousand dollars ($30,000).

(2) If the award exceeds thirty thousand dollars ($30,000), the fixed period of time shall increase one year for each additional ten thousand dollars ($10,000) or part thereof, to a maximum of seventy-five thousand dollars ($75,000).

(3) For awards which exceed seventy-five thousand dollars ($75,000), the fixed period of time shall not be less than 10 years.

2013. (a) The State of California shall be entitled to recapture a portion of state funds from the owner of a facility if, within 10 years after acquisition, or 20 years after completion of construction, either of the following occurs:

(1) The owner of the facility ceases to be a public or nonprofit agency.

(2) The facility is no longer used for youth center or youth shelter activities.

(b) The amount recovered shall be that proportion of the current value of the facility equal to the proportion of state funds contributed to the original cost. The current value of the facility shall be determined by an agreement between the owner of the facility and the State of California, or by an action in the court in the jurisdiction in which the facility is located.

2014. A facility altered, acquired, renovated, constructed, or equipped using funds allocated under this chapter may not be used and may not be intended to be used for sectarian instruction or as a place for religious worship.

2015. In a youth center or youth shelter facility that is shared with other age groups, funds received under this chapter may support only the following:

(a) That part of the facility used by young people.

(b) A proportionate share of the costs based on the extent of use of the facility by young people.

2016. The department prior to issuing a request for proposal shall create an advisory committee to secure from this committee advice on the request for proposal and the criteria for reviewing and evaluating the responses. In no case shall the department issue a request for proposals for youth centers and youth shelters any later than three months after the money is deposited in the fund for the purposes of this chapter. The advisory committee shall consist of representatives, including, but not limited to, of the Office of Criminal Justice Planning, law enforcement, League of California Cities, County Supervisors Association of California, California Collaboration for Youth, California Child, Youth and Family Coalition, California Park and Recreation Society, YWCA, California Association of Probation Officers, California Parent-Teachers' Association, Girl Scouts of America, two appointees each by the Speaker of the Assembly and Senate Rules Committee representing providers of community youth services including service providers for homeless youth.

The department shall review and evaluate proposals for funding. The proposals shall be consistent with the criteria developed by the department in consultation with its advisory bodies.

2017. Proposals for both youth centers and youth shelters shall do all of the following:

(1) Document the need for the applicant's proposal.

(2) Contain a written commitment and a plan for the delivery of programs, including, where appropriate, plans for innovative nontraditional programs designed to meet the needs of the youth of the targeted community.

(3) (A) Contain a match for funding which is:

(i) Equal to 25 percent of the total amount requested, when the applicant is a public agency or joint venture involving a public agency.

(ii) Equal to 15 pecent of the total amount requested, when the applicant is a private nonprofit agency.

(B) The match may be in cash or in kind.

(4) Document the cost effectiveness of the proposal.

(5) Contain a written commitment and plan to develop and implement a process to receive and consider feedback and suggestions from the community served including a separate mechanism for the youth it serves. A board of directors reflecting broad representation of the community will satisfy the requirement for community input.

(6) Document plans to utilize and coordinate with other organizations serving the same youth population including making available center facilities where possible.

2018. (a) (1) Funds shall be available in response to requests for proposals. The department shall rank the proposals for funding on a priority consideration based on established greatest need in the most

heavily populated areas, the most underserved areas, and the most economically disadvantaged areas, both in urban and rural counties.

(2) After ranking the priorities pursuant to paragraph (1) of subdivision (a), funds shall be given to applicants in the following order of priority taking into consideration the factors set forth in subdivision (b).

(A) Private nonprofit agencies.

(B) Joint ventures between public and private nonprofit agencies.

(C) Public agencies.

(b) In ranking the proposals, the department shall also consider the following factors:

(1) The number of youths to be served.

(2) The cost effectiveness of the proposal.

(3) The utilization of, and coordination with, other agencies serving youth.

(4) Experience in program management, particularly in programs serving the needs of youth.

(5) Experience in programs serving youth.

(c) The department shall, to the extent possible given the amount of funds available, attempt to ensure a broad distribution of the funds consistent with the program priorities, in order to meet the needs of youth.

The department shall consider any protest or objection regarding the award of a contract, whether submitted before or after the award, provided that the protest is filed within the time period established in the request for proposals, made pursuant to Section 2016. All protests or objections shall be filed in writing. The protesting party shall be notified in writing of the final decision on the protest, and the notification shall set forth the rationale upon which the decision is based.

2020. For purposes of administering this chapter and the allocation of bond proceeds, the department shall treat funding for the youth centers and youth shelters as separate programs. In addition to its advisory committee, the department shall seek the cooperation and advice of the Office of Criminal Justice Planning and other appropriate agencies in the administration of the youth shelter program.

2021. No grant made pursuant to this chapter shall exceed one million dollars ($1,000,000).

2022. The committee, as defined in Section 4496.04 of the Penal Code, shall give priority to the issuance of bonds in order to carry out the actions specified in subdivision (b) of Section 4496.12 of the Penal Code.

SEC. 2. (a) It is the intent of the Legislature that funds available under the program prescribed by this act shall be distributed as soon as possible in order to maximize the availability of services and programs for youths to the largest number of youths possible.

(b) 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.

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## CHAPTER 1536

An act relating to public works, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 29, 1988. Filed with Secretary of State September 30, 1988.]

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

SECTION 1. The Department of General Services shall, out of funds currently available, upgrade the restroom facilities in the State Capitol Park sufficient to accommodate visitors projected to visit the California Vietnam Veterans Memorial and the Capitol grounds. The department shall provide clean and safe facilities, regularly patrolled by security personnel, accessible to the handicapped, and open to the public on weekends. The upgrade for the restrooms required of this section shall be completed before the dedication of the completed California Vietnam Veterans Memorial.

This section shall be repealed on January 1, 1992.

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 essential health and safety facilities for visitors to the State Capitol Park as soon as possible, it is necessary that this act take effect immediately.

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## CHAPTER 1537

An act to add Section 199.78 to the Health and Safety Code, relating to AIDS.

[Approved by Governor September 29, 1988. Filed with Secretary of State September 30, 1988.]

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

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

(a) Education is the primary means of preventing the spread of acquired immune deficiency syndrome, commonly known as AIDS, a deadly disease which has reached epidemic proportions in

California and the rest of the nation.

(b) Cases of acquired immune deficiency syndrome (AIDS) are increasing rapidly among infants and children. Today, human immunodeficiency virus (HIV) infected infants are being born at the rate of 3,000 a year.

(c) Approximately 79 percent of pediatric AIDS cases are caused by transmission of infection from an HIV infected mother. In many cases, the mothers are symptom free and unaware that they are infected. The number of perinatal AIDS cases is expected to increase significantly as HIV infection becomes more prevalent in the heterosexual population. The federal Centers for Disease Control estimates that by 1991, the number of AIDS cases among children under the age of 13 will increase 450 percent.

(d) In New York City, AIDS is currently the leading cause of death among women aged 25 to 28. The United States Department of Health estimates that between 30,000 and 50,000 of the women in New York City who are of childbearing age now carry the AIDS virus. In Los Angeles, which has the fastest growing rate of AIDS cases in the nation, 18 percent of women who have AIDS do not know how they contracted it.

(e) The only way to prevent the perinatal transmission of AIDS to infants is to prevent HIV infection in women of childbearing age and the avoidance of pregnancy by HIV infected women. This requires a widespread program of education, identification of women who are at high risk for HIV infection, counseling, and the availability of appropriate HIV testing services.

(f) The State Department of Health Services, through a variety of categorical programs, provides various services to women and children who may be at high risk for infection by the human immunodeficiency virus.

(g) These categorial programs include:

(1) The California Childrens Services Program.

(2) Programs under the Maternal and Child Health Branch of the department.

(3) The Child Health Disability Prevention Program.

(4) The Genetic Disease Program.

(5) The Office of Family Planning.

(6) The Rural and Community Health Clinics Program.

(7) The County Health Services Program.

(8) The Sexually Transmitted Disease Program.

(h) In addition, the State Department of Alcohol and Drug Programs administers programs which serve a large population of women who may be at high risk for HIV infection.

(i) Currently, however, most providers of services under these programs lack the AIDS-related information, training, and testing capacity necessary to effectively educate, counsel, and test clients who are potentially at high risk for HIV infection.

SEC. 2. Section 199.78 is added to the Health and Safety Code, to read:

199.78. (a) The state department shall, in coordination with the State Department of Alcohol and Drug Programs, develop a plan which assesses the need for, a program of acquired immune deficiency syndrome (AIDS) primary prevention, health education, testing, and counseling, specifically designed for women and children, which shall be integrated, as the department deems appropriate, into the following programs:

(1) The California Childrens Services Program provided for pursuant to Article 2 (commencing with Section 248).

(2) Programs under the Maternal and Child Health Branch of the department.

(3) The Child Health Disability Prevention Program provided for pursuant to Article 3.4 (commencing with Section 320).

(4) The Genetic Disease Program, provided for pursuant to Sections 309 and 309.5.

(5) The Family Planning Programs, provided for pursuant to Chapter 8.5 (commencing with Section 14500) of Part 3 of Division 9 of the Welfare and Institutions Code.

(6) The Rural and Community Health Clinics Program.

(7) The County Health Services Program, provided for pursuant to Part 4.5 (commencing with Section 16700) of Part 3 of Division 9 of the Welfare and Institutions Code.

(8) The Sexually Transmitted Disease Program.

(9) Programs administered by the State Department of Alcohol and Drug Programs.

(b) The AIDS-related services which shall be addressed in the plan specified in this section shall include, but not be limited to, all of the following:

(1) A variety of educational materials which are appropriate to the cultural background and educational level of the program clientele.

(2) The availability of confidential HIV antibody testing and counseling either onsite or by referral.

(c) Pursuant to subdivision (a), the plan shall include a method to provide the educational materials specified in subdivision (b) and appropriate AIDS-related training programs for those persons who provide direct services to women and children receiving services under the programs specified in this section.

(d) In order that the AIDS-related services plan provided through the programs specified in this section be as effective as possible, the state department shall ensure that the educational materials and training programs provided for each program specified in subdivision (a) are developed in coordination with, and with input from, each of the respective programs.

(e) Nothing in this section shall preclude the state department from incorporating the plan requirements into the department's annual state AIDS plan, or any other reporting document relating to AIDS deemed appropriate by the department.

SEC. 3. On or before July 1, 1989, the state department shall

report to the Governor and the Legislature on the plan developed pursuant to this act, including a cost estimate for implementing the plan.

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## CHAPTER 1538

An act to add Article 1.9 (commencing with Section 246.1) to Chapter 2 of Part 1 of Division 1 of the Health and Safety Code, relating to dental care.

[Approved by Governor September 29, 1988 Filed with Secretary of State September 30, 1988 ]

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

SECTION 1. Article 1.9 (commencing with Section 246.1) is added to Chapter 2 of Part 1 of Division 1 of the Health and Safety Code, to read:

### Article 1.9. Sonoma County Dental Care Pilot Project

246.1. (a) The Legislature finds and declares that it is necessary that a special authority be established in Sonoma County in order to meet the problems of the delivery of publicly assisted and indigent dental health care in the county. Because there is no general law under which such an authority could be formed, the adoption of a special act and the formation of a special authority is required.

(b) The Board of Supervisors of Sonoma County may, by ordinance, establish the Sonoma County Dental Health Authority to receive state funds and technical assistance for the purpose of managing a dental health care delivery program for indigent persons and Medi-Cal recipients covered under the Denti-Cal program. The enabling ordinance shall specify the membership of the authority, the qualifications of members, the manner of appointment, selection, or removal of members, and their term of office, and any other matters which the board of supervisors deems necessary or convenient for the conduct of the authority's activities. The authority so established shall be considered an entity separate from the county, shall file the statement required by Section 53051 of the Government Code, and shall have the rights, powers, duties, privileges conferred by this article, the power to acquire, possess, and dispose of real or personal property, as may be necessary for the performance of its functions, to employ personnel and contract for services required to meet its obligations, and to sue or be sued. Any obligations of the authority, statutory, contractual, or otherwise, shall be the obligations solely of the authority and shall not be the obligations of the county or of the state unless expressly provided for in a contract or grant agreement between the authority and the county or the

state.

(c) The authority shall bill the Medi-Cal program for services provided to Medi-Cal recipients.

(d) In the event the authority no longer functions for the purposes for which it was established, the board of supervisors may, by ordinance, terminate the authority at such time as the authority's then existing obligations have been satisfied or the authority's assets have been exhausted. Prior to the termination of the authority, the board of supervisors shall notify the state department of its intent to terminate the authority and shall provide the state department with an accounting of the assets and liabilities of the authority.

(e) Any assets of the authority shall be disposed of pursuant to provisions contained in the grant agreement entered into between the state and the authority pursuant to this article.

(f) Notwithstanding the provisions of this article, the state department may not enter into any arrangement with the authority to provide case management or fiscal intermediary services for dental health care provided to Medi-Cal recipients.

246.3. (a) The state department shall allocate any funds appropriated for that purpose to the Sonoma County Dental Health Authority for the provision of dental care and dental hygiene services for Medi-Cal to recipients covered under the Denti-Cal program, and for indigent persons in Sonoma County.

(b) The state department shall permit the Sonoma County Dental Health Authority to impose a fee upon any indigent persons served by the program, commensurate with their ability to pay. An additional fee shall not be imposed upon Medi-Cal recipients for services covered by that program.

246.5. (a) The state department, after consultation with the Sonoma County Dental Health Authority, shall report to the Legislature on or before December 31, 1989, on the effectiveness of the pilot project provided for under this article. The report shall contain recommendations as to whether the program should be continued or expanded.

(b) The report shall include, but not be limited to, all of the following information, which the department shall take into consideration in its recommendation:

(1) The number of indigent patients served.

(2) The number of dentists, dental auxiliaries, and other persons who volunteer in the provision of dental care to the indigent patients.

(3) The dollar amount billed to the Denti-Cal program, which provides reimbursement for dental care services under the Medi-Cal program.

(4) The dollar amount paid to the pilot project by Denti-Cal.

(5) The dollar amount of treatment denied by Denti-Cal.

(6) The dollar amount paid by patients.

(7) The dollar amount of supplies and equipment donated to the program.

(8) The dollar amount paid by the project for overhead.
(9) The number of hours of service by volunteers.

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## CHAPTER 1539

An act to amend Sections 711, 1528, and 1756 of, to add Sections 1055.3, 1585, 1764, 1765, 1766, 1767.5, 1768, 1769, and 12002.5 to, and to add and repeal Section 1767 of, the Fish and Game Code, relating to wildlife, and making an appropriation therefor.

[Approved by Governor September 29, 1988. Filed with Secretary of State September 30, 1988 ]

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

SECTION 1. Section 711 of the Fish and Game Code is amended to read:

711. It is the intent of the Legislature to ensure adequate funding from appropriate sources for the department. To this end, the Legislature finds and declares that:

(a) The costs of nongame fish and wildlife programs and free hunting and fishing license programs shall be provided annually in the Budget Act by appropriating money from the General Fund and sources other than the Fish and Game Preservation Fund to the department for these purposes.

(b) The costs of commercial fishing programs shall be provided solely out of revenues from commercial fishing taxes, license fees, and other revenues, and from reimbursements and federal funds received for commercial fishing programs.

(c) The costs of hunting and sportfishing programs shall be provided solely out of hunting and sportfishing revenues and reimbursements and federal funds received for hunting and sportfishing programs. These revenues shall not be used to support commercial fishing programs, free hunting and fishing license programs, or nongame fish and wildlife programs.

(d) The costs of managing lands managed by the department and the costs of wildlife management programs shall be supplemented out of revenues in the Native Species Conservation and Enhancement Account in the Fish and Game Preservation Fund.

(e) The department shall conduct, or contract for, a review, at least every five years, of its programs to ensure consistency with this section.

(f) Hunting, sportfishing, and sport ocean fishing license fees shall be adjusted annually to an amount equal to that computed pursuant to Section 713. However, a substantial increase in the aggregate of hunting and sportfishing programs shall be reflected by appropriate amendments to the sections of this code that establish the base sport license fee levels. The inflationary index provided in Section 713 may

not be used to accommodate a substantial increase in the aggregate of hunting and sportfishing programs.

For purposes of this article, "substantial increase" means an increase in excess of 5 percent of the Fish and Game Preservation Fund portion of the department's current year support budget, excluding cost-of-living increases provided for salaries, staff benefits, and operating expenses.

SEC. 2. Section 1055.3 is added to the Fish and Game Code, to read:

1055.3. The department may authorize any person, except a commissioner or an officer or employee of the department, to issue, as an agent of the department, annual wildlife area passes and native species stamps, and to sell promotional materials and nature study aids pursuant to, and subject to the requirements of, this article. Any agent thus authorized may add a handling charge of fifty cents ($0.50) to the fee prescribed in Article 3 (commencing with Section 1760) of Chapter 7.5 of Division 2 for each annual wildlife area pass or native species stamp issued.

SEC. 3. Section 1528 of the Fish and Game Code is amended to read:

1528. Lands, or lands and water, acquired for public shooting grounds or wildlife management areas shall be operated on a nonprofit basis by the department. Multiple recreational use of wildlife management areas is desirable and that use shall be encouraged by the commission. Except for hunting and fishing purposes, only minimum facilities to permit other forms of multiple recreational use, such as camping, picnicking, boating, or swimming, shall be provided. Except as provided in Section 1765, and to defray the costs associated with multiple use, the commission may determine and fix the amount of, and the department shall collect, fees for any use privileges. However, tours by organized youth and school groups are exempt from the payment of those fees. Only persons holding valid hunting licenses may apply for or obtain shooting permits for public shooting grounds or wildlife management areas.

SEC. 4. Section 1585 is added to the Fish and Game Code, to read:

1585. Notwithstanding Section 1580, which sets forth the primary purposes of ecological reserves, the department may construct facilities and conduct programs in ecological reserves it selects to provide natural history education and recreation if those facilities and programs are compatible with the protection of the biological resources of the reserve. As provided in Sections 1764 and 1765, the department may control access, use, and collect fees for selected ecological reserves.

SEC. 5. Section 1756 of the Fish and Game Code is amended to read:

1756. (a) The policy set forth in this chapter is in the public interest without regard to the economic value or the lack of economic value of wildlife or native plants.

(b) It is the policy of the state to require the recreational users of the state's wildlife resources to support the management of lands managed by the department and the management of wildlife consistent with Section 711.

SEC. 6. Section 1764 is added to the Fish and Game Code, to read:

1764. (a) The director shall designate those particular areas of land managed by the department at which possession of a valid annual wildlife pass or day use pass shall be required. No designation shall be effective until a management plan for the area has been presented at a public meeting and the plan has been approved by the director.

(b) No person shall enter the designated area unless that person possesses an annual wildlife area pass or a day use pass issued pursuant to Section 1765, a valid hunting license issued pursuant to Section 3031, a valid trapping license issued pursuant to Section 4006, or a valid sportfishing license issued pursuant to Section 7149, 7149.1, 7150, or 7151, or that person is a member of a tour by an organized youth or school group which has been issued a day use pass.

(c) Notwithstanding subdivision (b), possession of a license or pass shall not be required of any person who:

(1) Is passing through the area on a public right-of-way.

(2) Possesses authorization by the commission or the department to conduct scientific or educational research.

(3) Is discharging duties in the course of employment, as specified by the department.

(4) Possesses written authorization from the department to enter the area for a specific purpose.

SEC. 7. Section 1765 is added to the Fish and Game Code, to read:

1765. (a) The department may issue an annual wildlife area pass or a day use pass that authorizes the bearer to enter and use facilities and programs on the department managed lands subject to Section 1764 for the period of a calendar year or, if issued after the beginning of the year, for the remainder thereof. The fee for the annual wildlife area pass is ten dollars ($10). The fee for the day use pass is two dollars ($2); however, a tour by an organized youth or school group is exempt from the payment of this fee. The fees shall be adjusted in the calendar years following 1989 in accordance with Section 713. A person under the age of 16 years is exempt from the payment of fees under this section for an annual wildlife area pass or a day use pass.

(b) Any person eligible for a reduced fee or free sportfishing license pursuant to Section 7150 or 7151 shall be issued an annual wildlife area pass upon application therefor and under the same conditions and for the same fee as provided in those sections. There shall be appropriated in the annual Budget Act from the General Fund, for transfer to the Native Species Conservation and Enhancement Account, a sum equal to two dollars ($2) for each free annual wildlife area pass issued pursuant to this subdivision during the preceding calendar year.

SEC. 8. Section 1766 is added to the Fish and Game Code, to read:

1766. The department may also offer for sale a native species stamp, promotional materials, and nature study aids. The fee for a native species stamp is seven dollars and fifty cents ($7.50), as adjusted in the calendar years following 1989 in accordance with Section 713.

SEC. 8.5. Section 1767 is added to the Fish and Game Code, to read:

1767. (a) The department may enter into contracts for the purpose of producing and printing the native species stamps without complying with Sections 10301, 10339, and 10340 of the Public Contract Code.

(b) This section shall remain in effect only until January 1, 1991, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1991, deletes or extends that date.

SEC. 9. Section 1767.5 is added to the Fish and Game Code, to read:

1767.5. (a) The revenues from fees and sales under this article and Section 1055.3 shall be deposited in the Native Species Conservation and Enhancement Account in the Fish and Game Preservation Fund, and shall be available for appropriation for expenditure in the 1988–89 and subsequent fiscal years in the following order of priority:

(1) Repayment of any loan to the account from the Fish and Game Preservation Fund. The amounts repaid annually shall be prorated to complete the repayment with interest on or before July 1, 1993. Interest shall be calculated at the rate earned by the Surplus Money Investment Fund from the date funds for the loan were advanced to the date of repayment.

(2) The costs of ongoing wildlife management programs incurred at any lands managed by the department alone or cooperatively with other governmental agencies, irrespective of their designation pursuant to Section 1764, that are not adequately funded under subdivision (a) or (c) of Section 711.

(3) The costs of natural history education and recreational programs and improvements at areas designated pursuant to Section 1764.

(4) Augmentation of wildlife management programs and acquisition of additional lands at areas designated pursuant to Section 1764.

(b) Until the loans to the account from the Fish and Game Preservation Fund are repaid with interest, the department shall prepare and submit quarterly financial reports to the policy and fiscal committees of both houses of the Legislature for the purpose of reconsideration of the funding for this article.

(c) Revenues from fees and sales under this article and Section 1055.3 shall be used to augment and not to replace money appropriated from existing funds available to the department for the purposes specified in subdivision (a).

SEC. 10. Section 1768 is added to the Fish and Game Code, to

read:

1768. The Legislature finds and declares that the revenues from fees and sales under this article are related to the protection and propagation of fish and game within the meaning of Section 9 of Article XVI of the California Constitution.

SEC. 11. Section 1769 is added to the Fish and Game Code, to read:

1769. The department may take all appropriate measures to encourage persons to obtain annual wildlife area passes and day use passes issued pursuant to Section 1765, and to promote the sale of native species stamps, promotional materials, and nature study aids to provide revenue for the support of the department. The measures may include, but are not limited to, the dissemination of public information concerning the status of wildlife, fish, and plant species, conservation activities of the department, and programs and facilities provided by the department for the enjoyment of the lands managed by the department.

SEC. 12. Section 12002.5 is added to the Fish and Game Code, to read:

12002.5. (a) Notwithstanding Section 12202, a violation of Section 1764 is an infraction and not a misdemeanor, punishable by a fine of not less than one hundred dollars ($100) and not more than five hundred dollars ($500). If a person convicted of a violation of Section 1764 is granted probation, the court shall impose as a condition of probation that the person pay at least the minimum fine prescribed in this subdivision.

(b) If a person is convicted of a violation of Section 1764 and produces in court a valid wildlife area pass, the court may reduce the fine imposed for the violation of Section 1764 to fifty dollars ($50).

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.

SEC. 14. (a) The sum of not more than two million six hundred twenty-six thousand dollars ($2,626,000) is hereby appropriated from the Native Species Conservation and Enhancement Account in the Fish and Game Preservation Fund to the Department of Fish and Game for expenditure for the purposes of paragraphs (2) and (3) of subdivision (a) of Section 1767.5 of the Fish and Game Code, to be allocated as follows:

(1) For program support, for expenditure in the 1988–89 fiscal year, the sum of not more than one million six hundred eighty thousand dollars ($1,680,000).

(2) For minor capital outlay projects in ecological reserves and wildlife management areas consistent with management plans adopted pursuant to Section 1764 of the Fish and Game Code, for expenditure in the 1988–89, 1989–90, and 1990–91 fiscal years, the sum

of not more than nine hundred forty-six thousand dollars ($946,000).

(b) The Controller shall transfer funds quarterly during the 1988–89 fiscal year only, as a loan from the Fish and Game Preservation Fund to the Native Species Conservation and Enhancement Account, in an amount equal to the difference between the revenues deposited in the account pursuant to Section 1767.5 of the Fish and Game Code and the amount necessary to pay the costs specified in paragraphs (2) and (3) of subdivision (a) of Section 1767.5 of the Fish and Game Code, as determined quarterly by the Department of Finance with the assistance of the Department of Fish and Game, not to exceed in total the sum of two million dollars ($2,000,000).

(c) The Department of Fish and Game shall not encumber any of the funds appropriated in subdivision (a) any sooner than 30 days after written notification regarding any proposed encumbrance is provided to the Chairperson of the Joint Legislative Budget Committee, the Chairperson of the Assembly Committee on Water, Parks and Wildlife, and the Chairperson of the Senate Committee on Natural Resources and Wildlife. This notification shall include, for both programmatic and capital outlay projects, a description of each specific project to be funded; the project location, if appropriate; the cost of the project; the workload associated with the project implementation or construction; an estimate of the amount and type of recreational use that will result from funding the project; and an estimate of the annual fee revenue anticipated as a result of the project.

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## CHAPTER 1540

An act to repeal, add, and repeal Chapter 3.65 (commencing with Section 1597.80) of Division 2 of the Health and Safety Code, relating to child care providers, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 29, 1988. Filed with Secretary of State September 30, 1988.]

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

SECTION 1. Chapter 3.65 (commencing with Section 1597.80) of Division 2 of the Health and Safety Code is repealed.

SEC. 2. Chapter 3.65 (commencing with Section 1597.80) is added to Division 2 of the Health and Safety Code, to read:

### CHAPTER 3.65. PROFESSIONAL CHILD CARE PROVIDERS

1597.80. (a) A professional child care provider who possesses either a valid California driver's license or a valid identification card

issued by the Department of Motor Vehicles may initiate a background examination process pursuant to this chapter.

(b) "Professional child care provider" or "provider" for the purposes of this chapter means a person 18 years of age or older who, at the request and consent of a parent or legal guardian, legally provides care during a part of any 24-hour period for the children of, and is compensated by, the parent or legal guardian, and who is not required to be licensed pursuant to Section 1596.80.

1597.81. Each provider initiating a background examination process pursuant to this chapter shall obtain two sets of fingerprints from a law enforcement agency or other local agency authorized to take fingerprints and shall submit the fingerprints and a completed fingerprint application to the Department of Justice. The authorized fingerprinting agency shall inscribe the serial number from the provider's driver's license or identification card on the fingerprint cards.

1597.82. The Department of Justice shall submit one set of the fingerprints to the Federal Bureau of Investigation and shall retain the other set to search the Criminal History System and the Child Abuse Central Index.

1597.83. (a) A Child Abuse Central Index technician in the Department of Justice shall review the results produced by the searches of the Federal Bureau of Investigation, the Criminal History System, and the Child Abuse Central Index and take action as follows:

(1) If no 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 technician shall enter a registration record listing of the provider's name and driver's license number or identification card number in the Automated Child Abuse System.

(2) If criminal conviction or substantiated child abuse information for which the provider could not request an exemption from the State Department of Social Services for a license as a child care provider is found, the technician shall notify the provider.

(3) If criminal conviction or substantiated child abuse information for which the provider could request an exemption from the State Department of Social Services for a license as a child care provider is found, the technician shall review the information and either enter a registration record listing of the provider's name and driver's license number or identification card number in the Automated Child Abuse System or deny the registration. If the technician denies the registration, he or she shall advise the provider of the right to appeal. The prospective professional child care 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.

(b) 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 day care license 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.

(c) The Department of Justice may charge a provider initiating a background examination a fee not to exceed ten dollars ($10) for this service.

1597.84. (a) The Department of Justice shall, within six months of the effective date of the act enacting this chapter, establish and staff a toll-free telephone line to allow interested parents, employment agencies, and other child care referral groups and registries to give a provider's name and driver's license number or identification card number to the Department of Justice to determine if the provider's name and driver's license number or identification card number is registered in the Automated Child Abuse System.

(b) The Department of Justice shall maintain and continually update an index of reports of substantiated child abuse by, and pertinent criminal convictions of, professional child care providers and shall review the reports received from the Child Abuse Registry pursuant to Section 11170 of the Penal Code to determine if the child abuse of the provider is substantiated.

(c) Notwithstanding any provision of law to the contrary, including Part 3 (commencing with Section 900) of Division 3.6 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.

1597.85. The Department of Justice shall establish an advisory committee to, at a minimum, consist of one representative from each resource and referral program as described in Article 2 (commencing with Section 8210) of Chapter 2 of Part 6 of the Education Code in the pilot counties one parent from each pilot county and one representative from the private sector. Within six months of the effective date of the act enacting this chapter, the advisory committee shall develop and recommend to the Department of Justice criteria for evaluation of the project, recommend to the Department of Justice a contractor to evaluate the project, and publicize the project. The Department of Justice shall, no later than 60 days after the effective date of the act enacting this chapter, allocate no more than fifty thousand dollars ($50,000), unless just cause to increase that amount is provided, to the resource and referral program as described in Article 2 (commencing with Section 8210) of Chapter 2 of Part 6 of the Education Code in the pilot counties for the purpose of publicizing the project. The funding shall come from the existing resources provided for the implementation of Chapter 1496 of the Statutes of 1986. The

Department of Justice shall allocate the funds, taking into consideration the recommendations made by the advisory committee. The Department of Justice shall establish the criteria for evaluation and shall select a contractor for the evaluation, taking into consideration the recommendations made by the advisory committee.

1597.86. This chapter shall apply only to programs established by the Department of Justice in the City and County of San Francisco and Alameda, Contra Costa, Santa Clara, and San Diego Counties.

1597.87. The contractor selected by the Department of Justice shall evaluate the programs established pursuant to this chapter and report to the Legislature on or before August 1, 1990. The program shall be deemed successful if the number of unlicensed providers total at least 250 over an 18-month period and at least 500 contacts are made to the toll-free telephone line.

1597.88. This chapter shall become inoperative on June 30, 1991, and, on January 1, 1992, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 1992, deletes or extends the dates on which it becomes inoperative and is repealed.

1597.89. A law enforcement agency or other specified local agency may charge a reasonable fee to offset the costs of fingerprinting.

1597.90. Notwithstanding any other provision of law, the unexpended balance of the appropriation provided in Chapter 1496 of the Statutes of 1986 is reappropriated for the purposes provided in this chapter.

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.

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 the widest range of protective services to children as soon as possible, it is necessary that this act take effect immediately.

# CHAPTER 1541

An act to amend Section 41701.5 of, to add Sections 39050.7 and 39050.8 to, and to add Chapter 10 (commencing with Section 40950) to Part 3 of Division 26 of, the Health and Safety Code, and to add Section 9250.2 to the Vehicle Code, relating to air pollution.

[Approved by Governor September 29, 1988 Filed with Secretary of State September 30, 1988.]

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

SECTION 1. Section 39050.7 is added to the Health and Safety Code, to read:

39050.7. "Sacramento district" means the Sacramento Metropolitan Air Quality Management District created pursuant to Chapter 10 (commencing with Section 40950) of Part 3.

SEC. 2. Section 39050.8 is added to the Health and Safety Code, to read:

39050.8. "Sacramento district board" means the governing body of the Sacramento district.

SEC. 3. Chapter 10 (commencing with Section 40950) is added to Part 3 of Division 26 of the Health and Safety Code, to read:

## CHAPTER 10. SACRAMENTO METROPOLITAN AIR QUALITY MANAGEMENT DISTRICT

### Article 1. General Provisions

40950. The Legislature finds and declares as follows:

(a) The Sacramento metropolitan region is a geographical and meteorological entity not reflected by political boundaries.

(b) The region has serious air pollution problems caused by the operation of more than 1,000,000 vehicles in the region, numerous stationary sources of air pollution, and atmospheric and meteorological conditions which are conducive to the formation of a variety of air pollutants.

(c) Despite the implementation of improved emission controls on motor vehicles and stationary sources, rapid population growth and increases in vehicle miles traveled in the region are likely to result in worsening air pollution in future years.

(d) The state and federal governments have adopted ambient air quality standards in order to protect public health, and it is in the public interest that those standards be attained as expeditiously as possible.

(e) In order to achieve and maintain air quality standards and protect public health, a metropolitan air quality improvement strategy is required to be implemented in order to provide the maximum achievable reduction in emissions from existing sources

and to provide for the maximum feasible reduction or mitigation of emissions resulting from population growth, increased vehicle mileage, and other new sources of emissions.

(f) In order to successfully achieve improvements in air quality throughout the region, there is a need for greater coordination between land use and transportation planning decisions and the achievement of air quality goals.

(g) In order to successfully develop and implement a comprehensive program for the attainment and maintenance of state and federal ambient air quality standards in the region, the air quality management district in the region must be delegated additional authority and responsibility from the state, particularly with respect to reducing motor vehicle emissions and expanding the use of cleaner burning fuels.

(h) In order to successfully implement a coordinated air quality plan for the region, the responsibilities of local and regional authorities with respect to the implementation of air pollution control strategies, clean fuels programs, and motor vehicle use reduction measures should be fully integrated into an agency with countywide or regional authority, as determined by representatives of the affected county and city governments.

40951. As used in this chapter, "best available control technology" has the meaning provided in Section 40405.

40952. As used in this chapter, "best available retrofit control technology" has the meaning given in Section 40406.

40953. As used in this chapter, "strategy" means the Sacramento district air quality improvement strategy.

## Article 2. Creation of the Sacramento Metropolitan Air Quality Management District

40960. There is hereby created the Sacramento Metropolitan Air Quality Management District.

The boundaries of the Sacramento district shall include all of the County of Sacramento and, pursuant to Section 40963, if the board of supervisors of the County of Placer requests to become part of the Sacramento district, shall also include all or a portion of that county, as specified in the resolution of the board of supervisors requesting inclusion in the Sacramento district.

40961. The Sacramento district is the local agency within the boundaries of the Sacramento district with the primary responsibility for the development, implementation, monitoring, and enforcement of air pollution control strategies, clean fuels programs, and motor vehicle use reduction measures, and shall represent the citizens of the Sacramento district in influencing the decisions of other public and private agencies whose actions may have an adverse impact on air quality within the Sacramento district.

40962. The Sacramento district shall commence operation on July 1, 1989, and on that date shall assume the authority, functions,

employees, and responsibilities of the Sacramento County Air Pollution Control District.

40963. (a) The Sacramento district board may, by resolution, include all or a portion of the County of Placer within the Sacramento district, upon receipt of a resolution from the board of supervisors of the county requesting inclusion and specifying the portion of the county to be included in the Sacramento district. All territory included within the Sacramento district shall be contiguous.

(b) The inclusion of any county, or portion thereof, in the Sacramento district shall become effective on the July 1 immediately following the adoption of the resolution of inclusion by the Sacramento district board.

(c) A copy of the resolution of inclusion shall be transmitted by the Sacramento district board to the board of supervisors and to the state board.

## Article 3. Governing Body

40980. (a) The Sacramento district shall, at a minimum, be governed by a district board composed of the Board of Supervisors of the County of Sacramento.

(b) If the County of Placer submits a resolution of inclusion, pursuant to Section 40963, one or more elected officials from that county shall be included on the Sacramento district board, pursuant to agreement between that county and the Sacramento district board.

40981. The Sacramento district board shall elect a chairperson every two years from its membership. No member shall serve more than two consecutive terms as chairperson.

## Article 4. General Powers and Duties

41010. (a) The Sacramento district board shall adopt rules and regulations that are not in conflict with state and federal laws and rules and regulations that reflect the best available technological and administrative practices. Upon adoption and approval of the air quality improvement strategy, the rules and regulations shall be amended, if necessary, to conform to the strategy.

(b) The rules and regulations adopted pursuant to subdivision (a) shall require the use of best available control technology for new and modified sources and the use of best available retrofit control technology for existing sources.

(c) The rules and regulations of the Sacramento County Air Pollution Control District shall remain in effect and shall be enforced by the Sacramento district, until superseded or amended by the Sacramento district board.

41011. (a) After a public hearing, the Sacramento district may adopt regulations to require owners or operators of public or commercial motor vehicle fleets, or both, including those operated

by the state, to periodically submit information to the Sacramento district on the number and type of vehicles operated within the Sacramento district, including, but not limited to, the amount and type of fuel used, for use by the Sacramento district in ascertaining the contribution of these vehicles to air pollution emissions within the Sacramento district.

(b) After a public hearing, the Sacramento district may adopt regulations to require operators of public and commercial fleet vehicles, when adding vehicles to, or replacing vehicles in, an existing fleet or when purchasing vehicles to form a new fleet, to purchase low-emission motor vehicles and to require, to the maximum extent feasible or appropriate, that those vehicles be operated on a cleaner burning alternative fuel. Rules and regulations adopted under this section shall be applicable to vehicles operated by the state only when funds necessary to pay the costs to the state to comply with those rules and regulations have been appropriated for that purpose.

(c) For purposes of this section, "motor vehicle fleet" means 15 or more vehicles under common ownership or operation.

41012. In consultation with the Department of Transportation and other appropriate state and local public agencies, after a public hearing, the Sacramento district may adopt regulations to encourage ridesharing, van pooling, peak shifting, or flexible work hours, in order to improve air quality within the Sacramento district.

41013. The Sacramento district may adopt regulations to limit or mitigate the impact on air quality of indirect or areawide sources.

41014. The Sacramento district may conduct public education, marketing, demonstration, monitoring, research, and evaluation programs or projects with respect to transportation emission control measures.

41015. This chapter does not constitute an infringement on the existing authority of local governments to plan or control land use, and nothing in this chapter provides or transfers new authority over such land use to the Sacramento district.

41016. This chapter does not limit or restrict any authority of the City of Sacramento to adopt and implement any transportation system improvement program or air quality improvement program. The Sacramento district and the City of Sacramento may enter into a contract to implement any such program.

## Article 5. Sacramento Metropolitan Air Quality Coordinating Council

41040. The Sacramento district may, pursuant to agreement with one or more local agencies within the district, establish the Sacramento Metropolitan Air Quality Coordinating Council to provide for coordinated air quality planning within the Sacramento district.

Article 6. Air Quality Improvement Strategy

41060. Not later than January 1, 1990, the Sacramento district shall adopt an air quality improvement strategy to reduce public exposure to air pollution and toxic air contaminants and to achieve and maintain state and federal ambient air quality standards by the earliest practicable date.

41061. The strategy shall provide for the enforcement of regulations adopted pursuant to Section 41011 or 41013 and shall provide for the implementation and enforcement of the transportation control measures included in the state implementation plan, as required by state and federal law.

41062. (a) The strategy shall include a clean fuels program to provide, to the extent feasible and necessary to carry out the purposes of this chapter, a schedule for the introduction of cleaner burning alternative fuels and low-emmission motor vehicles or control measures providing equivalent emission reductions within the district, a program to encourage the establishment of the necessary infrastructure to support the introduction of cleaner burning fuels, and demonstration programs and incentives to encourage the purchase of clean fueled vehicles and the use of cleaner burning fuels.

(b) In developing the clean fuels program, the district shall consider projects utilizing methanol fuel; fuel cells; liquid petroleum gas; natural gas, including compressed natural gas; combination fuels; synthetic fuels; electricity, including electric vehicles; ethanol; and other cleaner burning fuels.

(c) Nothing in this section authorizes the Sacramento district to require the sale or supply of any specific motor vehicle fuel.

41063. The strategy shall provide for the implementation of all feasible measures to improve transportation system management and reduce or mitigate increases in motor vehicle use within the Sacramento Valley region.

41064. In preparing, evaluating, and amending the strategy, the district may contract with the Sacramento Area Council of Governments or with any private organization or consultant for the preparation of analyses of the availability and effectiveness of transportation controls and motor vehicle use reduction measures.

41065. The strategy shall include a public education program designed to achieve effective implementation of all feasible transportation system management measures.

41066. The strategy shall be consistent with any nonattainment area plan required by state or federal law, or any requirement imposed on a local agency with respect to the preparation or administration of a plan.

## Article 7. Financial Provisions

41080. The Sacramento district may adopt a schedule of fees, levied on permitted and other sources of air pollution, subject to regulation by the Sacramento district, to recover its costs of implementing this chapter.

41081. (a) Subject to Article 3.7 (commencing with Section 53720) of Chapter 4 of Part 1 of Division 2 of Title 5 of the Government Code, or with the approval of the board of supervisors of each county included, in whole or in part, within the Sacramento district, the Sacramento district board may adopt a surcharge on the motor vehicle registration fees applicable to all motor vehicles registered in those counties within the Sacramento district whose boards of supervisors have adopted a resolution approving the surcharge. The surcharge shall be collected by the Department of Motor Vehicles and, after deducting the department's administrative costs, the remaining funds shall be transferred to the Sacramento district. Prior to the adoption of any surcharge pursuant to this subdivision, the district board shall make a finding that any funds allocated to the district as a result of the adoption of a county transportation sales and use tax are insufficient to carry out the purposes of this chapter.

(b) The surcharge shall not exceed two dollars ($2) for each motor vehicle whose registration expires on or after December 31, 1989, and prior to December 31, 1990. For each motor vehicle whose registration expires on or after December 31 1990, the surcharge shall not exceed four dollars ($4).

(c) After consulting with the Department of Motor Vehicles on the feasibility thereof, the Sacramento district board may provide, in the surcharge adopted pursuant to subdivision (a), to exempt from all or part of the surcharge any category of low-emission motor vehicle.

(d) Funds received by the Sacramento district pursuant to this section shall be used to implement the strategy with respect to the reduction in emissions from vehicular sources, including, but not limited to, a clean fuels program and motor vehicle use reduction measures. Not more than 5 percent of the funds collected pursuant to this section shall be used by the district for administrative expenses.

41082. Pursuant to Section 41081, the district may undertake programs which may include, but are not limited to, financial assistance to fleet operators for the purchase, conversion, or operation of low-emission motor vehicles, financial assistance or other incentives to encourage the sale and distribution of cleaner burning fuels, and financial assistance or other incentives for the purchase and operation of ridesharing vehicles.

SEC. 4. Section 41701.5 of the Health and Safety Code is amended to read:

41701.5. (a) Neither the state board nor any district shall impose

a discharge requirement on emissions of visible smoke from diesel pile-driving hammers which is more stringent than the requirements of this section, except as provided in subdivisions (b) and (c).

(b) A district shall issue a permit to the operator of a diesel pile-driving hammer if the operator submits a completed application for a permit to the district and the district determines, on the basis of information provided in the application, that the proposed use will comply with one of the following requirements:

(1) Meets the Ringlemann 1 limit, as published by the United States Bureau of Mines, and does not exceed that limit for more than four minutes during the driving of a single pile.

(2) Meets the Ringlemann 2 limit, as published by the United States Bureau of Mines, does not exceed that limit for more than four minutes during the driving of a single pile, and uses kerosene fuel, smoke suppressing fuel additives, and synthetic lubricating oil. A district may establish other requirements for compliance with this paragraph if the requirements are technologically and economically feasible. A district may consider the type of soil in which the pile driving is to occur and the number of blows required to drive a pile in determining the technological and economic feasibility of other conditions to be imposed by the district.

(c) A permit issued by a district shall be valid until the pile driving work has been approved or accepted by the person or entity for which the work is being performed. Upon request of an operator or of a person or entity for which the pile driving work is performed, a district may extend the time period for which the permit is valid if the operator continues to comply with this section.

SEC. 5. Section 9250.2 is added to the Vehicle Code, to read:

9250.2. The department shall, if requested by the Sacramento Metropolitan Air Quality Management District pursuant to Section 41081 of the Health and Safety Code, impose and collect a surcharge on the registration fees for every motor vehicle registered in that district, not to exceed either of the following amounts, whichever is applicable, as specified by the governing body of that district:

(a) For each motor vehicle registered in that district whose registration expires on or after December 31, 1989, and prior to December 31, 1990, two dollars ($2).

(b) For each motor vehicle registered in that district whose registration expires on or after December 31, 1990, not to exceed four dollars ($4).

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 and 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.

# CHAPTER 1542

An act to add Article 4 (commencing with Section 17755) to Chapter 22 of Part 10 of the Education Code, relating to school facilities.

[Approved by Governor September 29, 1988. Filed with Secretary of State September 30, 1988.]

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

SECTION 1. The Legislature hereby finds and declares as follows:

(a) Highly urbanized areas exist in this state that contain no vacant land. In those areas, it is extremely costly, both in dollars and in mental anguish, to take property for public purposes through the eminent domain process, which moves and relocates current inhabitants of residential, commercial, or industrial structures.

(b) It is the intent of the Legislature to establish methods that provide for the use of land for school purposes while causing the least disruption.

(c) It is further the desire of the Legislature that a pilot program be instituted to provide, pursuant to the purpose set forth above, the construction of two model elementary or junior high schools in the northern portion of the state and two model elementary or junior high schools in the southern portion of the state.

SEC. 2. Article 4 (commencing with Section 17755) is added to Chapter 22 of Part 10 of the Education Code, to read:

## Article 4. Space-Saver Schools

17755. (a) The board shall authorize project funding under this chapter for the construction, in urban areas in which the construction of schools would ordinarily require the removal of residential, commercial, or industrial structures, of four elementary or junior high schools, or any combination thereof, none of which serve any of the grades 10 to 12, inclusive. Two of the funded model schools shall be located in the northern portion of the state, and the other two funded schools in the southern portion of the state.

(b) The construction funded pursuant to subdivision (a) shall be designed to minimize the need for the relocation of inhabitants of residential, commercial, or industrial structures. The design features of the schools may include, but should not be limited to, the use of below-ground facility construction, multistory construction, multiuse construction where single-use construction currently exists, the joint use of facilities that otherwise involve such uses as a shopping center, office complex, or apartment building, the joint or dual use of land that otherwise involves park or other uses, overhead or underground parking, or the use of areas above or below streets or freeways.

17756. Any school district that is a project applicant under this chapter may apply for the funding of a school specifically under this article, pursuant to which it may be approved by the board for funding only to the extent of its project eligibility under this chapter. The governing board of each district for which that funding is approved by the board shall do all of the following, in the order specified:

(a) Identify an area within the district that it determines to be appropriate for the construction of a school that meets the purposes of this article.

(b) Establish criteria for the purpose of identifying the school design that will most effectively accomplish the purposes of this article and the needs of the district. The district shall thereupon issue, in a manner approved by the board, a request for architectural design proposals incorporating those criteria.

(c) Evaluate the proposals, and, no later than January 1, 1990, or any other date designated by the board pursuant to an action taken by the board on or before January 1, 1990, submit to the board the three proposals that it determines to most effectively accomplish the purposes of this article and the needs of the district in accordance with the criteria established under subdivision (b). The governing board shall prioritize those three proposals in order of its preferences, and shall include a brief explanation for its recommendations.

17757. (a) The board shall select, from the architectural design proposals submitted by school districts pursuant to Section 17756, proposals for the design and location of the four schools that it determines to most effectively accomplish the purposes of this article.

(b) In addition, the board may pay to any applicant district that is eligible for funding under this article, as described in subdivision (a) of Section 17756, and that applied for that funding in accordance with that section, an amount not to exceed fifty thousand dollars ($50,000) for the purchase of architectural design plans that were not approved pursuant to subdivision (a), but that the board determines to effectively accomplish the purposes of this article, for use in the development of design criteria for future project funding under this chapter. The board may expend no more than one hundred fifty thousand dollars ($150,000) pursuant to this subdivision.

17758. Except as provided under subdivision (b) of Section 17757, the cost of any project funded under this article shall not exceed the maximum cost that would otherwise be allowable for a project funded under this chapter.

# CHAPTER 1543

An act to amend Sections 2430, 2432, 2432.5, 2444, and 2500 of the Civil Code, and to amend Section 9701 of the Welfare and Institutions Code, relating to health.

[Approved by Governor September 29, 1988. Filed with Secretary of State September 30, 1988.]

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

SECTION 1. Section 2430 of the Civil Code is amended to read:

2430. As used in this article:

(a) "Durable power of attorney for health care" means a durable power of attorney to the extent that it authorizes an attorney in fact to make health care decisions for the principal.

(b) "Health care" means any care, treatment, service, or procedure to maintain, diagnose, or treat an individual's physical or mental condition.

(c) "Health care decision" means consent, refusal of consent, or withdrawal of consent to health care.

(d) "Health care provider" means a person who is licensed, certified, or otherwise authorized or permitted by the law of this state to administer health care in the ordinary course of business or practice of a profession.

(e) "Person" includes an individual, corporation, partnership, association, the state, a city, county, city and county, or other public entity or governmental subdivision or agency, or any other legal entity.

(f) "Community care facility" means a community care facility as defined in Section 1502 of the Health and Safety Code.

(g) "Residential care facilities for the elderly" means a residential care facility for the elderly as defined in Section 1569.2 of the Health and Safety Code.

SEC. 2. Section 2432 of the Civil Code is amended to read:

2432. (a) An attorney in fact under a durable power of attorney may not make health care decisions unless all of the following requirements are satisfied:

(1) The durable power of attorney specifically authorizes the attorney in fact to make health care decisions.

(2) The durable power of attorney contains the date of its execution.

(3) The durable power of attorney is witnessed by one of the following methods:

(A) The durable power of attorney is signed by at least two witnesses each of whom witnessed either the signing of the instrument by the principal or the principal's acknowledgment of the signature or of the instrument, each witness making the following declaration in substance: "I declare under penalty of

perjury under the laws of California that the person who signed or acknowledged this document is personally known to me to be the principal, that the principal signed or acknowledged this durable power of attorney in my presence, that the principal appears to be of sound mind and under no duress, fraud, or undue influence, that I am not the person appointed as attorney in fact by this document, and that I am not a health care provider, an employee of a health care provider, the operator of a community care facility, an employee of an operator of a community care facility, the operator of a residential care facility for the elderly, nor an employee of an operator of a residential care facility for the elderly." At least one of the witnesses must also have signed the following declaration: "I further declare under penalty of perjury under the laws of California that I am not related to the principal by blood, marriage, or adoption, and, to the best of my knowledge, I am not entitled to any part of the estate of the principal upon the death of the principal under a will now existing or by operation of law."

(B) The durable power of attorney is acknowledged before a notary public at any place within this state, the notary public certifying to the substance of the following:

State of California }
County of _____ } ss.

On this _____ day of _____, in the year _____, before me,

_____,
( Insert name of notary public)

personally appeared _____ ,
(Insert name of principal)

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to this instrument, and acknowledged that he or she executed it. I declare under penalty of perjury that the person whose name is subscribed to this instrument appears to be of sound mind and under no duress, fraud, or undue influence.

NOTARY SEAL _____
(Signature of Notary Public)

(b) Except as provided in Section 2432.5:

(1) Neither the treating health care provider nor an employee of the treating health care provider, nor an operator of a community care facility or residential care facility for the elderly nor an employee of an operator of a community care facility or residential care facility for the elderly, may be designated as the attorney in fact to make health care decisions under a durable power of attorney.

(2) A health care provider or employee of a health care provider may not act as an attorney in fact to make health care decisions if the health care provider becomes the principal's treating health care

provider.

(c) A conservator may not be designated as the attorney in fact to make health care decisions under a durable power of attorney for health care executed by a person who is a conservatee under the Lanterman-Petris-Short Act, Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code, unless (1) the power of attorney is otherwise valid, (2) the conservatee is represented by legal counsel, and (3) the lawyer representing the conservatee signs a certificate stating in substance: "I am a lawyer authorized to practice law in the state where this power of attorney was executed, and the principal was my client at the time this power of attorney was executed. I have advised my client concerning his or her rights in connection with this power of attorney and the applicable law and the consequences of signing or not signing this power of attorney, and my client, after being so advised, has executed this power of attorney."

(d) None of the following may be used as a witness under subdivision (a):

(1) A health care provider.

(2) An employee of a health care provider.

(3) The attorney in fact.

(4) The operator of a community care facility.

(5) An employee of an operator of a community care facililty.

(6) The operator of a residential care facility for the elderly.

(7) An employee of an operator of a residential care facility for the elderly.

(e) At least one of the persons used as a witness under subdivision (a) shall be a person who is not one of the following:

(1) A relative of the principal by blood, marriage, or adoption.

(2) A person who would be entitled to any portion of the estate of the principal upon his or her death under any will or codicil thereto of the principal existing at the time of execution of the durable power of attorney or by operation of law then existing.

(f) A durable power of attorney for health care is not effective if the principal is a patient in a skilled nursing facility as defined in subdivision (c) of Section 1250 of the Health and Safety Code at the time of its execution unless one of the witnesses is a patient advocate or ombudsman as may be designated by the State Department of Aging for this purpose pursuant to any other applicable provision of law. The patient advocate or ombudsman shall include in the declaration required by subdivision (a) a declaration that he or she is serving as a witness as required by this subdivision. It is the intent of this subdivision to recognize that some patients in skilled nursing facilities are insulated from a voluntary decisionmaking role, by virtue of the custodial nature of their care, so as to require special assurance that they are capable of willfully and voluntarily executing a durable power of attorney for health care.

SEC. 3. Section 2432.5 of the Civil Code is amended to read:

2432.5. An employee of the treating health care provider or an

employee of an operator of a community care facility or an employee of a residential care facility for the elderly may be designated as the attorney in fact to make health care decisions under a durable power of attorney if (a) the employee so designated is a relative of the principal by blood, marriage, or adoption, and (b) the other requirements of this article are satisfied.

SEC. 4. Section 2444 of the Civil Code is amended to read:

2444. (a) Notwithstanding Section 2433, on and after January 1, 1986, a printed form of a durable power of attorney for health care may be sold or otherwise distributed if it complies with Section 2433 as amended by Section 5 of Chapter 312 of the Statutes of 1984, or with Section 2433 as in effect at the time of sale or distribution. However, any printed form of a durable power of attorney for health care printed on or after January 1, 1986, that is sold or otherwise distributed in this state for use by a person who does not have the advice of legal counsel shall comply with Section 2433 as in effect at the time of printing.

(b) Notwithstanding Section 2432, a printed form of a durable power of attorney for health care may be sold or otherwise distributed if it complies with Section 2432 as originally enacted, or with Section 2432 as subsequently amended. However, any printed form of a durable power of attorney for health care printed on or after January 1, 1986, shall comply with the requirements of Section 2432 in effect at the time of printing.

(c) A durable power of attorney for health care executed on or after January 1, 1986, is not invalid if it complies with Section 2432 as originally enacted or as subsequently amended. A durable power of attorney for health care executed on or after January 1, 1986, using a printed form that complied with Section 2433 as amended by Section 5 of Chapter 312 of the Statutes of 1984, is as valid as if it had been executed using a printed form that complied with Section 2433 as thereafter amended.

SEC. 5. Section 2500 of the Civil Code is amended to read:

2500. The use of the following form in the creation of a durable power of attorney for health care under Article 5 (commencing with Section 2430) of Chapter 2 is lawful, and when used, the power of attorney shall be construed in accordance with the provisions of this chapter and shall be subject to the provisions of Article 5 (commencing with Section 2430) of Chapter 2.

STATUTORY FORM DURABLE POWER OF ATTORNEY FOR HEALTH CARE
(California Civil Code Section 2500)

WARNING TO PERSON EXECUTING THIS DOCUMENT

THIS IS AN IMPORTANT LEGAL DOCUMENT WHICH IS AUTHORIZED BY THE KEENE HEALTH CARE AGENT ACT. BEFORE EXECUTING THIS DOCUMENT, YOU SHOULD

KNOW THESE IMPORTANT FACTS:

THIS DOCUMENT GIVES THE PERSON YOU DESIGNATE AS YOUR AGENT (THE ATTORNEY IN FACT) THE POWER TO MAKE HEALTH CARE DECISIONS FOR YOU. YOUR AGENT MUST ACT CONSISTENTLY WITH YOUR DESIRES AS STATED IN THIS DOCUMENT OR OTHERWISE MADE KNOWN.

EXCEPT AS YOU OTHERWISE SPECIFY IN THIS DOCUMENT, THIS DOCUMENT GIVES YOUR AGENT THE POWER TO CONSENT TO YOUR DOCTOR NOT GIVING TREATMENT OR STOPPING TREATMENT NECESSARY TO KEEP YOU ALIVE.

NOTWITHSTANDING THIS DOCUMENT, YOU HAVE THE RIGHT TO MAKE MEDICAL AND OTHER HEALTH CARE DECISIONS FOR YOURSELF SO LONG AS YOU CAN GIVE INFORMED CONSENT WITH RESPECT TO THE PARTICULAR DECISION. IN ADDITION, NO TREATMENT MAY BE GIVEN TO YOU OVER YOUR OBJECTION AT THE TIME, AND HEALTH CARE NECESSARY TO KEEP YOU ALIVE MAY NOT BE STOPPED OR WITHHELD IF YOU OBJECT AT THE TIME.

THIS DOCUMENT GIVES YOUR AGENT AUTHORITY TO CONSENT, TO REFUSE TO CONSENT, OR TO WITHDRAW CONSENT TO ANY CARE, TREATMENT, SERVICE, OR PROCEDURE TO MAINTAIN, DIAGNOSE, OR TREAT A PHYSICAL OR MENTAL CONDITION. THIS POWER IS SUBJECT TO ANY STATEMENT OF YOUR DESIRES AND ANY LIMITATIONS THAT YOU INCLUDE IN THIS DOCUMENT. YOU MAY STATE IN THIS DOCUMENT ANY TYPES OF TREATMENT THAT YOU DO NOT DESIRE. IN ADDITION, A COURT CAN TAKE AWAY THE POWER OF YOUR AGENT TO MAKE HEALTH CARE DECISIONS FOR YOU IF YOUR AGENT (1) AUTHORIZES ANYTHING THAT IS ILLEGAL, (2) ACTS CONTRARY TO YOUR KNOWN DESIRES, OR (3) WHERE YOUR DESIRES ARE NOT KNOWN, DOES ANYTHING THAT IS CLEARLY CONTRARY TO YOUR BEST INTERESTS.

UNLESS YOU SPECIFY A SHORTER PERIOD IN THIS DOCUMENT, THIS POWER WILL EXIST FOR SEVEN YEARS FROM THE DATE YOU EXECUTE THIS DOCUMENT AND, IF YOU ARE UNABLE TO MAKE HEALTH CARE DECISIONS FOR YOURSELF AT THE TIME WHEN THIS SEVEN-YEAR PERIOD ENDS, THIS POWER WILL CONTINUE TO EXIST UNTIL THE TIME WHEN YOU BECOME ABLE TO MAKE HEALTH CARE DECISIONS FOR YOURSELF.

YOU HAVE THE RIGHT TO REVOKE THE AUTHORITY OF YOUR AGENT BY NOTIFYING YOUR AGENT OR YOUR TREATING DOCTOR, HOSPITAL, OR OTHER HEALTH CARE PROVIDER ORALLY OR IN WRITING OF THE REVOCATION.

YOUR AGENT HAS THE RIGHT TO EXAMINE YOUR MEDICAL RECORDS AND TO CONSENT TO THEIR DISCLOSURE UNLESS YOU LIMIT THIS RIGHT IN THIS

DOCUMENT.

UNLESS YOU OTHERWISE SPECIFY IN THIS DOCUMENT, THIS DOCUMENT GIVES YOUR AGENT THE POWER AFTER YOU DIE TO (1) AUTHORIZE AN AUTOPSY, (2) DONATE YOUR BODY OR PARTS THEREOF FOR TRANSPLANT OR THERAPEUTIC OR EDUCATIONAL OR SCIENTIFIC PURPOSES, AND (3) DIRECT THE DISPOSITION OF YOUR REMAINS.

THIS DOCUMENT REVOKES ANY PRIOR DURABLE POWER OF ATTORNEY FOR HEALTH CARE.

YOU SHOULD CAREFULLY READ AND FOLLOW THE WITNESSING PROCEDURE DESCRIBED AT THE END OF THIS FORM. THIS DOCUMENT WILL NOT BE VALID UNLESS YOU COMPLY WITH THE WITNESSING PROCEDURE.

IF THERE IS ANYTHING IN THIS DOCUMENT THAT YOU DO NOT UNDERSTAND, YOU SHOULD ASK A LAWYER TO EXPLAIN IT TO YOU.

YOUR AGENT MAY NEED THIS DOCUMENT IMMEDIATELY IN CASE OF AN EMERGENCY THAT REQUIRES A DECISION CONCERNING YOUR HEALTH CARE. EITHER KEEP THIS DOCUMENT WHERE IT IS IMMEDIATELY AVAILABLE TO YOUR AGENT AND ALTERNATE AGENTS OR GIVE EACH OF THEM AN EXECUTED COPY OF THIS DOCUMENT. YOU MAY ALSO WANT TO GIVE YOUR DOCTOR AN EXECUTED COPY OF THIS DOCUMENT.

DO NOT USE THIS FORM IF YOU ARE A CONSERVATEE UNDER THE LANTERMAN-PETRIS-SHORT ACT AND YOU WANT TO APPOINT YOUR CONSERVATOR AS YOUR AGENT. YOU CAN DO THAT ONLY IF THE APPOINTMENT DOCUMENT INCLUDES A CERTIFICATE OF YOUR ATTORNEY.

1. DESIGNATION OF HEALTH CARE AGENT. I, _____

(Insert your name and address)

do hereby designate and appoint _____

(Insert name, address, and telephone number of one individual only as your agent to make health care decisions for you. None of the following may be designated as your agent: (1) your treating health care provider, (2) a nonrelative employee of your treating health care provider, (3) an operator of a community care facility, (4) a nonrelative employee of an operator of a community care facility, (5) an operator of a residential care facility for the elderly, or (6) a nonrelative employee of an operator of a residential care facility for the elderly.)

as my attorney in fact (agent) to make health care decisions for me as authorized in this document. For the purposes of this document, "health care decision" means consent, refusal of consent, or withdrawal of consent to any care, treatment, service, or procedure to maintain, diagnose, or treat an individual's physical or mental

condition.

2. CREATION OF DURABLE POWER OF ATTORNEY FOR HEALTH CARE. By this document I intend to create a durable power of attorney for health care under Sections 2430 to 2443, inclusive, of the California Civil Code. This power of attorney is authorized by the Keene Health Care Agent Act and shall be construed in accordance with the provisions of Sections 2500 to 2506, inclusive, of the California Civil Code. This power of attorney shall not be affected by my subsequent incapacity.

3. GENERAL STATEMENT OF AUTHORITY GRANTED. Subject to any limitations in this document, I hereby grant to my agent full power and authority to make health care decisions for me to the same extent that I could make such decisions for myself if I had the capacity to do so. In exercising this authority, my agent shall make health care decisions that are consistent with my desires as stated in this document or otherwise made known to my agent, including, but not limited to, my desires concerning obtaining or refusing or withdrawing life-prolonging care, treatment, services, and procedures.

(If you want to limit the authority of your agent to make health care decisions for you, you can state the limitations in paragraph 4 ("Statement of Desires, Special Provisions, and Limitations") below. You can indicate your desires by including a statement of your desires in the same paragraph.)

4. STATEMENT OF DESIRES, SPECIAL PROVISIONS, AND LIMITATIONS.

(Your agent must make health care decisions that are consistent with your known desires. You can, but are not required to, state your desires in the space provided below. You should consider whether you want to include a statement of your desires concerning life-prolonging care, treatment, services, and procedures. You can also include a statement of your desires concerning other matters relating to your health care. You can also make your desires known to your agent by discussing your desires with your agent or by some other means. If there are any types of treatment that you do not want to be used, you should state them in the space below. If you want to limit in any other way the authority given your agent by this document, you should state the limits in the space below If you do not state any limits, your agent will have broad powers to make health care decisions for you, except to the extent that there are limits provided by law.)

In exercising the authority under this durable power of attorney for health care, my agent shall act consistently with my desires as stated below and is subject to the special provisions and limitations stated below:

(a) Statement of desires concerning life-prolonging care, treatment, services, and procedures:

_____

_____

_____

_____

_____

_____

(b) Additional statement of desires, special provisions, and limitations: _____

(You may attach additional pages if you need more space to complete your statement. If you attach additional pages, you must date and sign EACH of the additional pages at the same time you date and sign this document.)

5. INSPECTION AND DISCLOSURE OF INFORMATION RELATING TO MY PHYSICAL OR MENTAL HEALTH. Subject to any limitations in this document, my agent has the power and authority to do all of the following:

(a) Request, review, and receive any information, verbal or written, regarding my physical or mental health, including, but not limited to, medical and hospital records.

(b) Execute on my behalf any releases or other documents that may be required in order to obtain this information.

(c) Consent to the disclosure of this information.

(If you want to limit the authority of your agent to receive and disclose information relating to your health, you must state the limitations in paragraph 4 ("Statement of Desires, Special Provisions, and Limitations") above.)

6. SIGNING DOCUMENTS, WAIVERS, AND RELEASES. Where necessary to implement the health care decisions that my agent is authorized by this document to make, my agent has the power and authority to execute on my behalf all of the following:

(a) Documents titled or purporting to be a "Refusal to Permit Treatment" and "Leaving Hospital Against Medical Advice."

(b) Any necessary waiver or release from liability required by a hospital or physician.

7. AUTOPSY; ANATOMICAL GIFTS; DISPOSITION OF REMAINS. Subject to any limitations in this document, my agent has the power and authority to do all of the following:

(a) Authorize an autopsy under Section 7113 of the Health and Safety Code.

(b) Make a disposition of a part or parts of my body under the Uniform Anatomical Gift Act (Chapter 3.5 (commencing with Section 7150) of Part 1 of Division 7 of the Health and Safety Code).

(c) Direct the disposition of my remains under Section 7100 of the Health and Safety Code.

(If you want to limit the authority of your agent to consent to an autopsy, make an anatomical gift, or direct the disposition of your remains, you must state the limitations

in paragraph 4 ("Statement of Desires, Special Provisions, and Limitations") above.)

8. DURATION.

(Unless you specify a shorter period in the space below, this power of attorney will exist for seven years from the date you execute this document and, if you are unable to make health care decisions for yourself at the time when this seven-year period ends, the power will continue to exist until the time when you become able to make health care decisions for yourself.)

This durable power of attorney for health care expires on _____

(Fill in this space ONLY if you want the authority of your agent to end EARLIER than the seven-year period described above.)

9. DESIGNATION OF ALTERNATE AGENTS.

(You are not required to designate any alternate agents but you may do so. Any alternate agent you designate will be able to make the same health care decisions as the agent you designated in paragraph 1, above, in the event that agent is unable or ineligible to act as your agent. If the agent you designated is your spouse, he or she becomes ineligible to act as your agent if your marriage is dissolved.)

If the person designated as my agent in paragraph 1 is not available or becomes ineligible to act as my agent to make a health care decision for me or loses the mental capacity to make health care decisions for me, or if I revoke that person's appointment or authority to act as my agent to make health care decisions for me, then I designate and appoint the following persons to serve as my agent to make health care decisions for me as authorized in this document, such persons to serve in the order listed below:

A. First Alternate Agent _____

(Insert name, address, and telephone number of first alternate agent)

B. Second Alternate Agent _____

(Insert name, address, and telephone number of second alternate agent)

10. NOMINATION OF CONSERVATOR OF PERSON.

(A conservator of the person may be appointed for you if a court decides that one should be appointed. The conservator is responsible for your physical care, which under some circumstances includes making health care decisions for you. You are not required to nominate a conservator but you may do so. The court will appoint the person you nominate unless that would be contrary to your best interests. You may, but are not required to, nominate as your conservator the same person you named in paragraph 1 as your health care agent. You can nominate an individual as your conservator by completing the space below.)

If a conservator of the person is to be appointed for me, I nominate the following individual to serve as conservator of the person _____

(Insert name and address of person nominated as conservator of the person)

11. PRIOR DESIGNATIONS REVOKED. I revoke any prior durable power of attorney for health care.

## DATE AND SIGNATURE OF PRINCIPAL

(YOU MUST DATE AND SIGN THIS POWER OF ATTORNEY)

I sign my name to this Statutory Form Durable Power of Attorney for Health Care on _____ at
(Date)

_____, _____.
(City) (State)

_____
(You sign here)

(THIS POWER OF ATTORNEY WILL NOT BE VALID UNLESS IT IS SIGNED BY TWO QUALIFIED WITNESSES WHO ARE PRESENT WHEN YOU SIGN OR ACKNOWLEDGE YOUR SIGNATURE. IF YOU HAVE ATTACHED ANY ADDITIONAL PAGES TO THIS FORM, YOU MUST DATE AND SIGN EACH OF THE ADDITIONAL PAGES AT THE SAME TIME YOU DATE AND SIGN THIS POWER OF ATTORNEY.)

## STATEMENT OF WITNESSES

(This document must be witnessed by two qualified adult witnesses. None of the following may be used as a witness: (1) a person you designate as your agent or alternate agent, (2) a health care provider, (3) an employee of a health care provider, (4) the operator of a community care facility, (5) an employee of an operator of a community care facility, (6) the operator of a residential care facility for the elderly, or (7) an employee of an operator of a residential care facility for the elderly. At least one of the witnesses must make the additional declaration set out following the place where the witnesses sign.)

(READ CAREFULLY BEFORE SIGNING. You can sign as a witness only if you personally know the principal or the identity of the principal is proved to you by convincing evidence.)

(To have convincing evidence of the identity of the principal, you must be presented with and reasonably rely on any one or more of the following:

(1) An identification card or driver's license issued by the California Department of Motor Vehicles that is current or has been issued within five years.

(2) A passport issued by the Department of State of the United States that is current or has been issued within five years.

(3) Any of the following documents if the document is current or has been issued within five years and contains a photograph and description of the person named on it, is signed by the person, and bears a serial or other identifying number:

(a) A passport issued by a foreign government that has been stamped by the United States Immigration and Naturalization Service.

(b) A driver's license issued by a state other than California or by a Canadian or Mexican public agency authorized to issue drivers' licenses.

(c) An identification card issued by a state other than California.

(d) An identification card issued by any branch of the armed forces of the United States.)

(Other kinds of proof of identity are not allowed.)

I declare under penalty of perjury under the laws of California that the person who signed or acknowledged this document is personally known to me (or proved to me on the basis of convincing evidence) to be the principal, that the principal signed or acknowledged this durable power of attorney in my presence, that the principal appears to be of sound mind and under no duress, fraud, or undue influence, that I am not the person appointed as attorney in fact by this document, and that I am not a health care provider, an employee of a health care provider, the operator of a community care facility, an employee of an operator of a community care facility, the operator of a residential care facility for the elderly, nor an employee of an operator of a residential care facility for the elderly.

Signature: _____ Residence Address: _____
Print Name: _____ _____
Date: _____ _____

Signature: _____ Residence Address: _____
Print Name: _____ _____
Date: _____ _____

(AT LEAST ONE OF THE ABOVE WITNESSES MUST ALSO SIGN THE FOLLOWING DECLARATION.)

I further declare under penalty of perjury under the laws of California that I am not related to the principal by blood, marriage, or adoption, and, to the best of my knowledge, I am not entitled to any part of the estate of the principal upon the death of the principal under a will now existing or by operation of law.

Signature: _____

Signature: _____

STATEMENT OF PATIENT ADVOCATE OR OMBUDSMAN

(If you are a patient in a skilled nursing facility, one of the witnesses must be a patient advocate or ombudsman. The following statement is required only if you are a

patient in a skilled nursing facility--a health care facility that provides the following basic services: skilled nursing care and supportive care to patients whose primary need is for availability of skilled nursing care on an extended basis. The patient advocate or ombudsman must sign both parts of the "Statement of Witnesses" above AND must also sign the following statement.)

I further declare under penalty of perjury under the laws of California that I am a patient advocate or ombudsman as designated by the State Department of Aging and that I am serving as a witness as required by subdivision (f) of Section 2432 of the Civil Code.

Signature: _____

SEC. 6. Section 9701 of the Welfare and Institutions Code is amended to read:

9701. Unless the contrary is stated or clearly appears from the context, the following definitions shall govern the interpretation of this chapter:

(a) "Long-term care facility" means any of the following:

(1) Any long-term health care facility, as defined in subdivision (a) of Section 1418 of the Health and Safety Code.

(2) Any community care facility, as defined in paragraphs (1) and (2) of subdivision (a) of Section 1502 of the Health and Safety Code, whether licensed or unlicensed.

(3) Any swing bed in an acute care facility, or any extended care facility.

(4) Any adult day health care facility as defined in subdivision (b) of Section 1570.7 of the Health and Safety Code.

(5) Any residential care facility for the elderly as defined in Section 1569.2 of the Health and Safety Code.

(b) "Approved organization" means any public agency or other appropriate organization which has been designated by the department to hear, investigate, and resolve complaints made by or on behalf of patients, residents, or clients of long-term care facilities relating to matters which may affect the health, safety, welfare, and rights of these patients, residents, or clients.

(c) "Office" means the Office of the State Long-Term Care Ombudsman, including approved organizations.

(d) "State Ombudsman" means the State Long-Term Care Ombudsman.

(e) "Director" means the Director of the Department of Aging.

(f) "Department" means the Department of Aging.

(g) "Medical training" or "medical records training" means the completion of training as a physician, registered nurse, nurse practitioner, licensed vocational nurse, pharmacist, medical social worker, medical records technician, physician's assistant, or

discharge planner.

(h) "Ombudsman coordinator" means the individual selected by the governing board or executive director of the approved organization to manage the day-to-day operation of the ombudsman program, including the implementation of federal and state requirements governing the office.

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## CHAPTER 1544

An act to amend Sections 9886, 9886.1, 9886.2, and 9886.4 of, and to repeal Chapter 20.4 (commencing with Section 9889.50) of Division 3 of, the Business and Professions Code, to amend Sections 43204, 44001, 44003.5, 44010, 44011, 44012, 44013, 44014, 44015, 44016, 44017, 44021, 44030.5, 44031, 44031.5, 44032, 44033, 44034, 44035, 44037, 44038, 44039, 44050, 44051, 44051.5, 44053, 44054, 44060, 44061, 44070, and 44071 of, to add Sections 39037.5, 43205, 43205.5, 43210.5, 44001.5, 44011.5, 44011.6, 44022, 44040, and 44062 to, and to repeal and add Sections 44000, 44003, 44019, 44030, and 44036 of, the Health and Safety Code, and to amend Sections 4000.1, 4000.2, 4000.3, 24007, and 42001 of, and to add Section 42001.2 to, the Vehicle Code, relating to air pollution.

[Approved by Governor September 29, 1988. Filed with Secretary of State September 30, 1988.]

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

SECTION 1. Section 9886 of the Business and Professions Code is amended to read:

9886. All fees and revenues collected pursuant to this chapter and Chapter 5 (commencing with Section 44000) of Part 5 of Division 26 of the Health and Safety Code shall be paid into the State Treasury to the credit of the Vehicle Inspection and Repair Fund, which is hereby created.

SEC. 2. Section 9886.1 of the Business and Professions Code is amended to read:

9886.1. The director shall report to the Controller at the beginning of each month, for the month preceding, the amount and source of all fees and revenues received by the department pursuant to this chapter and Chapter 5 (commencing with Section 44000) of Part 5 of Division 26 of the Health and Safety Code, and at that time shall pay the entire amount of those fees and revenues into the State Treasury for credit to the Vehicle Inspection and Repair Fund.

SEC. 3. Section 9886.2 of the Business and Professions Code is amended to read:

9886.2. The money in the Vehicle Inspection and Repair Fund necessary for the administration of this chapter and Chapter 5 (commencing with Section 44000) of Part 5 of Division 26 of the

Health and Safety Code is available to the department, when appropriated for those purposes.

SEC. 4. Section 9886.4 of the Business and Professions Code is amended to read:

9886.4. All salaries, expenses, or costs incurred or sustained pursuant to this chapter and Chapter 5 (commencing with Section 44000) of Part 5 of Division 26 of the Health and Safety Code shall be payable only out of the Vehicle Inspection and Repair Fund.

SEC. 5. Chapter 20.4 (commencing with Section 9889.50) of Division 3 of the Business and Professions Code is repealed.

SEC. 6. Section 39037.5 is added to the Health and Safety Code, to read:

39037.5. "Medium duty" means a heavy-duty vehicle having a manufacturer's gross vehicle weight rating under a limit established by the state board.

SEC. 12. Section 43204 of the Health and Safety Code is amended to read:

43204. (a) The manufacturer of each motor vehicle or motor vehicle engine manufactured prior to the 1990 model-year shall warrant to the ultimate purchaser and each subsequent purchaser that the motor vehicle or motor vehicle engine is:

(1) Designed, built, and equipped so as to conform, at the time of sale, with the applicable emission standards specified in this part.

(2) Free from defects in materials and workmanship which cause such motor vehicle or motor vehicle engine to fail to conform with applicable regulations for its useful life, determined pursuant to subdivision (b).

(b) As used in subdivision (a), "useful life" of a motor vehicle or motor vehicle engine means:

(1) In the case of light-duty motor vehicles, and motor vehicle engines used in such motor vehicles, a period of use of five years or 50,000 miles, whichever first occurs, except that, in the case of fuel metering and ignition systems and their component parts which are contained in the state board's "Emissions Warranty Parts List" dated December 14, 1978 (items I(A), I(C), III(A), III(C), III(E), IX(A), and IX(B)), and which are contained in vehicles or vehicle engines certified to the optional standards pursuant to Section 43101.5 and subject to subdivision (a) of Section 43009.5, "useful life" means a period of use of two years or 24,000 miles, whichever occurs first.

(2) In the case of any other motor vehicle or motor vehicle engine, a period of use of five years or 50,000 miles, whichever first occurs, unless the state board determines that a period of use of greater duration or mileage is appropriate.

SEC. 13. Section 43205 is added to the Health and Safety Code, to read:

43205. (a) Commencing with the 1990 model-year, the manufacturer of each light-duty and medium-duty motor vehicle and motor vehicle engine shall warrant to the ultimate purchaser and each subsequent purchaser that the motor vehicle engine meets

all of the following requirements:

(1) Is designed, built, and equipped so as to conform with the applicable emissions standards specified in this part for a period of use of five years or 50,000 miles, whichever first occurs.

(2) Is free from defects in materials and workmanship which cause the motor vehicle or motor vehicle engine to fail to conform with applicable requirements specified in this part or to fail to pass a test established under Section 44012 for three years or 50,000 miles, whichever first occurs.

(3) Is free from defects in materials and workmanship in emission related parts which, at the time of certification by the state board, are estimated by the manufacturer to cost individually more than three hundred dollars ($300) to replace, for a period of seven years or 70,000 miles, whichever first occurs.

(b) The state board shall, by regulation, periodically revise the three hundred dollar ($300) repair cost level specified in paragraph (3) of subdivision (a) in accordance with the consumer price index, as published by the United States Bureau of Labor Statistics.

SEC. 14. Section 43205.5 is added to the Health and Safety Code, to read:

43205.5. Commencing with the 1990 model-year, the manufacturer of each motor vehicle and motor vehicle engine, other than a light-duty or medium-duty motor vehicle or motor vehicle engine, shall warrant to the ultimate purchaser and each subsequent purchaser that the motor vehicle or motor vehicle engine meets all of the following requirements:

(a) Is designed, built, and equipped so as to conform with the applicable emission standards specified in this part for a period of use determined by the state board.

(b) Is free from defects in materials and workmanship which cause the motor vehicle or motor vehicle engine to fail to conform with applicable requirements specified in this part for the same or lesser period of use established under subdivision (a).

SEC. 15. Section 43210.5 is added to the Health and Safety Code, to read:

43210.5. The state board shall, by regulation, require manufacturers of motor vehicles and motor vehicle engines to determine the extent to which emissions-related defects exist in each engine family and to recommend the diagnostic and repair procedures that can result in the identification and correction of these defects under vehicle inspection and maintenance programs.

SEC. 16. Section 44000 of the Health and Safety Code is repealed.

SEC. 17. Section 44000 is added to the Health and Safety Code, to read:

44000. (a) The Legislature finds and declares as follows:

(1) Motor vehicle inspection and maintenance programs can significantly reduce vehicle emissions and thereby contribute to the attainment and maintenance of ambient air quality standards.

(2) The effectiveness of motor vehicle inspection and

maintenance programs depends on effective monitoring and enforcement of program requirements.

(3) The complexity of vehicle emission control systems has increased to the extent that it is necessary for the qualifications of inspectors and the capabilities of test equipment to be improved.

(4) Organizational changes to achieve more effective coordination between the new motor vehicle emission control program and the motor vehicle inspection and maintenance program will enhance the effectiveness of both programs.

(5) Emission reductions due to motor vehicle inspection and maintenance programs can be substantially increased through the implementation of more effective inspection and repair requirements.

(6) Air pollution problems in many areas of the state are of such severity and persistence that all reasonable motor vehicle air pollution control measures will be required for the indefinite future.

(b) It is, therefore, the intent of the Legislature in adopting amendments to this chapter in 1988 to establish a more effective motor vehicle inspection and maintenance program as a continuing element of the state's vehicular air pollution control program.

SEC. 18. Section 44001 of the Health and Safety Code is amended to read:

44001. 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.

SEC. 19. Section 44001.5 is added to the Health and Safety Code, to read:

44001.5. (a) There is in the Department of Consumer Affairs a Bureau of Automotive Repair under the supervision and control of the director. A duty of enforcing and administering this chapter is vested in the chief of the bureau who is responsible to the director.

(b) The department shall take those actions consistent with its statutory authority to ensure that the reduction in emissions of hydrocarbons and carbon monoxide is 25 percent or more, and the reduction in emissions of oxides of nitrogen is 10 percent or more, than would have occurred without a motor vehicle inspection program. The department shall endeavor to achieve these emission reductions as expeditiously as practicable, but not later than January 1, 1994.

(c) In areas of the state where testing for oxides of nitrogen emissions is conducted pursuant to subdivision (b) of Section 44003, the department shall take all actions to ensure that the reduction in emissions of hydrocarbons is 40 percent or more, the reduction in carbon monoxide is 25 percent or more, and the reduction in oxides of nitrogen is 20 percent or more, than would have occurred without the amendments to this chapter enacted in 1988. The department shall endeavor to achieve these reductions as expeditiously as practicable, but not later than four years after the commencement of testing for oxides of nitrogen emissions pursuant to subdivision (b)

of Section 44003.

SEC. 20. Section 44003 of the Health and Safety Code is repealed.

SEC. 21. Section 44003 is added to the Health and Safety Code, to read:

44003. (a) Any district may request the department to implement within its area of jurisdiction a motor vehicle inspection program which meets the requirements of this chapter. The area subject to the program shall include the entire standard metropolitan statistical area in which any violation of ambient air quality standards related to motor vehicle emissions exists and any other areas within the district specified by the requesting district or determined by the state board, in consultation with the districts, to contribute to violations of the ozone or carbon monoxide air quality standards in the district or in an adjacent district.

(b) At the time of the initial request pursuant to subdivision (a), or at any time thereafter, testing for oxides of nitrogen emissions shall be included at the option of the district requesting the program or upon a determination by the state board, after a hearing held within the district, that testing for oxides of nitrogen emissions will contribute to improved air quality.

(c) If testing for oxides of nitrogen emissions is requested pursuant to subdivision (b), the department shall implement a testing program within the district as soon as the department can develop a procedure for testing for oxides of nitrogen emissions that will be feasible and more effective than the testing program existing in 1988. The implementation date for testing for oxides of nitrogen emissions shall be the earliest date which provides sufficient lead time for the development, production, and installation of testing equipment. The department shall endeavor to implement testing within two years of the district's request. If the department determines that more time is required, the department shall provide the district with a detailed implementation schedule and shall periodically report to the district on the progress being made to implement testing.

SEC. 22. Section 44003.5 of the Health and Safety Code is amended to read:

44003.5. (a) Any district that is not, or does not contain, a federally designated nonattainment area, but desires to utilize a motor vehicle inspection program meeting the requirements of this chapter as an air pollution control strategy, may request the department to implement the program within the district if the requesting district finds, and the department concurs in, both of the following:

(1) The requesting district adjoins a district that has a motor vehicle inspection program.

(2) The adjoining district is the regular destination of a significant number, as determined by the department, of commuter trips which originate in the requesting district and which contribute a significant amount, as determined by the department, of pollutants from motor

vehicles.

(b) The area of the district to be included in the program shall be specified by the requesting district.

SEC. 23. Section 44010 of the Health and Safety Code is amended to read:

44010. The motor vehicle inspection program shall provide for privately operated stations which shall be referred to as smog check stations and are authorized to issue certificates of compliance or noncompliance to vehicles which meet the requirements of this chapter.

SEC. 24. Section 44011 of the Health and Safety Code is amended to read:

44011. 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:

(a) Every motorcycle, every vehicle powered by liquid petroleum gas which is not part of a fleet of 15 or more vehicles, and every diesel-powered vehicle, until the department determines that the inclusion of those vehicles is technologically and economically feasible.

(b) Any motor vehicle which has been issued a certificate of compliance or noncompliance or a waiver upon a change of ownership or initial registration in this state during the preceding 12 months.

(c) Any motor vehicle manufactured prior to the 1966 model-year.

(d) Any other motor vehicle which the department determines would present prohibitive inspection or repair problems.

(e) Any vehicle registered to the owner of a fleet licensed pursuant to Section 44020 if the vehicle is garaged exclusively outside the area included within the program.

(f) Those motor vehicles subject to the program consisting of 1971 and earlier model-years as a group, 1972 to 1974, inclusive, model-years as a group, and 1975 to 1979, inclusive, model-years as a group for which the state board determines that the emission reductions for a single group, on an individual pollutant basis, are less than 2 percent of the total emission reductions achieved by the program.

SEC. 25. Section 44011.5 is added to the Health and Safety Code, to read:

44011.5. Documentation that a motor vehicle is exempt from the requirements of Section 44011 may not be based solely on the owner's statement that the vehicle is in an exempt category. Physical inspection of the vehicle by the department is required unless alternative documentation satisfactory to the department is available.

SEC. 26. Section 44011.6 is added to the Health and Safety Code, to read:

44011.6. (a) As expeditiously as possible, the state board shall develop a test procedure for the detection of excessive smoke emissions from heavy-duty diesel motor vehicles that is feasible for use in an intermittent roadside inspection program. During the development of the test procedure, the state board shall cooperate with the Department of the California Highway Patrol in conducting roadside inspections. The state board may also specify visual or functional inspection procedures to determine the presence of tampering or defective emissions control systems in heavy-duty diesel or heavy-duty gasoline motor vehicles. The chairperson of the state board shall appoint an ad hoc advisory committee which shall include, but not be limited to, representatives of heavy-duty engine manufacturers, carriers of property for compensation using heavy-duty gasoline or diesel motor vehicles, and the Department of the California Highway Patrol. The advisory committee shall cooperate with the state board to develop a test procedure pursuant to this subdivision and shall advise the state board in developing regulations to implement test procedures and inspection of heavy-duty commercial motor vehicles.

(b) The state board shall, by regulation, prohibit the use of heavy-duty motor vehicles which are determined to have excessive smoke emissions or other emissions-related defects, using the test procedure established pursuant to subdivision (a). However, visual or functional inspection procedures for heavy-duty gasoline vehicles shall not be more stringent than those prescribed by the department for heavy-duty gasoline vehicles subject to biennial inspection pursuant to Section 44013. The state board may issue a citation to the owner or operator for any vehicle in violation of regulations adopted under this subdivision. These regulations may require the operator of a vehicle to submit to a test procedure adopted pursuant to subdivision (a), may specify that refusal to so submit is a violation of the regulations, and shall require that, when a citation has been issued, the owner of a vehicle in violation of the regulations shall immediately correct every deficiency specified in the citation.

(c) The department may develop criteria for one or more classes of smog check stations capable of determining compliance with regulations adopted pursuant to subdivision (b) and may authorize those stations to issue certificates of compliance to vehicles in compliance with the regulations. The department may contract for the operation of smog check stations for heavy-duty vehicles pursuant to this subdivision, and only heavy-duty vehicles may be inspected at these stations.

(d) In addition to the corrective action required by subdivision (b), the owner of a motor vehicle in violation of the regulations adopted pursuant to subdivision (b) is subject to a civil penalty of not more than one thousand five hundred dollars ($1,500) per day for each day that the vehicle is in violation. The state board may adopt a schedule of reduced civil penalties to be applied in cases where violations are corrected in an expeditious manner. The schedule of

reduced civil penalties shall not, however, apply where there have been repeated incidents of emissions control system tampering. All civil penalties imposed pursuant to this section shall be collected by the state board and deposited in the Vehicle Inspection and Repair Fund. Funds in the Vehicle Inspection and Repair Fund shall, when appropriated by the Legislature, be available to the state board and the Department of the California Highway Patrol for the conduct of intermittent roadside inspections of heavy-duty vehicles pursuant to this section.

(e) Following the adoption of regulations pursuant to subdivision (b), the state board and the Department of the California Highway Patrol shall commence inspecting heavy-duty motor vehicles. With the concurrence of the Department of the California Highway Patrol, these inspections may be conducted in conjunction with the safety and weight enforcement activities of the Department of the California Highway Patrol or at other locations selected by the state board or the Department of the California Highway Patrol. Inspection locations may include private facilities where fleet vehicles are serviced or maintained. The state board and the Department of the California Highway Patrol may conduct these inspections either cooperatively or independently, and the state board may contract for assistance in the conduct of these inspections.

(f) The state board shall inform the Department of the California Highway Patrol whenever a vehicle owner cited pursuant to subdivision (b) fails to take a required corrective action or to pay the civil penalty levied pursuant to subdivision (d) in a timely manner, and the Department of the California Highway Patrol may, upon receipt of that information, require that the vehicle be removed from service until the civil penalty is paid and the corrective action taken.

(g) The state board, in consultation with the Department of the California Highway Patrol, shall, within two years of the adoption of regulations pursuant to subdivision (b), prepare and submit to the Legislature a report on the smoke emissions enforcement program conducted under this section, including, but not limited to, its assessment of the effectiveness of the program, the impact of the program on the operations of the Department of the California Highway Patrol, and its recommendations for changes in, alternatives to, or termination of, the program.

SEC. 27. Section 44012 of the Health and Safety Code is amended to read:

44012. The test at the smog check stations shall include all of the following:

(a) A determination that emission control devices and systems required by state and federal law are installed and functioning correctly in accordance with the test procedure adopted pursuant to subdivision (b) of Section 44013.

(b) A preconditioning of the motor vehicle to ensure representative and stablilized operation of the vehicle's emission

control system.

(c) For other than diesel-powered vehicles, a test of the vehicle's exhaust emissions of hydrocarbons, carbon monoxide, and carbon dioxide in an idle mode or loaded mode in accordance with the procedure prescribed by the department. Testing for oxides of nitrogen emissions shall be included if the district has requested testing for oxides of nitrogen and the department has implemented a testing program pursuant to Section 44003.

(d) For diesel-powered vehicles when the department determines that the inclusion of those vehicles is technologically and economically feasible, a test of the vehicle's exhaust emissions in an idle mode or loaded mode in accordance with the procedure prescribed by the department. The test may include testing of emissions of any or all of the pollutants specified in subdivision (b) and, upon the adoption of applicable standards, measurement of emissions of smoke or particulates, or both.

(e) 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.

SEC. 28. Section 44013 of the Health and Safety Code is amended to read:

44013. (a) The department, in cooperation with the state board, shall prescribe maximum emission standards to be applied in inspecting motor vehicles under this chapter.

In prescribing the standards, the department shall undertake studies and experiments which are necessary and feasible, evaluate available data, and confer with automotive engineers.

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. The standards shall be designed so that motor vehicles 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 the requirements of 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.

SEC. 29. *Section 44014 of the Health and Safety Code is amended* to read:

44014. (a) The testing and repair portion of the program shall be conducted by smog check stations licensed by the department, and by smog check mechanics who have qualified pursuant to this chapter, if the repairs are performed for compensation.

(b) A smog check station may be licensed by the department as a smog check test only station and, when so licensed, need not comply with the requirement for onsite availability of current service and adjustment procedures specified in paragraph (3) of subdivision (b) of Section 44030. A smog check mechanic employed by a smog check test only station shall be qualified in accordance with this section.

(c) Smog check mechanics are qualified to test and repair only those classes and categories of vehicles for which they have passed a qualification test administered by the department. The department shall provide for smog check mechanics to be qualified for different categories of motor vehicle inspection based on vehicle classification and model-year.

(d) The consumer protection-oriented quality assurance portion of the program, shall be conducted by more than one private entity pursuant to contracts with the department.

SEC. 30. *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 or noncompliance for a motor vehicle which does not meet the requirements of Section 44012.

(b) If a vehicle meets the requirements of Section 44012, a licensed smog check station shall issue a certificate of compliance or a certificate of noncompliance. The certificate shall be signed by a licensed inspector.

(c) A certificate of compliance or noncompliance may be issued by the department or a referee facility when it is determined that no adjustment or repair can be made that will reduce emissions from the inspected motor vehicle without exceeding the cost limitation established by the department and that every defect specified by paragraph (2) of subdivision (a) of Section 43204, and by paragraphs (2) and (3) of subdivision (a) and paragraph (2) of subdivision (b) of Section 43205, have been corrected.

(d) A certificate of compliance or noncompliance shall be valid for 90 days.

(e) A test may be made at any time within three months prior to the date otherwise required.

SEC. 31. Section 44016 of the Health and Safety Code is amended to read:

44016. The department shall, with the cooperation of the state board and after consultation with the motor vehicle manufacturers and representatives of the service industry, research, establish, and update as necessary, specifications and procedures for motor vehicle maintenance and tuneup procedures and for repair of motor vehicle pollution control devices and systems. Licensed repair stations and qualified mechanics shall perform all repairs in accordance with specifications and procedures so established.

SEC. 32. Section 44017 of the Health and Safety Code is amended to read:

44017. (a) The department shall set cost limitations for repairs required under the program, including parts and labor. On and after January 1, 1990, the cost limitations shall be as follows:

(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).

(b) The department shall periodically revise the cost limitations specified in subdivision (a) in accordance with changes in the Consumer Price Index, as published by the United States Bureau of Labor Statistics. No limit shall be imposed in those cases where emissions control equipment is missing or is partially or totally inoperative as a result of tampering.

(c) The review committee established pursuant to Section 44021 shall prepare and submit to the Legislature on or before January 1, 1992, a report on the effect of the cost limitations established in subdivision (a) on reductions in air pollution accomplished pursuant to this chapter and on the extent of compliance with motor vehicle registration laws.

SEC. 33. Section 44019 of the Health and Safety Code is repealed.

SEC. 34. Section 44019 is added to the Health and Safety Code, to read:

44019. (a) Every public agency, including, but not limited to, a publicly owned public utility, owning or operating any motor vehicle that is exempt from annual renewal of registration, and is otherwise subject to this chapter, shall obtain for the vehicle a certificate of compliance with the same frequency as is required for vehicles subject to renewal of registration. The cost limitations specified in Section 44017 do not apply to any vehicle owned or operated by a public agency.

(b) Certificates of compliance required by subdivision (a) shall be

issued after a test of the motor vehicle utilizing a test analyzer system meeting the requirements of Section 44036. Any certificate so issued shall be indexed by vehicle license plate number or vehicle identification number and retained by the public agency for not less than three years, and shall be available for inspection by the department.

(c) Every public agency subject to subdivision (a) shall annually report to the department the number of certificates issued, the number of motor vehicles owned, and the schedule under which the motor vehicles were issued certificates of compliance.

(d) The department may accept proof of compliance with this section other than by a certificate of compliance.

SEC. 35. Section 44021 of the Health and Safety Code is amended to read:

44021. (a) The department shall conduct ongoing cost benefit analyses and other evaluations of the motor vehicle inspection program, including, but not limited to, observed patterns of malfunctions in inspected motor vehicles' emissions control systems, inquiries from the public regarding emissions system warranties, inspection and repair costs, the failure rate after repairs, and recommendations for legislation to improve the inspection program.

The department shall prepare and submit an annual report to the Legislature on the analyses and evaluations of the program. The department shall conduct at least one public hearing prior to submitting each report and shall include pertinent information which it receives from the public hearing in that report.

Commencing in 1989, and every year thereafter, the department shall include the following information in its annual report:

(1) A narrative description of what actions have been taken by the department, since the last report, to implement recommendations contained in the reports of the review committee submitted pursuant to subdivision (b). The description shall indentify the funds expended to implement the recommendations, the sources of those funds, and how those funds and sources have changed since the department's last report.

(2) A quantitative assessment of the impact of these actions, since the last report, on all of the following:

(A) The waiver rate.

(B) The percentage of all inspections performed pursuant to subdivision (a) of Section 44012 which were incorrectly or incompletely performed.

(C) The percentage of repairs to emission control devices and systems which were incorrectly or incompletely performed.

(D) The percentage of enforcement investigations which result in issuance of a citation or imposition of any other penalty.

(3) An identification and assessment of whether any additional actions or funds are required to achieve any specific performance or emission reduction objectives identified in the review committee report.

The department shall provide the review committee and the state board an opportunity to comment on the draft annual report prepared under this subdivision, and any written comments of the state board or the review committee shall be included in the final report submitted to the Legislature.

(b) A review committee is hereby created to analyze the effect of the program on motor vehicle emissions and air quality. The review committee shall consist of a representative from the state board and a representative from each of the districts in which the motor vehicle inspection program has been implemented.

(1) The committee shall elect one of its members as its chairperson. The members of the committee shall receive no compensation, but shall be reimbursed by the department for their actual and necessary expenses in performing committee duties. The state board and the department shall provide the committee the necessary technical and clerical support in its evaluation of program effectiveness.

(2) The committee shall schedule and conduct periodic meetings in the performance of its duties, and shall meet and consult with local, state, and federal officials involved in the evaluation of motor vehicle inspection and maintenance programs.

(c) The committee shall conduct at least one public hearing prior to submitting its report to the Legislature and shall include pertinent information which it receives from the public hearings in its report. The first report shall be submitted not later than 36 months following the implementation of the program. Thereafter, the committee shall submit periodic written reports to the Legislature on the program at least every 24 months. The committee's reports shall quantify the reduction in emissions and improvement in air quality attributed to the program.

(d) In those areas where testing for oxides of nitrogen emissions has not been implemented, the committee shall determine whether the average emissions of hydrocarbons and carbon monoxide from inspected vehicles is at least 25 percent less than the average of those emissions without the program.

(e) In those areas where testing for oxides of nitrogen emissions has been implemented, the committee shall determine whether the average emissions from inspected motor vehicles is at least 40 percent less for hydrocarbons, at least 25 percent less for carbon monoxide, and at least 20 percent less for oxides of nitrogen, than the average of those emissions without the program. If the committee determines that the average percentage reduction in emissions from inspected motor vehicles is less than the percentages specified in subdivision (d) or (e), as the case may be, the report shall include specific recommendations for improving the emissions reduction effectiveness and administration of the program. Where possible, specific recommendations shall include quantitative performance objectives which the committee has determined are reasonably achievable and which are based on the program's achieving the

maximum emissions reduction. The department shall take all feasible actions to implement the committee's recommendations as expeditiously as practical.

SEC. 35.5. Section 44022 is added to the Health and Safety Code, to read:

44022. (a) On and after Janaury 1, 1990, no license issued to an official motor vehicle pollution control device installation and inspection station or to a motor vehicle pollution control device installer under Section 9887.1 of the Business and Professions Code shall be valid. On and after that date, every such station and installer shall be licensed under this chapter.

(b) The department may specify requirements for emission test analyzers that are different from the requirements contained in subdivision (b) of Section 44036.

SEC. 36. Section 44030 of the Health and Safety Code is repealed.

SEC. 37. Section 44030 is added to the Health and Safety Code, to read:

44030. (a) The department shall develop standards for the licensing of smog check stations. Tests, service, and adjustment at smog check stations shall be performed by a qualified smog check mechanic.

(b) The licensing standards for smog check stations may include, but are not limited to, requirements for all of the following:

(1) Use of computerized and tamper-resistant testing equipment, including, but not limited to, test analyzer systems meeting the current requirements of the department.

(2) Annual license renewal.

(3) Onsite availability of current emission control system information and service and adjustment procedures.

SEC. 38. Section 44030.5 of the Health and Safety Code is amended to read:

44030.5. The department shall develop standards for certification of institutions and instructors for purposes of providing training of smog check mechanics. The standards shall include criteria for applications, manuals, textbooks, laboratory equipment, laboratory exercises, hands-on work, examinations, and other matters the department determines necessary for a certified course of instruction.

The standards shall also specify the conditions under which an institution or instructor may be decertified, and under which a decertified institution or instructor may regain certification.

SEC. 39. Section 44031 of the Health and Safety Code is amended to read:

44031. (a) The owner or manager of every licensed smog check station shall be a licensed inspector.

(b) Every licensed inspector either shall have completed training courses meeting the standards developed under Section 44031.5 or shall be a qualified smog check mechanic.

(c) The license of a licensed inspector shall be issued for a period

of two years, commencing January 1, 1988, and is subject to renewal every two years thereafter. The department shall establish initial and renewal license fees, which shall not exceed the reasonable costs of administering the licensed inspector program.

SEC. 40. Section 44031.5 of the Health and Safety Code is amended to read:

44031.5. (a) No smog check mechanic 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.

(b) No person may perform the duties of a licensed inspector, including, but not limited to, the signing of certificates, unless that person is licensed and has met the requirements of subdivision (b) of Section 44031. This subdivision applies to every licensed inspector upon the first renewal of the inspector's license after January 1, 1988, and upon each renewal thereafter.

(c) The department shall prescribe training and periodic retraining courses for licensed inspectors and for smog check mechanics.

(d) Whenever the department determines, through investigation, that a previously qualified smog check mechanic may lack the skills to reliably and accurately perform the test or repair functions within the required qualification, it may prescribe for the mechanic one or more retraining courses which have been certified by the department. The smog check mechanic 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 mechanic's qualification.

(e) Smog check mechanics 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. The institution administering the department certified training or retraining courses shall issue a certificate of completion to each person successfully completing the certified courses. The certificate shall be valid for two years.

(f) There is hereby created a training course advisory board to assist and advise the department in recommending the form and content of training courses. The advisory board shall consist of five members appointed by the director, of whom two shall represent smog check station owners or managers, two shall represent smog check mechanics, and one shall be a public member. The members

of the advisory board shall receive no compensation for their services, but shall be reimbursed for their actual and necessary expenses in performing their duties under this subdivision.

SEC. 41. Section 44032 of the Health and Safety Code is amended to read:

44032. No person shall perform, for compensation, tests or repairs of emission control devices or systems of motor vehicles required by this chapter unless the person performing the test or repair is a qualified smog check mechanic and the test or repair is performed at a licensed smog check station. Qualified mechanics shall perform tests of emission control devices and systems in accordance with Section 44012.

SEC. 42. Section 44033 of the Health and Safety Code is amended to read:

44033. (a) Any facility meeting the requirements established by the department pursuant to this chapter may be licensed as a smog check station. A licensed smog check station shall display an identifying sign prescribed by the department in a manner conspicuous to the public.

(b) No licensed smog check station shall require, as a condition of performing the test, that any needed repairs or adjustment be done by the person, or at the facility of the person, performing the test.

(c) If a motor vehicle is tested at a facility licensed to perform tests and repairs pursuant to this chapter, the facility shall provide the customer with a written estimate pursuant to Section 9884.9 of the Business and Professions Code. The written estimate shall contain a notice to the customer stating that the customer may choose another smog check station to perform needed repairs, installations, adjustments, or subsequent tests.

(d) Charges for testing or repair, or both, shall be separately stated.

(e) The department shall require the posting of station licenses, inspector licenses, and qualified mechanics certificates prominently in each place of business so as to be readily visable to the public.

SEC. 43. Section 44034 of the Health and Safety Code is amended to read:

44034. Annual license fees for smog check stations and smog check mechanics may be imposed by the department, but shall not exceed the reasonable cost of administering the qualifications and licensing program.

SEC. 44. Section 44035 of the Health and Safety Code is amended to read:

44035. A smog check station's license, an inspector's license, or a qualified smog check mechanic's qualification may be suspended or revoked by the department, after a hearing, for failure to meet or maintain the standards prescribed for qualification, equipment, performance, or conduct. The department shall adopt rules and regulations governing the suspension, revocation, and reinstatement of licenses and qualifications and the conduct of the hearings.

SEC. 45. Section 44036 of the Health and Safety Code is repealed.

SEC. 46. Section 44036 is added to the Health and Safety Code, to read:

44036. (a) The consumer protection-oriented quality assurance portion of the motor vehicle inspection program shall ensure uniform and consistent tests and repairs by all qualified smog check mechanics and licensed smog check stations throughout the district, and shall include a number of referee stations available to consumers. Sufficient referee stations shall be provided to accommodate at least 2 percent of the motor vehicles subject to the requirements of this chapter.

(b) All licensed smog check stations shall utilize equipment which has been certified by the department. The department shall adopt, and may from time to time revise, standards for certification of the equipment, which may include a device for testing of emissions of oxides of nitrogen. As expediously as possible, the department shall adopt equipment standards which shall include a test analyzer system containing all of the following:

(1) A microprocessor to control test sequencing, selection of proper test standards, the automatic pass or fail decision, and the format for the test report and the recorded data file. The microprocessor shall be capable of using a standardized programming language specified by the department.

(2) An exhaust gas analysis portion with an analyzer for hydrocarbons, carbon monoxide, and carbon dioxide which is designed to accommodate an optional oxides of nitrogen analyzer.

(3) A device to accept and record motor vehicle identification information, including a device capable of reading bar code information affixed to vehicles pursuant to regulations of the state board.

(4) A device to provide a printed record of the test process and diagnostic information for the motorist.

(5) A device capable of measuring engine speed from all models of vehicles using spark ignition at the time the specification is adopted by the department.

(6) A mass storage device capable of storing not less than the minimum amount of program software and data specified by the department.

(7) A device to provide for the periodic modification of all program and data files contained on the mass storage device, using a standarized form of removable media conforming to specifications of the department.

(8) A device which provides for the storage of test records on a standardized form of removable media conforming to specifications of the department.

(9) One or more communications ports conforming to the specifications established by the department.

(10) An interface capable of monitoring equipment used with loaded mode testing.

(11) Any other features that the department determines will increase the effectiveness of the program.

(c) The department shall require all smog check stations to use equipment meeting the requirements of subdivision (b) as soon as possible after July 1, 1990, but not later than January 1, 1992. Prior to a requirement for equipment meeting the requirements of subdivision (b), every smog check station shall use equipment meeting the specifications of the department in effect on January 1, 1988. Any equipment required may be supplied by a single supplier in any nonattainment area if it is determined that there would be a demonstrable cost savings as shown through the solicitation and evaluation of competitive bids for each nonattainment area. If it is determined that any equipment required shall be supplied by a single supplier, the supplier shall enter into a master agreement with the department specifying the prices, terms, and conditions under which the supplier will provide equipment in a uniform manner within the nonattainment area. The master agreement shall contain terms consistent with the bid upon which it is based.

(d) The quality assurance portion shall provide for inspections of licensed smog check stations, data collection and forwarding, equipment accuracy checks, operation of referee stations, and other necessary functions. In contracting for services pursuant to subdivision (d) of Section 44014, the department shall prepare detailed specifications and solicit bids from private entities for the implementation of the quality assurance functions.

(e) The department may revise the specifications for equipment annually if the cost thereof is less than 20 percent of the total system cost. A more comprehensive revision to the specifications may be required not more often than every five years.

SEC. 47. Section 44037 of the Health and Safety Code is amended to read:

44037. 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 mechanics at licensed smog check stations pursuant to this chapter on all of the following information:

(a) The motor vehicle identification information and the test data collected at the station.

(b) The number of maintenance and repair operations performed on motor vehicles which fail to pass a test conducted pursuant to this chapter.

(c) The correlation between maintenance and repairs recommended by the department pursuant to Section 44016 and maintenance and repairs performed.

(d) The charges assessed for the service and repairs.

(e) Any other information deemed essential by the department.

A written summary of all the above information shall be published quarterly for the mechanics and smog check stations in each district and shall be available to the public upon request.

SEC. 48. Section 44038 of the Health and Safety Code is amended to read:

44038. Each smog check station shall transmit vehicle data and emission test results to the department. Each smog check station shall also transmit to the department 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.

SEC. 49. Section 44039 of the Health and Safety Code is amended to read:

44039. A written summary of the required information applicable to smog check stations in each district shall be published semiannually by the department and made available upon request to the owner of any motor vehicle subject to this chapter.

SEC. 50. Section 44040 is added to the Health and Safety Code, to read:

44040. The department may require certificates of compliance and certificates of noncompliance to contain a unique number encoded in bar code. These certificates may be sold to licensed smog check stations by the department or be printed by test analyzer systems. The department, with the cooperation of the Department of Motor Vehicles, shall periodically check certificates to determine their validity.

SEC. 51. Section 44050 of the Health and Safety Code is amended to read:

44050. (a) If, upon investigation, the department has probable cause to believe that a licensed smog check station, a licensed inspector, or a fleet owner licensed under Section 44020 has violated this chapter, or any regulation adopted pursuant to this chapter, the department may issue a citation to the licensee or fleet owner. The citation shall specify the nature of the violation and may specify a civil penalty assessed by the department pursuant to Section 44051 or 44051.5.

(b) If, upon investigation, the department has probable cause to believe that a qualified smog check mechanic has violated Section 44012, 44015, 44016, or 44032, or any regulation adopted pursuant to this chapter, the department may issue a citation to the mechanic. The citation shall specify the nature of the violation and, in addition, whichever of the following applies:

(1) For a first citation, the smog check mechanic shall successfully complete one or more retraining courses prescribed by the department pursuant to subdivision (d) of Section 44031.5.

(2) For a second citation, the smog check mechanic shall successfully complete one or more retraining courses prescribed by the department pursuant to subdivision (d) of Section 44031.5 and the mechanic shall perform no inspection or repair pursuant to this chapter until that completion.

(3) For a third citation, the smog check mechanic shall successfully complete an advanced retraining course prescribed by

the department and shall perform no inspection or repair pursuant to this chapter until that completion.

(4) For a fourth citation, the smog check mechanic's qualification shall be permanently revoked.

(c) The citation shall be served pursuant to subdivision (c) of Section 11505 of the Government Code.

SEC. 52. Section 44051 of the Health and Safety Code is amended to read:

44051. The civil penalty for a violation of the specified provisions of this chapter is as follows:

| Section | Short Description of Violation | Civil Penalty Minimum | Civil Penalty Maximum |
|---|---|---|---|
| 44002 | Smog check estimates and invoices | $ 50 | $ 500 |
| 44012(a) | No emission control system inspection | 250 | 1,500 |
| 44012(b) | No emissions test | 250 | 1,500 |
| 44014(a) | Unlicensed smog check station or mechanic | 250 | 1,500 |
| 44015(a,b,c) | Failure to issue certificate signed by licensed inspector | 150 | 1,000 |
| 44016 | Failure to follow established repair procedures | 150 | 1,000 |
| 44017 | Cost limitation requirement | 150 | 1,000 |
| 44031.5(a) | Test/repair by unlicensed smog check station or nonqualified smog check mechanic | 250 | 1,500 |
| 44033(a) | Smog check station requirement | 100 | 500 |
| 44033(b) | Test on condition of mandatory repair waiver | 250 | 1,500 |
| 44033(d) | Test/repair charges separate | 100 | 500 |
| 44036(b) | Smog check station certified equipment requirement | 150 | 1,500 |
| 44060 | Sale, transfer, or purchase of certificate | 250 | 1,500 |

SEC. 53. Section 44051.5 of the Health and Safety Code is amended to read:

44051.5. The civil penalty for a violation of the specified sections of Title 16 of the California Administrative Code is as follows:

| Section | Short Description of Violation | Civil Penalty Minimum | Civil Penalty Maximum |
|---|---|---|---|
| 3340.15(a–j) | Smog check station general requirements | $100 | $ 500 |
| 3340.16 | Smog check station equipment and testing procedures | 150 | 1,000 |
| 3340.16.5 | Smog check station equipment and testing procedures | 150 | 1,000 |
| 3340.17 | Smog check station equipment maintenance and calibration | 150 | 1,000 |
| 3340.22 | Smog check station sign requirement | 100 | 500 |
| 3340.23 | Smog check cease operations | 250 | 1,500 |
| 3340.25 | Licensed inspector requirement | 150 | 1,000 |
| 3340.30 | Qualified mechanic's training and certification requirement | 100 | 500 |
| 3340.35 | Certification of compliance and noncompliance requirement | 250 | 1,500 |
| 3340.37 | NOx device/sticker requirement | 100 | 500 |
| 3340.41 | Inspection/test/repair requirement | 150 | 1,000 |
| 3340.42 | Inspection standards, test procedures, and exhaust emissions requirement | 100 | 500 |
| 3340.45 | Cost limitation requirement | 100 | 500 |

SEC. 54. Section 44053 of the Health and Safety Code is amended to read:

44053. (a) Any person issued a citation pursuant to Section 44050 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 shall be submitted in writing within 30 days of service of the citation, and shall be delivered to the office of the department in Sacramento. Hearings and related procedures under this section shall be conducted in the same manner as proceedings for adjudication of an accusation under

that Chapter 5, except as otherwise specified in this article.

(b) If, within 30 days from service of the citation, the licensee or qualified mechanic fails to request a hearing, the citation shall be deemed the final order of the department.

SEC. 55. *Section 44054 of the Health and Safety Code is amended to read:*

44054. In assessing a civil penalty pursuant to a citation issued pursuant to Section 44050, the director shall give due consideration to the gravity of the violation, including, but not limited to, a consideration of whether any of the following apply to the licensee:

(a) A failure to perform work for which money was received.

(b) The making of any false or misleading statement in order to induce a person to authorize repair work or pay money.

(c) The commission of numerous or repeated violations.

(d) A failure to make restitution to customers affected by the licensee's violation.

SEC. 56. Section 44060 of the Health and Safety Code is amended to read:

44060. (a) The department shall prescribe the form of the certificate of compliance or noncompliance. The department shall charge a fee to licensed smog check stations for the issuance by the department to the stations of certificate of compliance or noncompliance forms. The fee charged shall be calculated to allow funding of the department and any other state agency directly involved in the implementation of the motor vehicle inspection program, and shall not exceed the amount reasonably necessary to fund the operation of the program, including all responsibilities, requirements, and obligations imposed upon the department or any of those state agencies by this chapter, which are not otherwise recoverable by license fees pursuant to Section 44034. Except for adjustments to reflect changes in the Consumer Price Index, as published by the United States Bureau of Labor Statistics, the fee for each certificate of compliance or noncompliance shall not exceed six dollars ($6). It is the intent of the Legislature that the Vehicle Inspection and Repair Fund shall maintain a prudent surplus. If the surplus exceeds reasonable costs of administration of the programs specified in this chapter and in Chapter 20.3 (commencing with Section 9880) of Division 3 of the Business and Professions Code, the department shall, by regulation, prescribe a lower fee for the certificate of compliance or noncompliance.

(b) The sale or transfer of any certificate of compliance or noncompliance by a licensed smog check station to any other licensed smog check station or any other person, and the purchase or acquisition of any certificate of compliance or noncompliance by any person, other than from the department, the department's designee, or pursuant to a vehicle inspection or repair conducted pursuant to this chapter, is prohibited.

SEC. 56.3. Section 44061 of the Health and Safety Code is amended to read:

44061. The fees and penalties collected by the department pursuant to this chapter shall be deposited in the Vehicle Inspection and Repair Fund in accordance with the procedures established by the department, and is available to the department, as specified by Section 9886.2 of the Business and Professions Code, and, upon appropriation by the Legislature, to any other state agency directly involved in the implementation of the motor vehicle inspection program, to carry out its functions and duties specified in this chapter or in any other law.

SEC. 56.6. Section 44062 is added to the Health and Safety Code, to read:

44062. The Vehicle Inspection Fund and the Automotive Repair Fund are hereby abolished. The balances in those funds are hereby transferred to the Vehicle Inspection and Repair Fund.

All fees collected by the department under this chapter and Chapter 20.3 (commencing with Section 9880) of Division 3 of the Business and Professions Code shall be deposited in the Vehicle Inspection and Repair Fund and are available to the department as specified by Section 9886.2 of the Business and Professions Code.

SEC. 57. Section 44070 of the Health and Safety Code is amended to read:

44070. (a) The department shall develop within the Bureau of Automotive Repair, with the advice and technical assistance of the state board, a public information program for the purpose of providing information designed to increase public awareness of the smog check program throughout the state and emissions warranty information to motor vehicle owners subject to an inspection and maintenance program required pursuant to this chapter. The department shall provide, upon request, either orally or in writing, information regarding emissions related warranties and available warranty dispute resolution procedures.

(b) The telephone number and business hours, and the address if appropriate, of the emissions warranty information program shall be noticed on the vehicle inspection report provided by the test analyzer system for any vehicle which fails the analyzer test.

SEC. 57.5. Section 44071 of the Health and Safety Code is amended to read:

44071. For purposes of implementing the smog check public awareness and emissions warranty information programs, the department shall use funds from the fee charged for each certificate of compliance or noncompliance which are deposited in the Vehicle Inspection and Repair Fund pursuant to Section 44060.

SEC. 58. Section 4000.1 of the Vehicle Code is amended to read:

4000.1. (a) Except as otherwise provided in subdivision (b), (c), or (d) of this section, or subdivision (b) of Section 43654 of the Health and Safety Code, the department shall require upon initial registration, and upon transfer of ownership and registration, of any motor vehicle subject to Part 5 (commencing with Section 43000) of Division 26 of the Health and Safety Code, and upon registration of

a motor vehicle previously registered outside this state which is subject to those provisions of the Health and Safety Code, a valid certificate of compliance or a certificate of noncompliance, as appropriate, issued in accordance with Section 44015 of the Health and Safety Code.

(b) With respect to new vehicles certified pursuant to Chapter 2 (commencing with Section 43100) of Part 5 of Division 26 of the Health and Safety Code, the department shall accept a statement completed pursuant to subdivision (b) of Section 24007 in lieu of the certificate of compliance.

(c) For purposes of determining the validity of a certificate of compliance or noncompliance submitted in compliance with the requirements of this section, the definitions of new and used motor vehicle contained in Chapter 2 (commencing with Section 39010) of Part 1 of Division 26 of the Health and Safety Code control.

(d) Subdivision (a) does not apply to a transfer of ownership and registration under any of the following circumstances:

(1) The transferor is either the parent, grandparent, child, grandchild, or spouse of the transferee.

(2) A vehicle registered to a sole proprietorship is transferred to the proprietor as owner.

(3) The transfer is between companies whose principal business is leasing vehicles, if there is no change in the lessee or operator of the vehicle or between the lessor and the person who has been, for at least one year, the lessee's operator of the vehicle.

(4) The transfer is between the lessor and lessee of the vehicle, if there is no change in the lessee or operator of the vehicle.

(5) On and after January 1, 1993, the vehicle is subject to Section 43652 of the Health and Safety Code.

(e) The State Air Resources Board, under Part 5 (commencing with Section 43000) of Division 26 of the Health and Safety Code, may exempt designated classifications of motor vehicles from subdivision (a) as it deems necessary, and shall notify the department of that action.

SEC. 59. Section 4000.2 of the Vehicle Code is amended to read:

4000.2. (a) Except as otherwise provided in subdivision (b) of Section 43654 of the Health and Safety Code, the department shall require upon registration of a motor vehicle subject to Part 5 (commencing with Section 43000) of Division 26 of the Health and Safety Code, previously registered outside this state, a valid certificate of compliance or a certificate of noncompliance, as appropriate, issued in accordance with Section 44015 of the Health and Safety Code.

(b) For the purposes of determining the validity of a certificate of compliance or noncompliance submitted in compliance with the requirements of this section, the definitions of new and used motor vehicle contained in Chapter 2 (commencing with Section 39010) of Part 1 of Division 26 of the Health and Safety Code shall control.

SEC. 60. Section 4000.3 of the Vehicle Code is amended to read:

4000.3. (a) Except as otherwise provided in Section 44011 of the Health and Safety Code, following implementation in a district of a motor vehicle inspection program pursuant to Chapter 5 (commencing with Section 44000) of Part 5 of Division 26 of the Health and Safety Code, the department shall require biennially, upon renewal of registration of any motor vehicle subject to Part 5 (commencing with Section 43000) of Division 26 of the Health and Safety Code, a valid certificate of compliance issued in accordance with Section 44015 of the Health and Safety Code. The department shall develop a schedule under which vehicles shall be required biennially to obtain certificates of compliance.

(b) The Department of Consumer Affairs may, subject to Section 44011.5 of the Health and Safety Code, exempt designated classifications of motor vehicles from subdivision (a) pursuant to Section 44011 of the Health and Safety Code.

(c) The Department of Consumer Affairs shall provide the department with information on program area boundaries and vehicle classes that are subject to the motor vehicle inspection and maintenance program.

SEC. 61. Section 24007 of the Vehicle Code is amended to read:

24007. (a) No dealer or person holding a retail seller's permit shall sell a new or used vehicle which is not in compliance with this code and departmental regulations adopted pursuant to this code, unless the vehicle is sold to another dealer, sold for the purpose of being wrecked or dismantled, or sold exclusively for off-highway use.

(b) (1) Except as provided in Section 24007.5, no person shall sell, or offer or deliver for sale, to the ultimate purchaser or to any subsequent purchaser a new or used motor vehicle, as those terms are defined in Chapter 2 (commencing with Section 39010) of Part 1 of Division 26 of the Health and Safety Code, subject to Part 5 (commencing with Section 43000) of that Division 26 which is not in compliance with that Part 5 and the rules and regulations of the State Air Resources Board, unless the vehicle is either sold to a dealer or sold for the purpose of being wrecked or dismantled.

(2) Prior to or at the time of delivery for sale, the seller shall provide the purchaser a valid certificate of compliance or certificate of noncompliance, as appropriate, issued in accordance with Section 44015 of the Health and Safety Code.

(c) (1) With each application for initial registration of a new motor vehicle or transfer of registration of a motor vehicle subject to that Part 5, a dealer, the purchaser, or his or her authorized representative, shall transmit to the Department of Motor Vehicles a valid certificate of compliance or noncompliance, as appropriate, issued in accordance with Section 44015 of the Health and Safety Code.

(2) Notwithstanding paragraph (1) of this subdivision, with respect to new vehicles certified pursuant to Chapter 2 (commencing with Section 43100) of Part 5 of Division 26 of the Health and Safety Code, a dealer may transmit, in lieu of a certificate

of compliance, a statement, in a form and containing information deemed necessary and appropriate by the Director of Motor Vehicles and the Executive Officer of the State Air Resources Board, to attest to the vehicle's compliance with that Chapter 2. The statement shall be certified under penalty of perjury, and shall be signed by the dealer or the dealer's authorized representative.

SEC. 62. Section 42001 of the Vehicle Code is amended to read:

42001. (a) Except as provided in Section 42000.5, 42001.1, 42001.2, 42001.3, 42001.5, 42001.7, 42001.8, 42001.9, or 42001.11, or subdivision (b) or (c) of this section, or Article 2 (commencing with Section 42030), every person convicted of an infraction for a violation of this code or of any local ordinance adopted pursuant to this code shall be punished as follows:

(1) By a fine not exceeding one hundred dollars ($100).

(2) For a second infraction occurring within one year of a prior infraction which resulted in a conviction, a fine not exceeding two hundred dollars ($200).

(3) For a third or any subsequent infraction occurring within one year of two or more prior infractions which resulted in convictions, a fine not exceeding two hundred fifty dollars ($250).

(b) Every person convicted of a misdemeanor violation of Section 2800, 2801, or 2803 insofar as they affect failure to stop and submit to inspection of equipment or for an unsafe condition endangering any person, shall be punished as follows:

(1) By a fine not exceeding fifty dollars ($50) or imprisonment in the county jail not exceeding five days.

(2) For a second conviction within a period of one year, a fine not exceeding one hundred dollars ($100) or imprisonment in the county jail not exceeding 10 days, or both that fine and imprisonment.

(3) For a third or any subsequent conviction within a period of one year, a fine not exceeding five hundred dollars ($500) or imprisonment in the county jail not exceeding six months, or both that fine and imprisonment.

(c) A pedestrian convicted of an infraction for a violation of this code or of any local ordinance adopted pursuant to this code shall be punished by a fine not exceeding fifty dollars ($50).

SEC. 63. Section 42001.2 is added to the Vehicle Code, to read:

42001.2. Every person convicted of an infraction for a violation of Section 27153.5 with a motor vehicle having a manufacturer's maximum gross vehicle weight rating of 6,001 or more pounds shall be punished by a fine not exceeding one thousand five hundred dollars ($1,500).

SEC. 64. 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 five hundred thousand dollars ($500,000), reimbursement shall be made from the State Mandates Claims Fund.

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## CHAPTER 1545

An act to add Chapter 8 (commencing with Section 6900) to Part 1 of Division 6 of the Fish and Game Code, relating to fish, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 29, 1988 Filed with Secretary of State September 30, 1988.]

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

SECTION 1. The Legislature finds that the Advisory Committee on Salmon and Steelhead Trout, reestablished by Resolution Chapter 141 of the Statutes of 1983, has conducted a thorough inquiry into the decline of the naturally spawning salmon and steelhead trout resources of the state and has presented to the public its findings and recommendations for legislative and administrative actions to protect and increase those resources. As a result of the advisory committee's inquiry, findings, and recommendations, the Legislature has recommended the establishment of a salmon, steelhead trout, and anadromous fisheries program set forth in Chapter 8 (commencing with Section 6900) of Part 1 of Division 6 of the Fish and Game Code.

SEC. 2. Chapter 8 (commencing with Section 6900) is added to Part 1 of Division 6 of the Fish and Game Code, to read:

### CHAPTER 8. SALMON, STEELHEAD TROUT, AND ANADROMOUS FISHERIES PROGRAM ACT

#### Article 1. Citation and Legislative Findings

6900. This chapter shall be known and may be cited as the Salmon, Steelhead Trout, and Anadromous Fisheries Program Act.

6901. The Legislature, for purposes of this chapter, finds as follows:

(a) According to the department, the natural production of salmon and steelhead trout in California has declined to approximately 1,000,000 adult chinook or king salmon, 100,000 coho

or silver salmon, and 150,000 steelhead trout.

(b) The naturally spawning salmon and steelhead trout resources of the state have declined dramatically within the past four decades, primarily as a result of lost stream habitat on many streams in the state.

(c) Much of the loss of salmon and steelhead trout and anadromous fish in the state has occurred in the central valley.

(d) Protection of, and an increase in, the naturally spawning salmon and steelhead trout resources of the state would provide a valuable public resource to the residents, a large statewide economic benefit, and would, in addition, provide employment opportunities not otherwise available to the citizens of this state, particularly in rural areas of present underemployment.

(e) Proper salmon and steelhead trout resource management requires maintaining adequate levels of natural, as compared to hatchery, spawning and rearing.

(f) Reliance upon hatchery production of salmon and steelhead trout in California is at or near the maximum percentage that it should occupy in the mix of natural and artificial hatchery production in the state. Hatchery production may be an appropriate means of protecting and increasing salmon and steelhead in specific situations; however, when both are feasible alternatives, preference shall be given to natural production.

(g) The protection of, and increase in, the naturally spawning salmon and steelhead trout of the state must be accomplished primarily through the improvement of stream habitat.

(h) Funds provided by the Legislature since 1978 to further the protection and increase of the fisheries of the state have been administered by the Department of Fish and Game in a successful program of contracts with local government and nonprofit agencies and private groups in ways that have attracted substantial citizen effort.

(i) The department's contract program has demonstrated that California has a large and enthusiastic corps of citizens that are eager to further the restoration of the stream and fishery resources of this state and that are willing to provide significant amounts of time and labor to that purpose.

(j) There is need for a comprehensive salmon, steelhead trout, and anadromous fisheries plan, program, and state government organization to guide the state's efforts to protect and increase the naturally spawning salmon, steelhead trout, and anadromous fishery resources of the state.

6902. The Legislature, for purposes of this chapter, declares as follows:

(a) It is the policy of the state to significantly increase the natural production of salmon and steelhead trout by the end of this century. The department shall develop a plan and a program that strives to double the current natural production of salmon and steelhead trout resources.

(b) It is the policy of the state to recognize and encourage the participation of the public in privately and publicly funded mitigation, restoration, and enhancement programs in order to protect and increase naturally spawning salmon and steelhead trout resources.

(c) It is the policy of the state that existing natural salmon and steelhead trout habitat shall not be diminished further without offsetting the impacts of the lost habitat.

## Article 2. Definitions

6910. Unless the context clearly requires a different meaning, the definitions in this article govern the construction of this chapter.

6911. "Production" means the survival of fish to adulthood as measured by the abundance of the recreational and commercial catch together with the return of fish to the state's spawning streams.

6912. "Program" means the program for protecting and increasing the naturally spawning salmon and steelhead trout of the state provided for in Article 3 (commencing with Section 6920).

## Article 3. Salmon, Steelhead Trout, and Anadromous Fisheries Program

6920. (a) The department shall, with the advice of the Advisory Committee on Salmon and Steelhead Trout and the Commercial Salmon Trollers Advisory Committee, prepare and maintain a detailed and comprehensive program for the protection and increase of salmon, steelhead trout, and anadromous fisheries.

(b) The department shall consult with every public agency whose policies or decisions may affect the goals of this program to determine if there are feasible means for those public agencies to help the department achieve the goals of this program.

6921. The program shall identify the measures the department will carry out to achieve the policies set forth in Section 6902.

6922. The program shall include, but is not limited to, all of the following elements:

(a) Identification of streams where the natural production of salmon and steelhead trout can be increased primarily through the improvement of stream and streambank conditions without effect on land ownership, land use practices, or changes in streamflow operations.

(b) Identification of streams where the natural production of salmon and steelhead trout can be increased only through the improvement of land use practices or changes in streamflow operations.

(c) Identification of streams where the protection of, and increase in, salmon and steelhead trout resources require, as a result of significant prior loss of stream habitat, the construction of artificial propagation facilities.

(d) A program element for evaluating the effectiveness of the program.

(e) Recommendations for an organizational structure, staffing, budgeting, long-term sources of funding, changes in state statutes and regulations and federal and local government policy and such other administrative and legislative actions as the department finds to be necessary to accomplish the purposes of this chapter.

(f) Identification of measures to protect and increase the production of other anadromous fisheries consistent with policies set forth in Section 6902.

(g) Identification of alternatives to, or mitigation of, manmade factors which cause the loss of juvenile and adult fish in California's stream system.

6923. Measures which are the responsibility of other agencies or persons, such as the repair or replacement of dysfunctional fish screens, are not eligible for funding under the program.

6924. The department shall determine the initial elements of the program and transmit a report describing those elements to the Legislature and the Advisory Committee on Salmon and Steelhead Trout within six months of the effective date of this chapter.

SEC. 3. The Department of Fish and Game shall determine the initial elements of the salmon, steelhead trout, and anadromous fisheries program initiated pursuant to Chapter 8 (commencing with Section 6900) of Part 1 of Division 6 of the Fish and Game Code, shall coordinate existing programs, and shall implement the elements of the program. In addition to the personnel positions authorized in the Budget Act of 1988, the department shall use moneys allocated to the salmon, steelhead trout, and anadromous fisheries program, upon appropriation by the Legislature, to provide three additional personnel years for the purposes of maintaining a salmon, steelhead trout, and anadromous fisheries program. The department shall annually submit a budget for the purpose of continuing this program.

SEC. 4. The sum of one hundred twenty-five thousand dollars ($125,000) is hereby appropriated from the Environmental License Plate Fund, and the sum of one hundred sixty-six thousand dollars ($166,000) is hereby appropriated from the Fish and Game Preservation Fund to the Department of Fish and Game to establish the salmon, steelhead trout, and anadromous fisheries program pursuant to Chapter 8 (commencing with Section 6900) of Part 1 of Division 6 of the Fish and Game Code. The department may also utilize its allocation of funds received pursuant to Chapter 10B (commencing with Section 777) of Title 16 of the United States Code for this program.

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:

The decline of naturally spawning salmon, steelhead trout, and other anadromous fish resources is occurring at such a rate that some

segments of these native California fish may be threatened with extinction. In order to stop the decline and restore the fishery resource at the earliest possible time, it is necessary that this act take effect immediately.

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## CHAPTER 1546

An act to amend and renumber Section 40404 of, and to add Sections 40404, 40448.5, and 40512 to, the Health and Safety Code, to add Section 25310.2 to the Public Resources Code, to add Section 738.6 to the Public Utilities Code, and to add and repeal Section 9250.11 of the Vehicle Code, relating to air pollution.

[Approved by Governor September 29, 1988. Filed with Secretary of State September 30, 1988.]

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

SECTION 1. Section 40404 of the Health and Safety Code is amended and renumbered to read:

40405. As used in this chapter, "plan" means the south coast district air quality management plan.

SEC. 2. Section 40404 is added to the Health and Safety Code, to read:

40404. The Legislature further finds and declares that the south coast district shall take a leadership role to sponsor, coordinate, and promote projects which increase the use of clean-burning fuels in the transportation and stationary source sectors, and that it is the intent of the Legislature that the district establish voluntary programs to accelerate the utilization of clean-burning fuels within the South Coast Air Basin.

SEC. 3. Section 40448.5 is added to the Health and Safety Code, to read:

40448.5. (a) The south coast district shall establish a program to encourage voluntary participation in projects to increase the utilization of clean-burning fuels. The district shall coordinate its program with the state board, the State Energy Resources Conservation and Development Commission, and other appropriate state and federal agencies and private organizations that are conducting activities to promote the use of clean-burning fuels.

(b) After holding at least two public hearings to solicit public comment on a clean-burning fuels program, the district shall adopt, on or before August 1, 1989, a five-year program of activities for increasing the use of clean-burning fuels in the transportation and stationary source sectors.

(c) The five-year program shall include an identification of potential funding sources, including, but not limited to, state and federal funds; private-sector funds; revenues from district permit,

variance, and emission fees; proceeds from district penalty settlements and judgments; and funds from other sources under the jurisdiction of the district.

(d) In developing its five-year program, the district shall consider promoting projects in the transportation and stationary source sectors utilizing methanol fuel, fuel cells, liquid petroleum gas, natural gas, including compressed natural gas, combination fuels, synthetic fuels, electricity, including electric vehicles, and other clean-burning fuels.

(e) When considering which clean fuels projects to promote, the district shall consider, among other factors, the current and projected economic costs and availability of fuels, the cost effectiveness of emission reductions associated with clean fuels compared with other pollution control alternatives, the use of new pollution control technologies in conjunction with traditional fuels as an alternative means of reducing emissions, potential effects on public health, ambient air quality, visibility within the region, and other factors deemed relevant by the district.

(f) When implementing clean fuels projects, the district shall consider limiting the use of clean fuels to specific seasons, time of day, and locations if these limitations are found by the district to further the goals of the five-year program.

(g) The district shall coordinate the clean-burning fuels program with transportation control measures adopted pursuant to subdivision (f) of Section 40440 to reduce traffic congestion, air pollution, and motor vehicle fuel consumption.

SEC. 4. Section 40512 is added to the Health and Safety Code, to read:

40512. The south coast district board may impose a fee surcharge based on a formula associated with quantity of emissions and the effect of these emissions on ambient air quality within the south coast district to generate sufficient revenues to pay for any of its costs associated with the development and implementation of Section 40448.5.

The total amount of funds collected from these surcharge fees may not exceed five hundred thousand dollars ($500,000) in each of the first two fiscal years of the development or implementation of Section 40448.5. All surcharge fees received by the south coast district pursuant to this section shall be deposited in a clean fuels and transportation control measures account which shall be established and maintained by the south coast district. In subsequent fiscal years, the total amount of funds collected from these surcharge fees may not exceed 25 percent of the amount of fees received the previous fiscal year from registered motor vehicle owners pursuant to Section 9250.11 of the Vehicle Code. The surcharge fees received by the south coast district pursuant to this section shall be used to pay for the initial costs incurred by the Department of Motor Vehicles to implement the motor vehicle fee program established by Section 9250.11 of the Vehicle Code.

All fees received by the south coast district pursuant to Section 9250.11 of the Vehicle Code shall be deposited in the clean fuels and transportation control measures account. Not more than 5 percent of the funds in the account may be used for the south coast district administrative costs.

SEC. 5. Section 25310.2 is added to the Public Resources Code, to read:

25310.2. The report required by Section 25310 shall also include, to the extent funds are available in the existing budget of the commission, information relating to methanol, fuel cells, liquid petroleum gas, natural gas, and electricity.

The report shall also describe the availability, economic cost, and air quality benefits associated with the use of clean-burning fuels in the stationary source and transportation sectors of California and shall consider the use of new pollution control technologies in conjunction with traditional fuels in comparison with the use of clean-burning fuels. This segment of the report shall be developed in consultation with the Public Utilities Commission, the State Air Resources Board, and the air pollution control districts and air quality management districts.

SEC. 6. Section 738.6 is added to the Public Utilities Code, to read:

738.6. In establishing rates for a public utility operating any portion of its line, plant, or system within a federally designated nonattainment area, the commission shall determine which expenses related to compliance with state and local air pollution control requirements for using clean-burning fuels in that area are reasonable and necessary and shall approve those expenses.

SEC. 7. Section 9250.11 is added to the Vehicle Code, to read:

9250.11. (a) Commencing on January 1, 1990, in addition to any other fees specified in this code and the Revenue and Taxation Code, a fee of one dollar ($1) may be imposed by the Counties of Los Angeles, Orange, Riverside and San Bernardino and shall be paid to the department, upon renewal of registration of any motor vehicle subject to Part 5 (commencing with Section 43000) of Division 26 of the Health and Safety Code, registered in the South Coast Air Quality Management District, except those vehicles that are expressly exempted under this code from the payment of registration fees.

(b) A county specified in subdivision (a) may impose the one dollar ($1) fee only if the board of supervisors of the county adopts a resolution providing for the fee.

(c) After deducting all costs incurred pursuant to this section, the department shall distribute the additional fees collected pursuant to subdivision (a) to the South Coast Air Quality Management District, which shall use the fees to reduce air pollution from motor vehicles and other sources through implementation of Section 40448.5 of the Health and Safety Code, in those counties in the South Coast Air Basin that have adopted the fees pursuant to subdivision (b).

(d) This section shall become inoperative on August 1, 1994, and, as of January 1, 1995, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 1995, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 8. 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.

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## CHAPTER 1547

An act to amend Section 4024.2 of the Penal Code, relating to prisoners.

[Approved by Governor September 29, 1988. Filed with Secretary of State September 30, 1988.]

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

SECTION 1. Section 4024.2 of the Penal Code is amended to read:

4024.2. (a) Notwithstanding any other provision of law, the board of supervisors of any county may authorize the sheriff or other official in charge of county correctional facilities to offer a voluntary program under which any person committed to the facility may perform a minimum of 8 and a maximum of 10 hours of labor on levees or on the public works or ways in lieu of one day of confinement under the direction of a responsible person appointed by the sheriff or other official in charge. The hours of labor to be performed pursuant to this section shall be uniform for all persons committed to those facilities in a county and may be determined by the sheriff or other official in charge of county correctional facilities, within the minimum and maximum herein set forth, in accordance with the normal working hours of county employees assigned to supervise the labor of such persons.

As used in this section "labor on levees or on the public works and ways" means manual labor to improve or maintain levees or public facilities, including, but not limited to, streets, parks, and schools.

(b) The board of supervisors may prescribe reasonable rules and regulations under which such labor is to be performed and may provide that such persons wear clothing of a distinctive character while performing such work. As a condition of participating in a work release program, a person shall give his or her promise to appear for work by signing a notice to appear before the sheriff at a time and place specified in the notice and shall sign an agreement that the sheriff may immediately retake such person into custody to serve the balance of his or her sentence if such person fails to appear for work

at the time and place agreed to, does not perform the work assigned, or for any other reason is no longer a fit subject for release under this section. A copy of the notice shall be delivered to the person and a copy shall be retained by the sheriff. Any person who willfully violates his or her written promise to appear at the time and place specified in the notice is guilty of a misdemeanor.

Whenever a peace officer has reasonable cause to believe the person has failed to appear at the time and place specified in the notice or fails to appear or work at the time and place agreed to or has failed to perform the work assigned, the peace officer may, without a warrant, retake the person into custody, or the court may issue an arrest warrant for the retaking of the person into custody, to complete the remainder of the original sentence. A peace officer may not retake a person into custody under this subdivision, without a warrant for arrest, unless the officer has a written order to do so, signed by the sheriff or other person in charge of the program, which describes with particularity the person to be retaken.

(c) Nothing in this section shall be construed to require the sheriff or other such official to assign labor to a person pursuant to this section if it appears from the record that such person has refused to satisfactorily perform labor as assigned or has not satisfactorily complied with the reasonable rules and regulations governing such assignment or any other order of the court.

A person shall be eligible for work release under this section only if the sheriff or other official in charge concludes that such person is a fit subject therefor.

(d) If the court sentences the defendant to a period of confinement of 15 days or more, it may restrict or deny his or her eligibility for the work release program.

(e) The board of supervisors may prescribe a program administrative fee, not to exceed the pro rata cost of administration, to be paid by each such person according to his or her ability to pay.

SEC. 2. Section 4024.2 of the Penal Code is amended to read:

4024.2. (a) Notwithstanding any other provision of law, the board of supervisors of any county may authorize the sheriff or other official in charge of county correctional facilities to offer a voluntary program under which any person committed to the facility may perform a minimum of 8 and a maximum of 10 hours of labor on levees or on the public works or ways in lieu of one day of confinement under the direction of a responsible person appointed by the sheriff or other official in charge. The hours of labor to be performed pursuant to this section shall be uniform for all persons committed to those facilities in a county and may be determined by the sheriff or other official in charge of county correctional facilities, within the minimum and maximum herein set forth, in accordance with the normal working hours of county employees assigned to supervise the labor of such persons.

As used in this section, "labor on levees or on the public works and ways" means manual labor to improve or maintain levees or public

facilities, including, but not limited to, streets, parks, and schools.

(b) The board of supervisors may prescribe reasonable rules and regulations under which such labor is to be performed and may provide that such persons wear clothing of a distinctive character while performing such work. As a condition of participating in a work release program, a person shall give his or her promise to appear for work by signing a notice to appear before the sheriff at a time and place specified in the notice and shall sign an agreement that the sheriff may immediately retake such person into custody to serve the balance of his or her sentence if such person fails to appear for work at the time and place agreed to, does not perform the work assigned, or for any other reason is no longer a fit subject for release under this section. A copy of the notice shall be delivered to the person and a copy shall be retained by the sheriff. Any person who willfully violates his or her written promise to appear at the time and place specified in the notice is guilty of a misdemeanor.

Whenever a peace officer has reasonable cause to believe the person has failed to appear at the time and place specified in the notice or fails to appear or work at the time and place agreed to or has failed to perform the work assigned, the peace officer may, without a warrant, retake the person into custody, or the court may issue an arrest warrant for the retaking of the person into custody, to complete the remainder of the original sentence. A peace officer may not retake a person into custody under this subdivision, without a warrant for arrest, unless the officer has a written order to do so, signed by the sheriff or other person in charge of the program, which describes with particularity the person to be retaken.

(c) Nothing in this section shall be construed to require the sheriff or other such official to assign labor to a person pursuant to this section if it appears from the record that such person has refused to satisfactorily perform labor as assigned or has not satisfactorily complied with the reasonable rules and regulations governing such assignment or any other order of the court.

A person shall be eligible for work release under this section only if the sheriff or other official in charge concludes that such person is a fit subject therefor.

(d) The board of supervisors may prescribe a program administrative fee, not to exceed the pro rata cost of administration, to be paid by each such person according to his or her ability to pay.

SEC. 3. Section 2 of this bill incorporates amendments to Section 4024.2 of the Penal Code proposed by both this bill and AB 3997. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1989, (2) each bill amends Section 4024.2 of the Penal Code, and (3) this bill is enacted after AB 3997, in which case Section 1 of this bill shall not become operative.

# CHAPTER 1548

An act to add Section 7106 to the Public Contract Code, relating to public works.

[Approved by Governor September 29, 1988. Filed with Secretary of State September 30, 1988.]

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

SECTION 1. Section 7106 is added to the Public Contract Code, to read:

7106. Any public works contract of a public entity shall include an affidavit, in the following form:

"NONCOLLUSION AFFIDAVIT TO BE EXECUTED BY BIDDER AND SUBMITTED WITH BID

State of California
County of _____ } ss.

_____, being first duly sworn, deposes and says that he or she is _____ of _____ the party making the foregoing bid that the bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the bid is genuine and not collusive or sham; that the bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid, and has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or that anyone shall refrain from bidding; that the bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in the bid are true; and, further, that the bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid."

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 five hundred thousand dollars ($500,000), reimbursement shall be made from the State Mandates Claims Fund.

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## CHAPTER 1549

An act to amend Section 131100 of, and to add Section 99268.19 to, the Public Utilities Code, relating to transit.

[Approved by Governor September 29, 1988. Filed with Secretary of State September 30, 1988.]

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

SECTION 1. Section 99268.19 is added to the Public Utilities Code, to read:

99268.19. If fare revenues are insufficient to meet the applicable ratio of fare revenues to operating cost required by this article, an operator may satisfy that requirement by supplementing its fare revenues with local funds. "Local funds" means revenues derived from taxes imposed by the operator or by a county transportation commission created pursuant to Division 12 (commencing with Section 130000) of the Public Utilities Code.

SEC. 2. Section 131100 of the Public Utilities Code is amended to read:

131100. (a) The Legislature, by the enactment of this chapter intends a county transportation authority or the commission, pursuant to a county transportation expenditure plan adopted pursuant to Section 131055, to use any additional funds provided by this chapter to supplement existing local revenues being used for public transportation purposes listed in the plan. The Legislature further intends that the funds provided pursuant to this chapter shall not replace funds previously provided by property tax revenues for public transportation purposes. The nine-county San Francisco Bay area is further encouraged to maintain its existing commitment of local funds for public transportation purposes.

(b) Any tax revenue generated pursuant to this chapter shall be expended in the county of origin, except that tax revenue generated in the County of San Mateo may be expended within and outside that county if so provided in the adopted county transportation expenditure plan. However, the tax revenues may be exchanged for federal or state funds available to another county or local government for transportation purposes if the exchange will benefit the county of origin.

(c) (1) In order to receive funds from the Counties of Alameda and Contra Costa and the City and County of San Francisco pursuant to this chapter, the San Francisco Bay Area Rapid Transit District shall agree to match from federal, state, or other funds available to the district, at least as much as it receives from the additional funds provided by this chapter from those counties.

(2) The funds the district received pursuant to this chapter, and its matching funds therefor, shall be used only for capital expenditures.

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## CHAPTER 1550

An act to amend Sections 4351.5, 4600.5, 4601, 4601.5, 4607, and 5181 of, and to add Section 4607.1 to, the Civil Code, relating to family law.

[Approved by Governor September 29, 1988. Filed with Secretary of State September 30, 1988.]

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

SECTION 1. Section 4351.5 of the Civil Code is amended to read:

4351.5. (a) Notwithstanding Section 4351, in proceedings under Sections 4450 and 4503, the superior court has jurisdiction to award reasonable visitation rights to a person who is a party to the marriage that is the subject of the proceeding with respect to a minor child of the other party to the marriage, if visitation by that person is determined to be in the best interests of the minor child.

(b) Notwithstanding any other provision of law, in proceedings under Sections 4450 and 4503, the superior court has jurisdiction pursuant to Section 4601 to award reasonable visitation rights to a person who is a grandparent of a minor child of a party to the marriage, if visitation by that person is determined to be in the best interests of the minor child.

(c) If a stepparent or grandparent has petitioned or otherwise applied for an order of reasonable visitation rights pursuant to this section, the court shall set the matter of visitation rights for mediation. The purpose of the mediation proceeding shall be to effect a settlement of the issue of visitation rights of all parties that is in the best interests of the child. The mediator shall meet the minimum qualifications required of a counselor of conciliation as provided in Section 1745 of the Code of Civil Procedure.

(d) Mediation proceedings shall be held in private and shall be confidential, and all communications, verbal or written, from the parties to the mediator made in a proceeding pursuant to this section shall be deemed to be official information within the meaning of Section 1040 of the Evidence Code.

(e) The mediator shall have the authority to exclude counsel from participation in the mediation proceedings where, in the discretion

of the mediator, exclusion of counsel is deemed by the mediator to be appropriate or necessary. The mediator shall have the duty to assess the needs and interests of the child involved in the controversy and shall be entitled to interview the child when the mediator deems that the interview is appropriate or necessary.

(f) The mediator may, consistent with local court rules, render a recommendation to the court as to the visitation of the child. The mediator may, in cases where the parties have not reached agreement as a result of the mediation proceeding, recommend to the court that an investigation shall be conducted to assist the parties to effect a resolution of the controversy prior to any hearing on the issues. The mediator may, in appropriate cases, recommend that mutual restraining orders shall be issued, pending determination of the controversy, to protect the well-being of the child involved in the controversy. Any agreement reached by the parties as a result of the mediation shall be reported to counsel for the parties by the mediator on the day set for mediation or as soon thereafter as practical, but prior to its being reported to the court. The terms of any agreement shall be limited to the resolution of issues relating to visitation. No agreement shall be confirmed or otherwise incorporated in an order of the court unless each party, in person or by his or her counsel of record, has affirmed and assented to the agreement in open court or by written stipulation. An agreement also may be so confirmed or incorporated if a party fails to appear at a noticed hearing on the issue involved in the agreement. All such visitation agreements may be modified at any time at the discretion of the court, subject to the provisions of subdivision (a).

(g) A natural or adoptive parent who is not a party to the proceeding shall not be required to participate in the mediation proceedings; however, failure to participate shall be a waiver of that parent's right to object to any settlement reached by the other parties during mediation or to require a hearing on the matter.

(h) If the issue of visitation rights of all parties is not settled by agreement of all parties who participate in mediation, the mediator shall so inform the court in writing and the court shall set the matter of visitation rights for hearing. Each natural or adoptive parent and the stepparent or grandparent seeking visitation rights shall be given an opportunity to appear and be heard on that issue.

(i) Notice of mediation and of any hearing to be held pursuant to this section shall be given to the stepparent or grandparent seeking visitation rights, to each of the parents of the child, and to the counsel of record of each of the parents in any proceeding under Section 4450 or 4503 with regard to their marriage. The notice shall be given by certified mail, return receipt requested, postage prepaid, to the last known address of each of the parents and his or her counsel.

(j) Any visitation right granted to a stepparent or grandparent pursuant to this section shall not conflict with any visitation or custodial right of a natural or adoptive parent who is not a party to the proceeding.

(k) There shall be a rebuttable presumption affecting the burden of proof that the visitation of a grandparent is not in the best interests of a minor child if the parties to the marriage agree that the grandparent should not be awarded visitation rights.

(*l*) In making an award of visitation pursuant to this section, if an order has been directed to a stepparent or grandparent pursuant to paragraph (2), (3), or (6) of subdivision (a) of Section 4359 or Sections 7020 and 7021 of this code, or Section 546 or 547 of the Code of Civil Procedure, during the pendency of the proceeding, the court shall consider whether the best interests of the child require that any visitation by that stepparent or grandparent should be denied.

SEC. 2. Section 4600.5 of the Civil Code is amended to read:

4600.5. (a) There shall be a presumption, affecting the burden of proof, that joint custody is in the best interests of a minor child, subject to Section 4608, where the parents have agreed to an award of joint custody or so agree in open court at a hearing for the purpose of determining the custody of a minor child of the marriage.

(b) Upon the application of either parent, joint custody may be awarded in the discretion of the court in other cases, subject to Section 4608. For the purpose of assisting the court in making a determination whether an award of joint custody is appropriate under this subdivision, the court may direct that an investigation be conducted pursuant to Section 4602.

(c) Whenever a request for joint custody is granted or denied, the court, upon the request of any party, shall state in its decision the reasons for granting or denying the request. A statement that joint physical custody is, or is not, in the best interests of the child shall not be sufficient to meet the requirements of this subdivision.

(d) For the purposes of this part:

(1) "Joint custody" means joint physical custody and joint legal custody.

(2) "Sole physical custody" means that a child shall reside with and under the supervision of one parent, subject to the power of the court to order visitation.

(3) "Joint physical custody" means that each of the parents shall have significant periods of physical custody. Joint physical custody shall be shared by the parents in such a way so as to assure a child of frequent and continuing contact with both parents.

(4) "Sole legal custody" means that one parent shall have the right and the responsibility to make the decisions relating to the health, education, and welfare of a child.

(5) "Joint legal custody" means that both parents shall share the right and the responsibility to make the decisions relating to the health, education, and welfare of a child.

(e) In making an order of joint legal custody, the court shall specify the circumstances under which the consent of both parents is required to be obtained in order to exercise legal control of the child and the consequences of the failure to obtain mutual consent. In all other circumstances, either parent acting alone may exercise

legal control of the child. An order of joint legal custody shall not be construed to permit an action that is inconsistent with the physical custody order unless the action is expressly authorized by the court.

(f) In making an order of joint physical custody, the court shall specify the rights of each parent to physical control of the child in sufficient detail to enable a parent deprived of that control to implement laws for relief of child snatching and kidnapping.

(g) In making an order for custody with respect to both parents, the court may award joint legal custody without awarding joint physical custody.

(h) In making an order of joint physical custody or joint legal custody, the court may specify one parent as the primary caretaker of the child and one home as the primary home of the child, for the purposes of determining eligibility for public assistance.

(i) Any order for joint custody may be modified or terminated upon the petition of one or both parents or on the court's own motion if it is shown that the best interests of the child require modification or termination of the order. The court shall state in its decision the reasons for modification or termination of the joint custody order if either parent opposes the modification or termination order.

(j) Any order for the custody of a minor child of a marriage entered by a court in this state or any other state may, subject to the jurisdictional requirements set forth in Sections 5152 and 5163, be modified at any time to an order of joint custody in accordance with this section.

(k) In counties having a conciliation court, the court or the parties may, at any time, pursuant to local rules of court, consult with the conciliation court for the purpose of assisting the parties to formulate a plan for implementation of the custody order or to resolve any controversy which has arisen in the implementation of a plan for custody.

(*l*) Notwithstanding any other provision of law, access to records and information pertaining to a minor child, including, but not limited to, medical, dental, and school records, shall not be denied to a parent because that parent is not the child's custodial parent.

(m) In making an order for custody, if the court does not deem it inappropriate, the court may specify that a parent shall notify the other parent if he or she plans to change the residence of the child for more than 30 days, unless there is prior written agreement to the removal. The notice shall be given prior to the contemplated move, by mail, return receipt requested, postage prepaid, to the last known address of the parent to be notified. A copy of the notice shall also be sent to that parent's counsel of record. To the extent feasible, the notice shall be provided within a minimum of 45 days prior to the proposed change of residence so as to allow time for mediation of a new agreement concerning custody. This subdivision shall not be deemed to affect orders made prior to January 1, 1989.

SEC. 3. Section 4601 of the Civil Code is amended to read:

4601. In making an order pursuant to Section 4600.5, the court

shall order reasonable visitation rights to a parent unless it is shown that the visitation would be detrimental to the best interests of the child. In the discretion of the court, reasonable visitation rights may be granted to any other person having an interest in the welfare of the child.

SEC. 4. Section 4601.5 of the Civil Code is amended to read:

4601.5. In making an award authorizing visitation pursuant to Section 4601, if an order has been directed to a parent pursuant to paragraph (2), (3), or (6) of subdivision (a) of Section 4359 during the pendency of the proceeding or pursuant to Section 4516, the court shall consider whether the best interests of the child require that any visitation granted to that parent shall be limited to situations in which a third person, specified by the court, is present. The court shall include a consideration of the nature of the acts from which the parent was enjoined and the period of time that has elapsed since that order in its deliberations.

A parent may submit the name of a person to the court that he or she deems suitable to be present during visitation.

SEC. 5. Section 4607 of the Civil Code is amended to read:

4607. (a) In any proceeding where there is at issue the custody of or visitation with a minor child, and where it appears on the face of the petition or other application for an order or modification of an order for the custody or visitation of a child or children that either or both issues are contested, as provided in Section 4600, 4600.1, or 4601, the matter shall be set for mediation of the contested issues prior to or concurrent with the setting of the matter for hearing. Upon the adoption of a resolution by the board of supervisors authorizing the procedure, a petition also may be filed pursuant to this section for the mediation of a dispute relating to any existing order for custody or visitation; the mediation of a dispute concerning an existing order shall be set not later than 60 days after the filing of the petition. The purpose of the mediation proceeding shall be to reduce acrimony which may exist between the parties and to develop an agreement assuring the child or children's close and continuing contact with both parents. The mediator shall use his or her best efforts to effect a settlement of the custody or visitation dispute that is in the best interests of the child or children, pursuant to Section 4608. Mediation shall not be denied to the parties on the basis that paternity is an issue in a proceeding before the court.

(b) Each superior court shall make available a mediator. The mediator may be a member of the professional staff of a family conciliation court, probation department, or mental health services agency, or may be any other person or agency designated by the court. In order to provide mediation services, the court shall not be required to institute a family conciliation court. The mediator shall meet the minimum qualifications required of a counselor of conciliation as provided in Section 1745 of the Code of Civil Procedure.

(c) Mediation proceedings shall be held in private and shall be

confidential, and all communications, verbal or written, from the parties to the mediator made in a proceeding pursuant to this section shall be deemed to be official information within the meaning of Section 1040 of the Evidence Code.

(d) The mediator shall have the authority to exclude counsel from participation in the mediation proceedings where, in the discretion of the mediator, exclusion of counsel is deemed by the mediator to be appropriate or necessary. The mediator shall have the duty to assess the needs and interests of the child or children involved in the controversy and shall be entitled to interview the child or children when the mediator deems the interview appropriate or necessary.

(e) The mediator may, consistent with local court rules, render a recommendation to the court as to the custody or visitation of the child or children. The mediator may, in cases where the parties have not reached agreement as a result of the mediation proceeding, recommend to the court that an investigation be conducted pursuant to Section 4602, or that other action be taken to assist the parties to effect a resolution of the controversy prior to any hearing on the issues. The mediator may, in appropriate cases, recommend that mutual restraining orders be issued, pending determination of the controversy, to protect the well-being of the children involved in the controversy. Any agreement reached by the parties as a result of mediation shall be reported to counsel for the parties by the mediator on the day set for mediation or as soon thereafter as practical, but prior to its being reported to the court. The terms of any agreement shall be limited to the resolution of issues relating to parenting plans, custody, or visitation, or any combination thereof. No agreement shall be confirmed or otherwise incorporated in an order of the court unless each party, in person or by his or her counsel of record, has affirmed and assented to the agreement in open court or by written stipulation. An agreement also may be so confirmed or incorporated if a party fails to appear at a noticed hearing on the issue involved in the agreement. All such custody or visitation agreements may be modified at any time at the discretion of the court, subject to the provisions of Sections 4600, 4600.5, and 4601.

(f) Nothing in this section shall prohibit the mediator from recommending to the court that counsel be appointed pursuant to Section 4606 to represent the minor child or children. In making any recommendation, the mediator shall inform the court of the reasons why it would be in the best interests of the minor child or children to have counsel appointed.

SEC. 6. Section 4607 of the Civil Code is amended to read:

4607. (a) In any proceeding where there is at issue the custody of or visitation with a minor child, and where it appears on the face of the petition or other application for an order or modification of an order for the custody or visitation of a child or children that either or both such issues are contested, as provided in Section 4600, 4600.1, or 4601, the matter shall be set for mediation of the contested issues prior to or concurrent with the setting of the matter for hearing.

Upon the adoption of a resolution by the board of supervisors authorizing the procedure, a petition also may be filed pursuant to this section for the mediation of a dispute relating to any existing order for custody or visitation; the mediation of a dispute concerning an existing order shall be set not later than 60 days after the filing of the petition. The purpose of the mediation proceeding shall be to reduce acrimony which may exist between the parties and to develop an agreement assuring the child or children's close and continuing contact with both parents. The mediator shall use his or her best efforts to effect a settlement of the custody or visitation dispute that is in the best interests of the child or children, pursuant to Section 4608. Mediation shall not be denied to the parties on the basis that paternity is an issue in a proceeding before the court.

(b) Each superior court shall make available a mediator. The mediator may be a member of the professional staff of a family conciliation court, probation department, or mental health services agency, or may be any other person or agency designated by the court. In order to provide mediation services, the court shall not be required to institute a family conciliation court. The mediator shall meet the minimum qualifications required of a counselor of conciliation as provided in Section 1745 of the Code of Civil Procedure.

(c) Mediation proceedings shall be held in private and shall be confidential, and all communications, verbal or written, from the parties to the mediator made in a proceeding pursuant to this section shall be deemed to be official information within the meaning of Section 1040 of the Evidence Code.

(d) The mediator shall have the authority to exclude counsel from participation in the mediation proceedings where, in the discretion of the mediator, exclusion of counsel is deemed by the mediator to be appropriate or necessary. The mediator shall have the duty to assess the needs and interests of the child or children involved in the controversy and shall be entitled to interview the child or children when the mediator deems the interview appropriate or necessary. The mediator shall have the authority to meet with the parties separately when a request for separate mediation is made by one of the parties in any proceeding where there has been a history of domestic violence between the parties, as domestic violence is defined in subdivision (b) of Section 542 of the Code of Civil Procedure.

(e) The mediator may, consistent with local court rules, render a recommendation to the court as to the custody or visitation of the child or children. The mediator may, in cases where the parties have not reached agreement as a result of the mediation proceeding, recommend to the court that an investigation be conducted pursuant to Section 4602, or that other action be taken to assist the parties to effect a resolution of the controversy prior to any hearing on the issues. The mediator may, in appropriate cases, recommend that mutual restraining orders be issued, pending determination of the

controversy, to protect the well-being of the children involved in the controversy. Any agreement reached by the parties as a result of mediation shall be reported to counsel for the parties by the mediator on the day set for mediation or as soon thereafter as practical, but prior to its being reported to the court. The agreement shall be limited to the resolution of issues relating to parenting plans, custody, or visitation, or any combination thereof. No agreement shall be confirmed or otherwise incorporated in an order of the court unless each party, in person or by his or her counsel of record, has affirmed and assented to the agreement in open court or by written stipulation. An agreement also may be so confirmed or incorporated if a party fails to appear at a noticed hearing on the issue involved in the agreement. All such custody or visitation agreements may be modified at any time at the discretion of the court, subject to the provisions of Sections 4600, 4600.5, and 4601.

(f) Nothing in this section shall prohibit the mediator from recommending to the court that counsel be appointed pursuant to Section 4606 to represent the minor child or children. In making any recommendation, the mediator shall inform the court of the reasons why it would be in the best interests of the minor child or children to have counsel appointed.

SEC. 7. Section 4607.1 is added to the Civil Code, to read:

4607.1. The Legislature finds and declares that the mediation of cases involving custody and visitation concerning children should be governed by uniform standards of practice, which shall be adopted by the Judicial Council. The standards of practice shall include, but not be limited to, all of the following:

(a) Provision for the best interests of the child and the safeguarding of the rights of the child to frequent and continuing contact with both parents.

(b) Facilitation of the transition of the family by detailing factors to be considered in decisions concerning the child's future.

(c) The conducting of negotiations in such a way as to equalize power relationships between the parties.

In adopting the standards of practice, the Judicial Council shall consider standards developed by recognized associations of mediators and attorneys and other relevant standards governing mediation of proceedings for the dissolution of marriage. The Judicial Council shall adopt the standards by January 1, 1990, and at that time, shall offer training with respect to the standards to mediators.

SEC. 9. Section 5181 of the Civil Code is amended to read:

5181. The Judicial Council shall do all of the following:

(a) Assist counties in implementing Sections 4351.5 and 4607.

(b) Establish and implement a uniform statistical reporting system relating to actions brought pursuant to this part, including, but not limited to, a custody disposition survey.

(c) Administer a program of grants to public and private agencies submitting proposals for research, study, and demonstration projects in the area of family law, including, but not limited to, all of the

following:

(1) The development of conciliation and mediation and other newer dispute resolution techniques, particularly as they relate to child custody and to avoidance of litigation.

(2) The establishment of criteria to insure that a child support order is adequate.

(3) The development of methods to insure that a child support order is paid.

(4) The study of the feasibility and desirability of guidelines to assist judges in making custody decisions.

(d) Administer a program for the training of court personnel involved in family law proceedings, which shall be available to the court personnel and which shall be totally funded from funds specified in Section 5183. The training shall include, but not be limited to, the order of preference set forth in Section 4600 and the meaning of the custody arrangements described in Sections 4600 and 4600.5.

SEC. 10. Section 6 of this bill incorporates amendments to Section 4607 of the Civil Code proposed by both this bill and AB 2698. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1989, (2) each bill amends Section 4607 of the Civil Code, and (3) this bill is enacted after AB 2698 in which case Section 5 of this bill shall not become operative.

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## CHAPTER 1551

An act relating to public utilities, and making an appropriation therefor.

[Approved by Governor September 29, 1988. Filed with Secretary of State September 30, 1988.]

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

SECTION 1. (a) The Legislature finds and declares as follows:

(1) One of the primary obligations of public utilities, including both privately owned and publicly owned electrical utilities, is to provide reliable service with due regard to public safety.

(2) A number of scientific studies are beginning to indicate that electromagnetic fields associated with electrical utility facilities may present a significant cancer risk.

(3) These studies show that exposure to electromagnetic fields may be related to an increased incidence of leukemia and other cancers in children.

(4) It is also possible that exposure to electromagnetic fields may be related to an increased risk of cancer for electrical utility workers.

(b) It is, therefore, the intent of the Legislature in enacting this act to require that further investigation and research be undertaken

to establish whether exposure to electromagnetic fields caused by electrical utility generating and transmission facilities presents an unreasonable cancer risk, and whether legislation is needed to reduce that risk.

SEC. 2. The Public Utilities Commission, in cooperation with the State Department of Health Services, shall, on or before March 15, 1989, with due consideration to any research already performed by, or under contract for, the commission; after consulting with representatives of state agencies, including, but not limited to, the State Energy Resources Conservation and Development Commission, the federal government, other states, academia, the electric utility industry, and public interest groups; and after holding public meetings in San Francisco, Los Angeles, and other communities selected by the commission; prepare and submit a report to the Legislature on its findings on all of the following matters:

(a) A comprehensive description of any cancer or other medical risks determined to be associated with exposure to electromagnetic fields caused by electrical utility facilities. The commission shall accompany this description with a summary and bibliography of all completed and ongoing research projects and studies, including those undertaken by the federal government, other states, academic institutions, and the electric utility industry, that are identified by the commission and the department as being associated with cancer or other medical risks which may be related to exposure to electromagnetic fields.

(b) A description of any higher incidence of leukemia or other cancers experienced by children who reside or attend school in close proximity to electrical utility facilities.

(c) A description of any increased incidence of cancer for workers employed by electrical utilities.

(d) A listing of high-priority research projects that still need to be undertaken to identify cancer or other medical risks which may be related to exposure to electromagnetic fields.

SEC. 3. The Public Utilities Commission and the State Department of Health Services shall jointly conduct the high-priority research projects identified in the report submitted pursuant to Section 2 of this act. Subject to the overall coordination of the commission, the department shall design and manage the research projects identified in the report required by Section 2 of this act. The department shall select qualified research personnel and oversee the review process to assure that the design, conduct, and analysis of the research are of high quality and applicable to regulatory needs. As part of its research program, the commission and department shall do the following:

(a) Coordinate its research efforts with similar federal, state, academic, and industry research projects, and, where feasible, secure funding from the entities funding that research to supplement the state's research efforts.

(b) On or before December 1, 1990, submit a report to the Legislature on the status of the joint research program, on additional research funding needs, if any, and on recommendations, if any, for legislation to limit exposure to electromagnetic fields.

SEC. 4. For purposes of conducting the study and research program and for preparing the reports, as required by Sections 2 and 3 of this act, the Public Utilities Commission shall calculate a fee to be paid by every electrical corporation and publicly owned electrical utility in this state with operating revenues over twenty-five million dollars ($25,000,000) per year, in the proportion that each utility's total distribution of electricity to its customers bears to the total distribution of electricity statewide, in a sufficient amount that the total of all fees so calculated does not exceed two million dollars ($2,000,000). The Public Utilities Commission shall report to the State Energy Resources Conservation and Development Commission the amount of fees calculated for payment by publicly owned electric utilities. The Public Utilities Commission shall then collect the calculated fees from electrical corporations, and the State Energy Resources Conservation and Development Commission shall collect the fees from publicly owned electric utilities. All fees so collected shall be deposited in the State Department of Health Services Electromagnetic Fields Study Fund, which is hereby created in the State Treasury. The money in the fund is hereby continuously appropriated, until June 30, 1992, to the department for purposes of its expenses and the expenses of the Public Utilities Commission under Sections 2 and 3 of this act.

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 and 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.

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## CHAPTER 1552

An act to amend Section 830.3 of the Penal Code, relating to peace officers.

[Approved by Governor September 29, 1988. Filed with Secretary of State September 30, 1988.]

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

SECTION 1. Section 830.3 of the Penal Code is amended to read:

830.3. The following persons are peace officers whose authority

extends to any place in the state for the purpose of performing their primary duty or when making an arrest pursuant to Section 836 of the Penal Code as to any public offense with respect to which there is immediate danger to person or property, or of the escape of the perpetrator of that offense, or pursuant to Section 8597 or 8598 of the Government Code. These peace officers may carry firearms only if authorized and under those terms and conditions as are specified by their employing agencies:

(a) Persons employed by the Department of Alcoholic Beverage Control for the enforcement of Division 9 (commencing with Section 23000) of the Business and Professions Code and designated by the Director of Alcoholic Beverage Control, provided that the primary duty of these peace officers shall be the enforcement of the laws relating to alcoholic beverages, as that duty is set forth in Section 25755 of the Business and Professions Code.

(b) Persons employed by the Division of Investigation of the Department of Consumer Affairs and investigators of the Board of Medical Quality Assurance and the Board of Dental Examiners, who are designated by the Director of Consumer Affairs, provided that the primary duty of these peace officers shall be the enforcement of the law as that duty is set forth in Section 160 of the Business and Professions Code.

(c) Voluntary fire wardens as are designated by the Director of Forestry pursuant to Section 4156 of the Public Resources Code, provided that the primary duty of these peace officers shall be the enforcement of the law as that duty is set forth in Section 4156 of that code.

(d) Employees of the Department of Motor Vehicles designated in Section 1655 of the Vehicle Code, provided that the primary duty of these peace officers shall be the enforcement of the law as that duty is set forth in Section 1655 of that code.

(e) Investigators of the California Horse Racing Board designated by the board, provided that the primary duty of these peace officers shall be the enforcement of Chapter 4 (commencing with Section 19400) of Division 8 of the Business and Professions Code and Chapter 10 (commencing with Section 330) of Title 9 of Part 1 of the Penal Code.

(f) The State Fire Marshal and assistant or deputy state fire marshals appointed pursuant to Section 13103 of the Health and Safety Code, provided that the primary duty of these peace officers shall be the enforcement of the law as that duty is set forth in Section 13104 of that code.

(g) Inspectors of the food and drug section as are designated by the chief pursuant to subdivision (a) of Section 216 of the Health and Safety Code, provided that the primary duty of these peace officers shall be the enforcement of the law as that duty is set forth in Section 216 of that code.

(h) All investigators of the Division of Labor Standards Enforcement, as designated by the Labor Commissioner, provided

that the primary duty of these peace officers shall be enforcement of the law as prescribed in Section 95 of the Labor Code.

(i) All investigators of the State Departments of Health Services, Social Services, Mental Health, Developmental Services, Alcohol and Drug Programs and the Office of Statewide Health Planning and Development, and the Public Employees' Retirement System, provided that the primary duty of these peace officers shall be the enforcement of the law relating to the duties of his or her department, or office. Notwithstanding any other provision of law, investigators of the Public Employees' Retirement System shall not carry firearms.

(j) Marshals and police appointed by the Board of Directors of the California Exposition and State Fair, pursuant to Section 3332 of the Food and Agricultural Code, provided that the primary duty of the peace officer shall be the enforcement of the law as prescribed in that section.

(k) The Chief of the Bureau of Fraudulent Claims of the Department of Insurance and those investigators as designated by the chief, provided that the primary duty of those investigators shall be enforcement of Section 556 of the Insurance Code.

(*l*) Employees of the Department of Housing and Community Development designated under Section 18023 of the Health and Safety Code, provided that the primary duty of these peace officers shall be the enforcement of the law as that duty is set forth in Section 18023 of that code.

(m) Investigators of the office of the Controller, provided that the primary duty of these investigators shall be the enforcement of the law relating to the duties of that office. Notwithstanding any other provision of law, the peace officers designated pursuant to this subdivision shall not carry firearms.

(n) Investigators of the Department of Corporations designated by the Commissioner of Corporations, provided that the primary duty of these investigators shall be enforcement of the provisions of law administered by the Department of Corporations. Notwithstanding any other provision of law, the peace officers designated pursuant to this subdivision shall not carry firearms.

(o) Persons employed by the Contractors' State License Board designated by the Director of Consumer Affairs pursuant to Section 7011.5 of the Business and Professions Code, provided that the primary duty of these persons shall be the enforcement of the law as that duty is set forth in Section 7011.5, and in Chapter 9 (commencing with Section 7000) of Division 3, of that code. The Director of Consumer Affairs may designate as peace officers not more than three persons who shall at the time of their designation be assigned to the special investigations unit of the board. Notwithstanding any other provision of law, the persons designated pursuant to this subdivision shall not carry firearms.

(p) The chief and coordinators of the Law Enforcement Division of the Office of Emergency Services.

(q) Investigators of the Office of the Secretary of State, designated by the Secretary of State, provided that the primary duty of these peace officers shall be the enforcement of the law as prescribed in Chapter 3 (commencing with Section 8200) of Division 1 of Title 2 of the Government Code and Section 12172.5 of that code. Notwithstanding any other provision of law, the peace officers designated pursuant to this subdivision shall not carry firearms.

(r) The Deputy Director for Security, as designated by Section 8880.38 of the Government Code, and all lottery security personnel assigned to the California State Lottery and designated by the director, provided that the primary duty of any of those peace officers shall be the enforcement of the laws related to assuring the integrity, honesty, and fairness of the operation and administration of the California State Lottery.

SEC. 2. Section 830.3 of the Penal Code is amended to read:

830.3. The following persons are peace officers whose authority extends to any place in the state for the purpose of performing their primary duty or when making an arrest pursuant to Section 836 of the Penal Code as to any public offense with respect to which there is immediate danger to person or property, or of the escape of the perpetrator of that offense, or pursuant to Section 8597 or 8598 of the Government Code. These peace officers may carry firearms only if authorized and under those terms and conditions as are specified by their employing agencies:

(a) Persons employed by the Department of Alcoholic Beverage Control for the enforcement of Division 9 (commencing with Section 23000) of the Business and Professions Code and designated by the Director of Alcoholic Beverage Control, provided that the primary duty of these peace officers shall be the enforcement of the laws relating to alcoholic beverages, as that duty is set forth in Section 25755 of the Business and Professions Code.

(b) Persons employed by the Division of Investigation of the Department of Consumer Affairs and investigators of the Board of Medical Quality Assurance and the Board of Dental Examiners, who are designated by the Director of Consumer Affairs, provided that the primary duty of these peace officers shall be the enforcement of the law as that duty is set forth in Section 160 of the Business and Professions Code.

(c) Voluntary fire wardens as are designated by the Director of Forestry pursuant to Section 4156 of the Public Resources Code, provided that the primary duty of these peace officers shall be the enforcement of the law as that duty is set forth in Section 4156 of that code.

(d) Employees of the Department of Motor Vehicles designated in Section 1655 of the Vehicle Code, provided that the primary duty of these peace officers shall be the enforcement of the law as that duty is set forth in Section 1655 of that code.

(e) Investigators of the California Horse Racing Board designated by the board, provided that the primary duty of these peace officers

shall be the enforcement of Chapter 4 (commencing with Section 19400) of Division 8 of the Business and Professions Code and Chapter 10 (commencing with Section 330) of Title 9 of Part 1 of the Penal Code.

(f) The State Fire Marshal and assistant or deputy state fire marshals appointed pursuant to Section 13103 of the Health and Safety Code, provided that the primary duty of these peace officers shall be the enforcement of the law as that duty is set forth in Section 13104 of that code.

(g) Inspectors of the food and drug section as are designated by the chief pursuant to subdivision (a) of Section 216 of the Health and Safety Code, provided that the primary duty of these peace officers shall be the enforcement of the law as that duty is set forth in Section 216 of that code.

(h) All investigators of the Division of Labor Standards Enforcement, as designated by the Labor Commissioner, provided that the primary duty of these peace officers shall be enforcement of the law as prescribed in Section 95 of the Labor Code.

(i) All investigators of the State Departments of Health Services, Social Services, Mental Health, Developmental Services, Alcohol and Drug Programs and the Office of Statewide Health Planning and Development, and the Public Employees' Retirement System, provided that the primary duty of these peace officers shall be the enforcement of the law relating to the duties of his or her department, or office. Notwithstanding any other provision of law, investigators of the Public Employees' Retirement System shall not carry firearms.

(j) Marshals and police appointed by the Board of Directors of the California Exposition and State Fair, pursuant to Section 3332 of the Food and Agricultural Code, provided that the primary duty of the peace officer shall be the enforcement of the law as prescribed in that section.

(k) The Chief of the Bureau of Fraudulent Claims of the Department of Insurance and those investigators as designated by the chief, provided that the primary duty of those investigators shall be enforcement of Section 556 of the Insurance Code.

(*l*) Employees of the Department of Housing and Community Development designated under Section 18023 of the Health and Safety Code, provided that the primary duty of these peace officers shall be the enforcement of the law as that duty is set forth in Section 18023 of that code.

(m) Investigators of the office of the Controller, provided that the primary duty of these investigators shall be the enforcement of the law relating to the duties of that office. Notwithstanding any other provision of law, the peace officers designated pursuant to this subdivision shall not carry firearms.

(n) Investigators of the Department of Corporations designated by the Commissioner of Corporations, provided that the primary duty of these investigators shall be enforcement of the provisions of

law administered by the Department of Corporations. Notwithstanding any other provision of law, the peace officers designated pursuant to this subdivision shall not carry firearms.

(o) Persons employed by the Contractors' State License Board designated by the Director of Consumer Affairs pursuant to Section 7011.5 of the Business and Professions Code, provided that the primary duty of these persons shall be the enforcement of the law as that duty is set forth in Section 7011.5, and in Chapter 9 (commencing with Section 7000) of Division 3, of that code. The Director of Consumer Affairs may designate as peace officers not more than three persons who shall at the time of their designation be assigned to the special investigations unit of the board. Notwithstanding any other provision of law, the persons designated pursuant to this subdivision shall not carry firearms.

(p) The chief and coordinators of the Law Enforcement Division of the Office of Emergency Services.

(q) Investigators of the Office of the Secretary of State, designated by the Secretary of State, provided that the primary duty of these peace officers shall be the enforcement of the law as prescribed in Chapter 3 (commencing with Section 8200) of Division 1 of Title 2 of the Government Code and Section 12172.5 of that code. Notwithstanding any other provision of law, the peace officers designated pursuant to this subdivision shall not carry firearms.

(r) The Deputy Director for Security, as designated by Section 8880.38 of the Government Code, and all lottery security personnel assigned to the California State Lottery and designated by the director, provided that the primary duty of any of those peace officers shall be the enforcement of the laws related to assuring the integrity, honesty, and fairness of the operation and administration of the California State Lottery.

(s) Investigators employed by the Investigation Division of the Employment Development Department, designated by the director of the department, provided that the primary duty of those peace officers shall be the enforcement of the law as that duty is set forth in Section 317 of the Unemployment Insurance Code.

Notwithstanding any other provision of law, the peace officers designated pursuant to this subdivision shall not carry firearms.

SEC. 3. Section 830.3 of the Penal Code is amended to read:

830.3. The following persons are peace officers whose authority extends to any place in the state for the purpose of performing their primary duty or when making an arrest pursuant to Section 836 of the Penal Code as to any public offense with respect to which there is immediate danger to person or property, or of the escape of the perpetrator of that offense, or pursuant to Section 8597 or 8598 of the Government Code. These peace officers may carry firearms only if authorized and under those terms and conditions as are specified by their employing agencies:

(a) Persons employed by the Department of Alcoholic Beverage Control for the enforcement of Division 9 (commencing with

Section 23000) of the Business and Professions Code and designated by the Director of Alcoholic Beverage Control, provided that the primary duty of these peace officers shall be the enforcement of the laws relating to alcoholic beverages, as that duty is set forth in Section 25755 of the Business and Professions Code.

(b) Persons employed by the Division of Investigation of the Department of Consumer Affairs and investigators of the Board of Medical Quality Assurance and the Board of Dental Examiners, who are designated by the Director of Consumer Affairs, provided that the primary duty of these peace officers shall be the enforcement of the law as that duty is set forth in Section 160 of the Business and Professions Code.

(c) Voluntary fire wardens as are designated by the Director of Forestry and Fire Protection pursuant to Section 4156 of the Public Resources Code, provided that the primary duty of these peace officers shall be the enforcement of the law as that duty is set forth in Section 4156 of that code.

(d) Employees of the Department of Motor Vehicles designated in Section 1655 of the Vehicle Code, provided that the primary duty of these peace officers shall be the enforcement of the law as that duty is set forth in Section 1655 of that code.

(e) Investigators of the California Horse Racing Board designated by the board, provided that the primary duty of these peace officers shall be the enforcement of Chapter 4 (commencing with Section 19400) of Division 8 of the Business and Professions Code and Chapter 10 (commencing with Section 330) of Title 9 of Part 1 of the Penal Code.

(f) The State Fire Marshal and assistant or deputy state fire marshals appointed pursuant to Section 13103 of the Health and Safety Code, provided that the primary duty of these peace officers shall be the enforcement of the law as that duty is set forth in Section 13104 of that code.

(g) Inspectors of the food and drug section as are designated by the chief pursuant to subdivision (a) of Section 216 of the Health and Safety Code, provided that the primary duty of these peace officers shall be the enforcement of the law as that duty is set forth in Section 216 of that code.

(h) All investigators of the Division of Labor Standards Enforcement, as designated by the Labor Commissioner, provided that the primary duty of these peace officers shall be enforcement of the law as prescribed in Section 95 of the Labor Code.

(i) All investigators of the State Departments of Health Services, Social Services, Mental Health, Developmental Services, Alcohol and Drug Programs and the Office of Statewide Health Planning and Development, and the Public Employees' Retirement System, provided that the primary duty of these peace officers shall be the enforcement of the law relating to the duties of his or her department, or office. Notwithstanding any other provision of law, investigators of the Public Employees' Retirement System shall not

carry firearms.

(j) Marshals and police appointed by the Board of Directors of the California Exposition and State Fair, pursuant to Section 3332 of the Food and Agricultural Code, provided that the primary duty of the peace officer shall be the enforcement of the law as prescribed in that section.

(k) The Chief of the Bureau of Fraudulent Claims of the Department of Insurance and those investigators as designated by the chief, provided that the primary duty of those investigators shall be enforcement of Section 556 of the Insurance Code.

(*l*) Employees of the Department of Housing and Community Development designated under Section 18023 of the Health and Safety Code, provided that the primary duty of these peace officers shall be the enforcement of the law as that duty is set forth in Section 18023 of that code.

(m) Investigators of the office of the Controller, provided that the primary duty of these investigators shall be the enforcement of the law relating to the duties of that office. Notwithstanding any other provision of law, the peace officers designated pursuant to this subdivision shall not carry firearms.

(n) Investigators of the Department of Corporations designated by the Commissioner of Corporations, provided that the primary duty of these investigators shall be enforcement of the provisions of law administered by the Department of Corporations. Notwithstanding any other provision of law, the peace officers designated pursuant to this subdivision shall not carry firearms.

(o) Persons employed by the Contractors' State License Board designated by the Director of Consumer Affairs pursuant to Section 7011.5 of the Business and Professions Code, provided that the primary duty of these persons shall be the enforcement of the law as that duty is set forth in Section 7011.5, and in Chapter 9 (commencing with Section 7000) of Division 3, of that code. The Director of Consumer Affairs may designate as peace officers not more than three persons who shall at the time of their designation be assigned to the special investigations unit of the board. Notwithstanding any other provision of law, the persons designated pursuant to this subdivision shall not carry firearms.

(p) The chief and coordinators of the Law Enforcement Division of the Office of Emergency Services.

(q) Investigators of the Office of the Secretary of State, designated by the Secretary of State, provided that the primary duty of these peace officers shall be the enforcement of the law as prescribed in Chapter 3 (commencing with Section 8200) of Division 1 of Title 2 of the Government Code and Section 12172.5 of that code. Notwithstanding any other provision of law, the peace officers designated pursuant to this subdivision shall not carry firearms.

(r) The Deputy Director for Security, as designated by Section 8880.38 of the Government Code, and all lottery security personnel assigned to the California State Lottery and designated by the

director, provided that the primary duty of any of those peace officers shall be the enforcement of the laws related to assuring the integrity, honesty, and fairness of the operation and administration of the California State Lottery.

(s) Appropriately trained investigators of the State Banking Department designated by the Superintendent of Banks, provided that the primary duty of the investigators shall be the enforcement of, and investigations relating to, the provisions of law administered by the State Banking Department. Notwithstanding any other provision of law, the persons designated pursuant to this subdivision shall not carry firearms.

(t) Appropriately trained investigators of the Department of Savings and Loan designated by the Commissioner of Savings and Loan, provided that the primary duty of the investigators shall be the enforcement of, and investigations relating to, the provisions of law administered by the Department of Savings and Loan. Notwithstanding any other provision of law, the persons designated pursuant to this subdivision shall not carry firearms.

(u) Appropriately trained persons employed by the Department of Real Estate designated by the Real Estate Commissioner, provided that the primary duty of these persons shall be the enforcement of laws as set forth in Part 1 (commencing with Section 10000) and Part 2 (commencing with Section 11000) of Division 4 of the Business and Professions Code. The Real Estate Commissioner may designate as peace officers persons who, at the time of their designation, are assigned to the special investigations unit of the department, and provided that the authority of those persons as peace officers shall extend only for the duration of the specific assignment to the special investigations unit internally known as the Crisis Response Team. Notwithstanding any other provision of law, the peace officers designated pursuant to this subdivision shall not carry firearms.

SEC. 4. Section 830.3 of the Penal Code is amended to read:

830.3. The following persons are peace officers whose authority extends to any place in the state for the purpose of performing their primary duty or when making an arrest pursuant to Section 836 of the Penal Code as to any public offense with respect to which there is immediate danger to person or property, or of the escape of the perpetrator of that offense, or pursuant to Section 8597 or 8598 of the Government Code. These peace officers may carry firearms only if authorized and under those terms and conditions as are specified by their employing agencies:

(a) Persons employed by the Department of Alcoholic Beverage Control for the enforcement of Division 9 (commencing with Section 23000) of the Business and Professions Code and designated by the Director of Alcoholic Beverage Control, provided that the primary duty of these peace officers shall be the enforcement of the laws relating to alcoholic beverages, as that duty is set forth in Section 25755 of the Business and Professions Code.

(b) Persons employed by the Division of Investigation of the

Department of Consumer Affairs and investigators of the Board of Medical Quality Assurance and the Board of Dental Examiners, who are designated by the Director of Consumer Affairs, provided that the primary duty of these peace officers shall be the enforcement of the law as that duty is set forth in Section 160 of the Business and Professions Code.

(c) Voluntary fire wardens as are designated by the Director of Forestry and Fire Protection pursuant to Section 4156 of the Public Resources Code, provided that the primary duty of these peace officers shall be the enforcement of the law as that duty is set forth in Section 4156 of that code.

(d) Employees of the Department of Motor Vehicles designated in Section 1655 of the Vehicle Code, provided that the primary duty of these peace officers shall be the enforcement of the law as that duty is set forth in Section 1655 of that code.

(e) Investigators of the California Horse Racing Board designated by the board, provided that the primary duty of these peace officers shall be the enforcement of Chapter 4 (commencing with Section 19400) of Division 8 of the Business and Professions Code and Chapter 10 (commencing with Section 330) of Title 9 of Part 1 of the Penal Code.

(f) The State Fire Marshal and assistant or deputy state fire marshals appointed pursuant to Section 13103 of the Health and Safety Code, provided that the primary duty of these peace officers shall be the enforcement of the law as that duty is set forth in Section 13104 of that code.

(g) Inspectors of the food and drug section as are designated by the chief pursuant to subdivision (a) of Section 216 of the Health and Safety Code, provided that the primary duty of these peace officers shall be the enforcement of the law as that duty is set forth in Section 216 of that code.

(h) All investigators of the Division of Labor Standards Enforcement, as designated by the Labor Commissioner, provided that the primary duty of these peace officers shall be enforcement of the law as prescribed in Section 95 of the Labor Code.

(i) All investigators of the State Departments of Health Services, Social Services, Mental Health, Developmental Services, Alcohol and Drug Programs and the Office of Statewide Health Planning and Development, and the Public Employees' Retirement System, provided that the primary duty of these peace officers shall be the enforcement of the law relating to the duties of his or her department, or office. Notwithstanding any other provision of law, investigators of the Public Employees' Retirement System shall not carry firearms.

(j) Marshals and police appointed by the Board of Directors of the California Exposition and State Fair, pursuant to Section 3332 of the Food and Agricultural Code, provided that the primary duty of the peace officer shall be the enforcement of the law as prescribed in that section.

(k) The Chief of the Bureau of Fraudulent Claims of the Department of Insurance and those investigators as designated by the chief, provided that the primary duty of those investigators shall be enforcement of Section 556 of the Insurance Code.

(*l*) Employees of the Department of Housing and Community Development designated under Section 18023 of the Health and Safety Code, provided that the primary duty of these peace officers shall be the enforcement of the law as that duty is set forth in Section 18023 of that code.

(m) Investigators of the office of the Controller, provided that the primary duty of these investigators shall be the enforcement of the law relating to the duties of that office. Notwithstanding any other provision of law, the peace officers designated pursuant to this subdivision shall not carry firearms.

(n) Investigators of the Department of Corporations designated by the Commissioner of Corporations, provided that the primary duty of these investigators shall be enforcement of the provisions of law administered by the Department of Corporations. Notwithstanding any other provision of law, the peace officers designated pursuant to this subdivision shall not carry firearms.

(o) Persons employed by the Contractors' State License Board designated by the Director of Consumer Affairs pursuant to Section 7011.5 of the Business and Professions Code, provided that the primary duty of these persons shall be the enforcement of the law as that duty is set forth in Section 7011.5, and in Chapter 9 (commencing with Section 7000) of Division 3, of that code. The Director of Consumer Affairs may designate as peace officers not more than three persons who shall at the time of their designation be assigned to the special investigations unit of the board. Notwithstanding any other provision of law, the persons designated pursuant to this subdivision shall not carry firearms.

(p) The chief and coordinators of the Law Enforcement Division of the Office of Emergency Services.

(q) Investigators of the Office of the Secretary of State, designated by the Secretary of State, provided that the primary duty of these peace officers shall be the enforcement of the law as prescribed in Chapter 3 (commencing with Section 8200) of Division 1 of Title 2 of the Government Code and Section 12172.5 of that code. Notwithstanding any other provision of law, the peace officers designated pursuant to this subdivision shall not carry firearms.

(r) The Deputy Director for Security, as designated by Section 8880.38 of the Government Code, and all lottery security personnel assigned to the California State Lottery and designated by the director, provided that the primary duty of any of those peace officers shall be the enforcement of the laws related to assuring the integrity, honesty, and fairness of the operation and administration of the California State Lottery.

(s) Investigators employed by the Investigation Division of the Employment Development Department, designated by the director

of the department, provided that the primary duty of those peace officers shall be the enforcement of the law as that duty is set forth in Section 317 of the Unemployment Insurance Code.

Notwithstanding any other provision of law, the peace officers designated pursuant to this subdivision shall not carry firearms.

(t) Appropriately trained investigators of the State Banking Department designated by the Superintendent of Banks, provided that the primary duty of the investigators shall be the enforcement of, and investigations relating to, the provisions of law administered by the State Banking Department. Notwithstanding any other provision of law, the persons designated pursuant to this subdivision shall not carry firearms.

(u) Appropriately trained investigators of the Department of Savings and Loan designated by the Commissioner of Savings and Loan, provided that the primary duty of the investigators shall be the enforcement of, and investigations relating to, the provisions of law administered by the Department of Savings and Loan. Notwithstanding any other provision of law, the persons designated pursuant to this subdivision shall not carry firearms.

(v) Appropriately trained persons employed by the Department of Real Estate designated by the Real Estate Commissioner, provided that the primary duty of these persons shall be the enforcement of laws as set forth in Part 1 (commencing with Section 10000) and Part 2 (commencing with Section 11000) of Division 4 of the Business and Professions Code. The Real Estate Commissioner may designate as peace officers persons who, at the time of their designation, are assigned to the special investigations unit of the department, and provided that the authority of those persons as peace officers shall extend only for the duration of the specific assignment to the special investigations unit internally known as the Crisis Response Team. Notwithstanding any other provision of law, the peace officers designated pursuant to this subdivision shall not carry firearms.

SEC. 5. (a) Section 2 of this bill incorporates amendments to Section 830.3 of the Penal Code proposed by both this bill and SB 1027. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1989, (2) each bill amends Section 830.3 of the Penal Code, and (3) SB 2272 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after SB 1027, 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 830.3 of the Penal Code proposed by both this bill and SB 2272. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1989, (2) each bill amends Section 830.3 of the Penal Code, (3) SB 1027 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after SB 2272 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 830.3 of the Penal Code proposed by this bill, SB 1027, and SB 2272. It shall

only become operative if (1) all three bills are enacted and become effective on or before January 1, 1989, (2) all three bills amend Section 830.3 of the Penal Code, and (3) this bill is enacted after SB 1027 and SB 2272, in which case Sections 1, 2, and 3 of this bill shall not become operative.

SEC. 6. It is the intent of the Legislature that the changes effected by this act with respect to investigators of the Office of the Secretary of State whose duties are the enforcement of the elections laws shall serve only to define peace officers, the extent of their jurisdiction, and the nature and scope of their authority, powers and duties and that there shall be no change in the status of individuals for purposes of retirement, workers' compensation or similar injury or death benefits, or other employee benefits.

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## CHAPTER 1553

An act to amend Sections 23166 and 23175 of the Vehicle Code, relating to driving offenses.

[Approved by Governor September 29, 1988. Filed with Secretary of State September 30, 1988.]

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

SECTION 1. Section 23166 of the Vehicle Code is amended to read:

23166. If the court grants probation to any person punished under Section 23165, in addition to the provisions of Section 23206 and any other terms and conditions imposed by the court, the court shall impose as conditions of probation that the person be subject to either subdivision (a) or (b), as follows:

(a) Be confined in the county jail for at least 10 days but not more than one year and pay a fine of at least three hundred ninety dollars ($390) but not more than one thousand dollars ($1,000). The person's privilege to operate a motor vehicle shall be suspended by the Department of Motor Vehicles pursuant to paragraph (3) of subdivision (a) of Section 13352.

(b) All of the following:

(1) Be confined in the county jail for at least 48 hours but not more than one year.

(2) Pay a fine of at least three hundred ninety dollars ($390) but not more than one thousand dollars ($1,000).

(3) If the person gives proof of ability to respond in damages as defined in Section 16430 to the Department of Motor Vehicles, have the privilege to operate a motor vehicle be restricted by the Department of Motor Vehicles pursuant to Section 13352.5, for one year, to necessary travel to and from that person's place of employment and to and from the applicable treatment program

described in paragraph (4), and if driving a motor vehicle is necessary to perform the duties of the person's employment, restricted to driving in that person's scope of employment. The Department of Motor Vehicles shall not suspend the person's privilege to operate a motor vehicle under Section 13352, as provided in Section 13352.5, unless the offense occurred in a vehicle requiring a driver with a class 1 or class 2 driver's license or with a certificate specified in Section 12804.1.

(4) Either of the following:

(A) Participate, for at least one year subsequent to the underlying conviction and in a manner satisfactory to the court, in a program approved pursuant to Chapter 9 (commencing with Section 11837) of Part 2 of Division 10.5 of the Health and Safety Code, as designated by the court. The program shall provide for persons who cannot afford the program fee pursuant to paragraph (2) of subdivision (a) of Section 11837.4 of the Health and Safety Code in order to enable those persons to participate.

(B) Participate, for at least 30 months subsequent to the underlying conviction and in a manner satisfactory to the court, in a program approved pursuant to Chapter 9 (commencing with Section 11837) of Part 2 of Division 10.5 of the Health and Safety Code. A person ordered to treatment pursuant to this subparagraph shall apply to the court or to a board of review, as designated by the court, at the conclusion of the program to obtain the court's order of satisfaction. Only upon the granting of that order of satisfaction by the court may the program issue its certificate of successful completion and report the completion to the Department of Motor Vehicles. A failure to obtain an order of satisfaction at the conclusion of the program is a violation of probation. In order to enable all required persons to participate, each person shall pay the program costs commensurate with the person's ability to pay as determined pursuant to Section 11837.4 of the Health and Safety Code. No condition of probation required pursuant to this subparagraph is a basis for reducing any other probation requirement or for avoiding the mandatory license revocation provisions of paragraph (5) of subdivision (a) of Section 13352.

SEC. 2. Section 23175 of the Vehicle Code is amended to read:

23175. If any person is convicted of a violation of Section 23152 and the offense occurred within seven years of three or more separate violations of Section 23103 as specified in Section 23103.5 which occurred on or after January 1, 1982, 23152, or 23153, or any combination thereof, which resulted in convictions, that person shall be punished by imprisonment in the state prison, or in the county jail for not less than 180 days nor more than one year, and by a fine of not less than three hundred ninety dollars ($390) nor more than one thousand dollars ($1,000). The person's privilege to operate a motor vehicle shall be revoked by the Department of Motor Vehicles pursuant to paragraph (7) of subdivision (a) of Section 13352.

# CHAPTER 1554

An act to add Chapter 13 (commencing with Section 18990) to Part 6 of Division 9 of the Welfare and Institutions Code, relating to child care, and making an appropriation therefor.

[Approved by Governor September 29, 1988. Filed with Secretary of State September 30, 1988 ]

I am deleting the $75,000 appropriation contained in Section 2 of Assembly Bill No. 953.

This bill would require the Department of Aging to establish six Grandparent Phonefriend Pilot Projects in selected counties. The bill appropriates $75,000 to fund loans to the projects and to cover state administrative costs

The demands placed on budget resources require all of us to set priorities The budget enacted in July 1988 appropriated nearly $44 billion in state funds This amount is more than adequate to provide the necessary essential services provided for by State Government. It is not necessary to put additional pressure on taxpayer funds for programs that fall beyond the priorities currently provided

Thus, after reviewing this legislation, I have concluded that its merits do not sufficiently outweigh the need this year for funding top priority programs and continuing a prudent reserve for economic uncertainties

It is more appropriate to consider funding the provisions of this bill during the budget process for Fiscal Year 1989-90. Only at that time can we review the relative merits of this program in comparison to all other funding projects The budget process enables us to weigh all demands on the state's revenues and direct our resources to programs, either new or existing, that have the most merit

With this deletion, I approve Assembly Bill No. 953

GEORGE DEUKMEJIAN, Governor

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

SECTION 1. Chapter 13 (commencing with Section 18990) is added to Part 6 of Division 9 of the Welfare and Institutions Code, to read:

## CHAPTER 13. GRANDPARENT PHONEFRIEND PILOT PROJECTS PROGRAM

18990. The Legislature finds both of the following:

(a) Older citizens have a great deal to offer children who might not have a close-knit family relationship. A program which utilizes the resources of older citizens as persons providing support or information, or both, to unsupervised children after school hours, and known as "phonefriends," would enhance the self-esteem of the participating older citizens while filling a great societal need.

(b) "Older citizens," as used in this article, means individuals 60 years of age or older.

18991. (a) The Department of Aging shall establish six pilot projects to provide after school telephone help lines for children in kindergarten through 6th grade. The department shall establish two of these projects in Los Angeles County, and one each in Alameda, Butte, Marin, and Riverside Counties. Each pilot project shall be conducted by a public or private entity, selected by the department, which provides services to older citizens. The department shall

provide one-time only loans, of up to fifteen thousand dollars ($15,000) to each entity so selected for startup costs of the project, which shall be limited to the costs of telephone installation and operation; the printing of informational material; a full-time, salaried coordinator; a 20-hour per week secretary; liability insurance; and fingerprinting costs.

(b) The Department of Aging in its operation and administration of the program shall select a coordinator. The coordinator shall work with phonefriend projects already in existence to assist new programs through the developmental stages.

(c) Within one year from the date of obtaining private sector funding, each pilot project coordinator shall submit a report to the Department of Aging citing the effectiveness of the program, the number of children assisted, and the type of assistance provided.

(d) The Department of Aging shall report to the Legislature prior to January 1, 1992. This report shall contain each individual report received pursuant to subdivision (b), along with an overview of the programs and an assessment of the ability of the programs to meet the objectives of this article.

(e) All loans made by the department pursuant to this section shall be repaid to the General Fund with interest equal to that earned by funds of the Pooled Money Investment Board.

(f) The Department of Aging shall notify all eligible parties through the network of providers of service to older citizens, of the availability of funds pursuant to this article.

(g) Prior to April 1, 1989, the Department of Aging shall select the six participants and shall, within six weeks from the selection distribute startup funds, not to exceed fifteen thousand dollars ($15,000) to each of the participants.

(h) Each pilot project shall meet the following requirements, as verified by the department:

(1) Services shall be provided through telephone help lines created for the purpose of providing information or support, or both, to children in kindergarten through 6th grade, when the children are without adult supervision after school hours.

(2) The telephone help lines shall be staffed on a volunteer basis by older citizens, who shall be known as "grandparent phonefriends" for purposes of publicizing the project.

(3) Volunteers answering the phone lines shall as a minimum be trained to: make appropriate referrals in cases of emergency or in other cases necessitating the assistance of another agency; listen to children who express feelings of loneliness or fear; provide practical information to callers about common household, school, or other problems, as determined by the department and the entity conducting the project; and inquire of children with problems.

(4) Each project shall include procedures for contacting parents in appropriate cases, and procedures to ensure that confidentiality is respected. A caller's phone number shall be requested only if the volunteer believes it might be necessary to call back the child.

(5) The coordinator for the Department of Aging shall arrange with local entities for fingerprinting volunteer older citizens before the volunteers can begin any training on the phonefriend lines.

(6) Each pilot project shall work with the local school boards and any parent or teacher group in determining training procedures described in paragraph (3).

SEC. 2. (a) The sum of seventy-five thousand dollars ($75,000) is hereby appropriated from the General Fund to the Department of Aging for expenditure pursuant to Chapter 13 (commencing with Section 18990) of Part 6 of Division 9 of the Welfare and Institutions Code.

(b) From the amount appropriated in this act, the Department of Aging shall allocate ten thousand dollars ($10,000) for the operation and administrative costs of the Grandparent Phonefriend Pilot Projects Program, including the selection of a coordinator for the program pursuant to subdivision (b) of Section 18991 of the Welfare and Institutions Code.

(c) Any portions of this appropriation which have not been loaned to pilot projects pursuant to Chapter 13 (commencing with Section 18990) of Part 6 of Division 9 of the Welfare and Institutions Code prior to July 1, 1989, shall revert to the General Fund on that date. All loan payments, plus interest, shall be deposited in the General Fund.

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## CHAPTER 1555

An act to amend Sections 199.45, 199.47, 199.50, and 199.51 of, to add Section 199.78 to, and to repeal Section 199.49 of, the Health and Safety Code, to amend Section 14132 of, and to add Section 14132.45 to, the Welfare and Institutions Code, and to amend Section 2 of Chapter 1463 of the Statutes of 1986, relating to AIDS.

[Approved by Governor September 29, 1988. Filed with Secretary of State September 30, 1988.]

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

SECTION 1. Section 199.45 of the Health and Safety Code is amended to read:

199.45. The Legislature finds and declares all of the following:

(a) The rapidly spreading AIDS epidemic poses an unprecedented major public health crisis in California, and threatens, in one way or another, the life and health of every Californian.

(b) The best hope of stemming the spread of the AIDS virus among the general public is the development of an AIDS vaccine to develop an immunity to exposure.

(c) No vaccine has yet been fully developed, tested, or approved

for AIDS. An effective vaccine, especially when directed at high-risk groups of unexposed persons, will virtually eliminate the risk of contracting AIDS, just as the risk of contracting polio and smallpox have been virtually eliminated by earlier vaccine development, production, and use among the general public.

(d) Private industry today has the capability of conducting the vaccine research, biological research, immunology, and genetic engineering of appropriate viral components needed to formulate, develop, produce, and test an AIDS vaccine. Whenever these and other appropriate expertise cannot be found within a single company, the formation of multiinstitutional research groups should be encouraged and prioritized, as it is in the public interest to encourage efforts toward vaccine production.

(e) It is of the highest importance and in the public interest to maximize public protection by developing an AIDS vaccine and by establishing high levels of immunization, initially among high-risk populations.

(f) The continuous spread of AIDS and especially the threat of infection spreading among population groups previously considered low-risk demands that the highest of priorities be given to the development of a universal immunoprophylaxis.

(g) The use of vaccines to control the spread of infectious pathogens is recognized as one of the genuinely decisive technologies of modern medicine. Recent advances in pharmaceutical technology combined with better understanding of the immune process offer the hope of an AIDS vaccine that is effective, safe, relatively inexpensive, and relatively easy to administer.

(h) Utilization of this new science may be forestalled, however, by problems that have recently deterred the development of vaccines by traditional means. These problems must be resolved before the full public health benefits of new approaches to vaccine development can be fully and expeditiously realized.

(i) The marketplace conditions facing vaccine manufacturers and developers today have changed considerably over the past 30 years. Private manufacturers and developers of vaccines cannot be forced to produce vaccines, and may choose, under the free enterprise system, not to produce them if marketplace conditions are unfavorable.

(j) Certain market conditions are slowing and threatening to halt the development of an AIDS vaccine. Any delay in the discovery, testing, approval, and production of the vaccine because of these secondary considerations may cost tens of thousands of human lives annually, unnecessary pain and suffering for hundreds of thousands of infected Americans, and billions of dollars in medical costs and in lost productivity.

(k) Resource constraints in the public and private sectors and the time required to bring vaccines to market presently limit investments in vaccines research and development. Although

universities constitute a significant resource in AIDS research in particular and vaccines research in general, university funding limitations and conflicting research priorities make reliance on the resources and expertise of the private pharmaceutical industry a necessary supplement to public funding of AIDS research.

(*l*) There has been a decrease in the willingness of pharmaceutical companies to become involved in vaccine research, development, and manufacturing because of uncertain profitability and perceived and actual marketplace risks and disincentives.

(m) It is clearly in the public interest to provide appropriate and necessary incentives toward the timely development and production of an effective and safe AIDS vaccine.

(n) The development of an AIDS vaccine provides an exceptionally important benefit, making its availability highly desirable. However, certain conditions may preclude that development, including the following:

(1) There is a high cost for capital expenditures for vaccine development (estimated to be from ten million dollars ($10,000,000) to thirty million dollars ($30,000,000)). Testing costs of clinical trials (twenty million dollars ($20,000,000) per vaccine, by some estimates) are particularly burdensome, especially for smaller firms.

(2) There is an uncertain market demand for a vaccine once development costs have been invested and FDA marketing approval has been secured.

(o) Without state intervention to assure minimal profitability of an AIDS vaccine, inadequate incentives may exist for the private sector to commit resources and expertise to the accelerated development of an AIDS vaccine.

(p) In light of the dangers inherent in the AIDS epidemic to the general public of California, it is crucial that to the extent possible any serious obstacles to the development of such a vaccine be removed.

(q) Because an AIDS vaccine provides an exceptionally important public benefit, it is in the public interest to take uncommon action to facilitate the development and production of such a vaccine.

(r) It is as well in the public interest to assure fair compensation, if necessary at public expense, to any innocent victim who may be injured by an AIDS vaccine, as a part of implementing the socially beneficial policy of establishing high levels of AIDS immunization.

(s) In light of the high incidence of AIDS amongst Californians, the California Legislature must lead our country into the 20th century in this effort.

(t) It is therefore fitting and proper that the State of California enact uncommon and exceptional legislation in order to prevent the further spread of the AIDS epidemic.

SEC. 2. Section 199.47 of the Health and Safety Code is amended to read:

199.47. The Legislature further finds and declares all of the following:

(a) The average cost per patient in the treatment of AIDS until death is now one hundred fifty thousand dollars ($150,000). It is estimated that total costs including health care of the first 10,000 AIDS cases in the United States totaled more than six billion three hundred million dollars ($6,300,000,000). By 1990, according to the State Department of Health Services, Californians will spend almost five billion dollars ($5,000,000,000) in medical costs alone in care and treatment of 30,000 AIDS patients, with no realistic hope for their remission or cure. This cost does not include money spent on education, research, and lost income.

(b) To date, the costs of caring for people with AIDS related complex (ARC) has not been officially calculated. However, it is safe to assume the costs are substantial over time. Experts fear that the illnesses of ARC patients, although they may not be fatal, are severe. For example, the virus invades the brain rendering the patients incapable of caring for themselves. It is, therefore, plausible that a percentage of ARC patients will need to be institutionalized.

(c) The Legislature intends by this chapter to take uncommon action to remove the impediments to the expeditious development of an AIDS vaccine.

(d) It is further the intent of the Legislature to provide to any person, whose injury is proximately caused by the use of the vaccine, except to the extent the injuries are attributable to the comparative negligence of the claimant in the use of the vaccine, all of the following:

(1) Compensation for related medical costs associated with the care and treatment of the injury.

(2) Compensation for the loss of any and all earnings caused by the injury.

(3) Compensation for pain and suffering caused by the injury, except that in no action shall the amount of damages for noneconomic losses exceed five hundred fifty thousand dollars ($550,000).

(e) It is further the intent of the Legislature to establish the AIDS Clinical Trials Testing Fund which will be available to not more than three California manufacturers of an AIDS vaccine approved by the federal Food and Drug Administration (FDA) for clinical trials with humans. The funds are to be appropriated to the manufacturers specified in the FDA approved protocol for administering the clinical trials.

SEC. 3. Section 199.49 of the Health and Safety Code is repealed.

SEC. 4. Section 199.50 of the Health and Safety Code is amended to read:

199.50. (a) There is hereby created the AIDS Vaccine Victims Compensation Fund.

(b) For the purposes of this section:

(1) "AIDS vaccine" means a vaccine which (A) has been developed by any manufacturer and (B) is approved by the FDA as a safe and efficacious vaccine for the purpose of immunizing against

AIDS.

(2) "Board" means the State Board of Control.

(3) "Damages for personal injuries," means the direct medical costs for the care and treatment of injuries to any person, including a person entitled to recover damages under Section 377 of the Code of Civil Procedure, proximately caused by an AIDS vaccine, the loss of earnings caused by the injuries, and the amount necessary, but not to exceed five hundred fifty thousand dollars ($550,000), to compensate for noneconomic losses, including pain and suffering caused by the injuries.

(4) "Fund" means the AIDS Vaccine Victims Compensation Fund.

(c) The board shall pay from the fund, contingent entirely upon the availability of moneys as provided in subdivision (o), damages for personal injuries caused by an AIDS vaccine that is sold in or delivered in California, and administered or dispersed in California to the injured person except that no payment shall be made for any of the following:

(1) Damages for personal injuries caused by the vaccine to the extent that they are attributable to the comparative negligence of the person making the claim.

(2) Damages for personal injuries in any instance in which the manufacturer has been found to be liable for such injuries in a court of law.

(3) Damages for personal injuries due to a vaccination administered during a clinical trial.

(d) An application for payment of damages for personal injuries shall be made on a form prescribed by the board, which application may be required to be verified, within one year of the date that the injury and its cause are discovered. Upon receipt, the board may require the submission of additional information necessary to evaluate the claim.

(e) (1) Within 45 days of the receipt of the application and the submission of any additional information, the board shall do either of the following:

(A) Allow the claim in whole or part.

(B) Disallow the claim.

(2) In those instances of unusual hardship to the victim, the board may grant an emergency award to the injured person to cover immediate needs upon agreement by the injured person to repay in the event of a final determination denying the claim.

(3) If the claim is denied in whole or part, the victim may apply within 60 days of denial for a hearing. The hearing shall be held within 60 days of the request for a hearing unless the injured person requests a later hearing.

(f) At the hearing the injured person may be represented by counsel and may present relevant evidence as defined in subdivision (c) of Section 11513 of the Government Code. The board may consider additional evidence presented by its staff. If the injured

person declines to appear at the hearing, the board may act solely upon the application, the staff report, and other evidence that appears on the record.

(g) The board may delegate the hearing of applications to hearing examiners.

(h) The decision of the board shall be in writing and shall be delivered or mailed to the injured person within 30 days of the hearing. Upon the request by the applicant within 30 days of delivery or mailing, the board may reconsider its decision.

(i) Judicial review of a decision shall be under Section 1094.5 of the Code of Civil Procedure, and the court shall exercise its independent judgment. A petition for review shall be filed as follows:

(1) If no request for reconsideration is made, within 30 days of personal delivery or mailing of the board's decision on the application.

(2) If a timely request for reconsideration is filed and rejected by the board, within 30 days of personal delivery or mailing of the notice of rejection.

(3) If a timely request for reconsideration is filed and granted by the board, or reconsideration is ordered by the board, within 30 days of personal delivery or mailing of the final decision on the reconsidered application.

(j) The board shall adopt rules and regulations to implement this section, including those governing discovery.

(k) The fund is subrogated to any right or claim that any injured person may have who receives compensation pursuant to this section, or any right or claim that such person's personal representative, legal guardian, estate, or survivor may have, against any third party who is liable for the personal injuries caused by the AIDS vaccine, and the fund shall be entitled to indemnity from that third party. The fund shall also be entitled to a lien on the judgment, award, or settlement in the amount of any payments made to the injured person.

(*l*) In the event that the injured person, or his or her guardian, personal representative, estate, or survivors, or any of them, bring an action for damages against the person or persons liable for the injury or death giving rise to an award by the board under this section, notice of institution of legal proceedings and notice of any settlement shall be given to the board in Sacramento except in cases where the board specifies that notice shall be given to the Attorney General. All notices shall be given by the attorney employed to bring the action for damages or by the injured person, or his or her guardian, personal representative, estate, or survivors, if no attorney is employed.

(m) This section is not intended to affect the right of any individual to pursue claims against the fund and lawsuits against manufacturers concurrently, except that the fund shall be entitled to a lien on the judgment, award, or settlement in the amount of any payments made to the injured party by the fund.

(n) There is hereby created the AIDS Vaccine Injury

Compensation Policy Review Task Force consisting of 14 members. The task force shall be composed of 10 members appointed by the Governor, of which two shall be from a list provided by the California Trial Lawyers Association, one from the State Department of Health Services, the Director of Finance, one unspecified member, and one attorney with experience and expertise in products liability and negligence defense work, two representing recognized groups which represent victims of vaccine induced injuries or AIDS victims, or both, and two representing manufacturers actively engaged in developing an AIDS vaccine. In addition four Members of the Legislature or their designees shall be appointed to the task force, two of which shall be appointed by the Speaker of the Assembly and two of which shall be appointed by the Senate Rules Committee. The chairperson of the task force shall be appointed by the Governor from the membership of the task force. The task force shall study and make recommendations on the legislative implementation of the fund created by subdivision (a). These recommendations shall at least address the following issues:

(1) The process by which victims are to be compensated through the fund.

(2) The procedures by which the fund will operate and the governance of the fund.

(3) The method by which manufacturers are to pay into the fund and the amount of that payment.

(4) The procedural relationship between a potential victim's claim through the fund and a court claim made against the manufacturer.

(5) Other issues deemed appropriate by the task force.

The task force shall make its recommendations to the Legislature on or before June 30, 1987.

(o) The fund shall be funded wholly by a surcharge on the sale of an FDA-approved AIDS vaccine in California in an amount to be determined by the State Department of Health Services. The surcharge shall be levied on the sale of each unit of the vaccine sold or delivered, administered, or dispensed in California. The appropriate amount of the surcharge shall be studied by the AIDS Vaccine Injury Compensation Policy Review Task Force which shall recommend the appropriate amount as part of its report, with the amount of the surcharge not to exceed ten dollars ($10) per unit of vaccine. Expenditures of the task force shall be made at the discretion of the Director of Finance or the director's designee.

(p) For purposes of this section, claims against the fund are contingent upon the existing resources of the fund as provided in subdivision (o), and in no case shall the state be liable for any claims in excess of the resources in the fund.

SEC. 5. Section 199.51 of the Health and Safety Code is amended to read:

199.51. (a) Because the development of a vaccine now costs somewhere between twenty million dollars ($20,000,000) and forty

million dollars ($40,000,000), and because the last vaccine produced and marketed did not sell well, vaccine manufacturers are hesitant to proceed to invest their resources in such a risky venture. It is, therefore, in the public health interest of California to assure that manufacturers proceed to develop this vaccine and protect Californians against this dread disease and protect the State of California against the enormous fiscal costs of treatment for persons getting AIDS. It is a sound and worthwhile investment to provide a guarantee of a market to lessen the risk of loss and assure the development of an AIDS vaccine.

It is anticipated that this AIDS vaccine will consist of a three-unit series. The State of California is willing to guarantee that at least 175,000 persons will be vaccinated, and to guarantee the purchase, within three years after the FDA approves marketing of an AIDS vaccine, of at least 500,000 units, at a cost of no more than twenty dollars ($20) per dosage, by all companies, anywhere in the United States.

Therefore, the State of California, by moneys to be appropriated later through the Budget Act, commits itself to purchasing, at the end of three years after the FDA has approved the marketing on a competitive basis, at not more than twenty dollars ($20) per dosage, the difference between 500,000 units and the actual amount sold, delivered, administered, or dispensed by all companies throughout the United States, including units sold to or reimbursed by Medi-Cal, Medicare, or other public programs, providing that less than 500,000 units are sold, delivered, administered, or dispensed.

(b) The AIDS Vaccine Guaranteed Purchase Fund is hereby established and shall be administered by the State Department of Health Services, which may develop necessary regulations to carry out the purpose of this section.

(c) The State Department of Health Services is hereby authorized to carry out this section, when such funds are appropriated through the state budget. In determining which vaccine shall be purchased by the state from among those manufacturers selling or distributing in California, an FDA-approved AIDS vaccine, the State Department of Health Services shall take into consideration at least all of the following factors:

(1) The length of time each AIDS vaccine has been in the marketplace in California.

(2) Each AIDS vaccine's history of efficacy since FDA approval.

(3) Each AIDS vaccine's history of side effects experienced by previous recipients of the vaccine.

(4) The relative cost of each competing manufacturer's AIDS vaccine.

SEC. 6. Section 199.78 is added to the Health and Safety Code, to read:

199.78. (a) The state department may use funds appropriated to it to pay the costs, including reimbursements to contractors for administrative costs, of providing home and community-based

services to eligible persons with a diagnosis of acquired immune deficiency syndrome (AIDS) or AIDS related conditions (ARC) when the funds are appropriated for that purpose.

(b) To the extent that federal financial participation is available, each department within the Health and Welfare Agency, including departments designated as single state agencies for public social services programs, shall waive regulations and general policies and make resources available when necessary for the provision of home and community-based care services to eligible persons with a diagnosis of AIDS or ARC.

SEC. 7. Section 14132 of the Welfare and Institutions Code is amended to read:

14132. The following is the schedule of benefits under this chapter:

(a) Outpatient services are covered as follows:

Physician, hospital or clinic outpatient, surgical center, optometric, chiropractic, psychology, podiatric, occupational therapy, physical therapy, speech therapy, audiology, acupuncture to the extent federal matching funds are provided for acupuncture, and services of persons rendering treatment by prayer or healing by spiritual means in the practice of any church or religious denomination insofar as these can be encompassed by federal participation under an approved plan, subject to utilization controls.

(b) Inpatient hospital services, including, but not limited to, physician and podiatric services, physical therapy and occupational therapy, are covered subject to utilization controls.

(c) Skilled nursing facility services, including podiatry, physician, nurse practitioner services, and prescribed drugs, as described in subdivision (d), are covered subject to utilization controls. Physical therapy, occupational therapy, speech therapy, and audiology services for patients in skilled nursing facilities are covered subject to utilization controls.

(d) Purchase of prescribed drugs is covered subject to the Medi-Cal Drug Formulary and utilization controls.

(e) Outpatient dialysis services and home hemodialysis services, including physician services, medical supplies, drugs and equipment required for dialysis, are covered, subject to utilization controls.

(f) Anesthesiologist services when provided as part of an outpatient medical procedure, nurse anesthetists services when rendered in an inpatient or outpatient setting under conditions set forth by the director, outpatient laboratory services, and X-ray services are covered, subject to utilization controls. Nothing in this subdivision shall be construed to require prior authorization for anesthesiologist services provided as part of an outpatient medical procedure or for portable X-ray services in an intermediate care facility or a skilled nursing facility.

(g) Blood and blood derivatives are covered.

(h) Emergency and essential diagnostic and restorative dental services, except for orthodontic, fixed bridgework, and partial

dentures that are not necessary for balance of a complete artificial denture, are covered, subject to utilization controls. The utilization controls shall allow emergency and essential diagnostic and restorative dental services and prostheses that are necessary to prevent a significant disability or to replace previously furnished prostheses which are lost or destroyed due to circumstances beyond the beneficiary's control. The department's utilization controls shall not require X-rays as a condition of reimbursement for fillings for children under 18 years of age. Notwithstanding the foregoing, the director may by regulation provide for certain fixed artificial dentures necessary for obtaining employment or for medical conditions which preclude the use of removable dental prostheses, and for orthodontic services in cleft palate deformities administered by the department's crippled children services program.

(i) Medical transportation is covered, subject to utilization controls.

(j) Home health care services are covered, subject to utilization controls.

(k) Prosthetic and orthotic devices and eyeglasses are covered, subject to utilization controls. Utilization controls shall allow replacement of prosthetic and orthotic devices and eyeglasses necessary because of loss or destruction due to circumstances beyond the beneficiary's control. Frame styles for eyeglasses replaced pursuant to this subdivision shall not change more than once every two years, unless the department so directs.

Orthopedic and conventional shoes are covered when provided by a prosthetic and orthotic supplier on the prescription of a physician and when at least one of the shoes will be attached to a prosthesis or brace, subject to utilization controls. Modification of stock conventional or orthopedic shoes when medically indicated, is covered subject to utilization controls. When there is a clearly established medical need that cannot be satisfied by the modification of stock conventional or orthopedic shoes, custom-made orthopedic shoes are covered, subject to utilization controls.

(*l*) Hearing aids are covered, subject to utilization controls. Utilization controls shall allow replacement of hearing aids necessary because of loss or destruction due to circumstances beyond the beneficiary's control.

(m) Durable medical equipment and medical supplies are covered, subject to utilization controls. The utilization controls shall allow the replacement of durable medical equipment and medical supplies when necessary because of loss or destruction due to circumstances beyond the beneficiary's control.

(n) Intermediate care facility services, including physician services, nurse practitioner services pursuant to Section 14115.6, and prescribed drugs as described in subdivision (d) are covered, subject to utilization controls. Physical therapy, occupational therapy, speech therapy and audiology services for patients in intermediate care facilities are covered subject to utilization controls.

(o) Family planning services are covered, subject to utilization controls.

(p) Inpatient intensive rehabilitation hospital services in a general acute care hospital are covered, subject to utilization controls, when the following criteria are met:

(1) A patient with a permanent disability or severe impairment requires an inpatient intensive rehabilitation hospital program as described in Section 14064 to develop function beyond the limited amount that would occur in the normal course of recovery; or

(2) A patient with a chronic or progressive disease requires an inpatient intensive rehabilitation hospital program as described in Section 14064 to maintain the patient's present functional level as long as possible.

(q) Adult day health care is covered in accordance with the provisions of Chapter 8.7 (commencing with Section 14520) of this part.

(r) Application of fluoride, or other appropriate fluoride treatment as defined by the department, other prophylaxis treatment for children 17 years of age and under, are covered.

(s) Paramedic services performed by a city, county, or special district, or pursuant to a contract with a city, county, or special district, and pursuant to a program established under Article 3 (commencing with Section 1480) of Chapter 2.5 of Division 2 of the Health and Safety Code by a paramedic certified pursuant to that article, and consisting of defibrillation and those services specified in subdivision (3) of Section 1482 of the article.

This subdivision shall be in effect only to the extent federal financial participation is available as set forth in Section 14106.6.

(t) In-home medical care services are covered when medically appropriate and subject to utilization controls, for beneficiaries who would otherwise require care for an extended period of time in an acute care hospital at a cost higher than in-home medical care services. The director shall have the authority under this section to contract with organizations qualified to provide in-home medical care services to such persons. These services may be provided to patients placed in facilities such as skilled nursing or intermediate care facilities, or to persons in shared or congregate living arrangements, if a home setting is not medically appropriate or available to the beneficiary. As used in this section, "in-home medical care service" includes utility bills directly attributable to continuous, 24-hour operation of life-sustaining medical equipment, to the extent that federal financial participation is available.

As used in this subdivision, in-home medical care services, include, but are not limited to:

(1) Level of care and cost of care evaluations.

(2) Expenses, directly attributable to home care activities, for materials.

(3) Physician fees for home visits.

(4) Expenses directly attributable to home care activities for

shelter and modification to shelter.

(5) Expenses directly attributable to additional costs of special diets, including tube feeding.

(6) Medically related personal services.

(7) Home nursing education.

(8) Emergency maintenance repair.

(9) Home health agency personnel benefits which permit coverage of care during periods when regular personnel are on vacation or using sick leave.

(10) All services needed to maintain antiseptic conditions at stoma or shunt sites on the body.

(11) Emergency and nonemergency medical transportation.

(12) Medical supplies.

(13) Medical equipment, including, but not limited to, scales, gurneys, and equipment racks suitable for paralyzed patients.

(14) Utility use directly attributable to the requirements of home care activities which are in addition to normal utility use.

(15) Special drugs and medications.

(16) Home health agency supervision of visiting staff which is medically necessary, but not included in the home health agency rate.

(17) Therapy services.

(18) Household appliances and household utensil costs directly attributable to home care activities.

(19) Modification of medical equipment for home use.

(20) Training and orientation for use of life support systems, including, but not limited to support of respiratory functions.

Beneficiaries receiving in-home medical care services are entitled to the full range of services within the Medi-Cal scope of benefits as defined by this section, subject to medical necessity and applicable utilization control. Services provided pursuant to this subdivision, which are not otherwise included in the Medi-Cal schedule of benefits, shall be available only to the extent that federal financial participation for these services is available in accordance with a home and community-based services waiver.

(u) Home and community-based services approved by the United States Department of Health and Human Services may be covered to the extent that federal financial participation is available for such services under waivers granted in accordance with Section 1915 of the federal Social Security Act. The director may seek waivers for any or all home and community-based services approvable under Section 1915 of the federal Social Security Act. Coverage for such services shall be limited by the terms, conditions, and duration of the federal waivers.

The department shall submit a report, as provided in Section 28 of the 1982 Budget Act, 30 days prior to providing these services as Medi-Cal benefits. The report shall be submitted to the Joint Legislative Budget Committee and the fiscal committees and shall address the cost effectiveness of services provided pursuant to this

subdivision.

(v) Comprehensive perinatal services, as provided through an agreement with a health care provider designated in Section 14134.5 and meeting the standards developed by the department pursuant to Section 14134.5, subject to utilization controls.

The department shall seek any federal waivers necessary to implement the provisions of this subdivision. The provisions for which appropriate federal waivers cannot be obtained shall not be implemented. Provisions for which waivers are obtained or for which waivers are not required shall be implemented notwithstanding any inability to obtain federal waivers for the other provisions. No provision of this subdivision shall be implemented unless matching funds from Title XIX of the federal Social Security Act are available.

(w) Early and periodic screening, diagnosis, and treatment for any individual under 21 years of age is covered, consistent with the requirements of Title XIX of the federal Social Security Act.

(x) Hospice service which is Medicare-certified hospice service is covered, subject to utilization controls. Coverage shall be available only to the extent that no additional net program costs are incurred.

(y) When a claim for treatment provided to a beneficiary includes both services which are authorized and reimbursable under this chapter, and services which are not reimbursable under this chapter, that portion of the claim for the treatment and services authorized and reimbursable under this chapter shall be payable.

(z) Home and community-based services approved by the United States Department of Health and Human Services for beneficiaries with a diagnosis of AIDS or ARC, who require an intermediate care facility or a higher level of care.

Services provided pursuant to a waiver obtained from the Secretary of the United States Department of Health and Human Services pursuant to this subdivision, and which are not otherwise included in the Medi-Cal schedule of benefits, shall be available only to the extent that federal financial participation for these services is available in accordance with the waiver, and subject to the terms, conditions, and duration of the waiver. These services shall be provided to individual beneficiaries in accordance with the client's needs as identified in the plan of care, and subject to medical necessity and applicable utilization control.

The director may under this section contract with organizations qualified to provide, directly or by subcontract, services provided for in this subdivision to eligible beneficiaries. Contracts or agreements entered into pursuant to this division shall not be subject to the Public Contract Code.

SEC. 8. Section 14132.45 is added to the Welfare and Institutions Code, to read:

14132.45. Regulations implementing, interpreting, or making specific the provisions of subdivision (z) of Section 14132 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.

SEC. 9. Section 2 of Chapter 1463 of the Statutes of 1986 is amended to read:

Sec. 2. The sum of six million fifty thousand dollars ($6,050,000) is hereby appropriated from the General Fund in accordance with the following schedule:

(a) For expenditures in fiscal year 1986–87 for purpose of subsidizing any clinical trials with humans for an acquired immune deficiency syndrome (AIDS) vaccine which are approved by a federal Food and Drug Administration (FDA) protocol. The funds shall be allocated by the State Department of Health Services in amounts up to one million dollars ($1,000,000) for each of up to three sites or manufacturers with management or officers based in this state and operations for the research and manufacture of an AIDS vaccine in this state, who receive FDA approval for clinical trials. The funds shall be provided to the state department for disbursement to the sites or manufacturers approved in the FDA protocol and for the purposes set forth in the protocol. The funds shall be disbursed to FDA approved sites or manufacturers within 90 days of a request from the FDA approved sites or manufacturers. The unencumbered and unexpended balance of funds appropriated pursuant to this subdivision, on June 30, 1987, shall be carried over for expenditure pursuant to subdivision (b) of this section .... $3,000,000

(b) For expenditure and allocation in the same manner and for the same purposes as described in subdivision (a) of this section, in fiscal year 1987–88 ..... $3,000,000

(c) For purposes of the AIDS Vaccine Injury Compensation Policy Review Task Force, established pursuant to Section 199.50, to be expended at the discretion of the Director of Finance or the director's designee ..... $ 50,000

# CHAPTER 1556

An act to amend Section 597 of the Penal Code, relating to animals.

[Approved by Governor September 29, 1988. Filed with Secretary of State September 30, 1988.]

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

SECTION 1. Section 597 of the Penal Code, as amended by Chapter 127 of the Statutes of 1988, is amended to read:

597. (a) Except as provided in subdivision (c), every person who maliciously and intentionally maims, mutilates, tortures, or wounds a living animal which is the property of the person or which is the property of another, or maliciously and intentionally kills an animal which is the property of the person or which is the property of another, is guilty of an offense punishable by imprisonment in the state prison, or by a fine of not more than twenty thousand dollars ($20,000), or by both the fine and imprisonment, or, alternatively, by imprisonment in the county jail for not more than one year, or by a fine of not more than twenty thousand dollars ($20,000), or by both the fine and imprisonment.

(b) Except as otherwise provided in subdivision (a) or (c), every person who overdrives, overloads, drives when overloaded, overworks, tortures, torments, deprives of necessary sustenance, drink, or shelter, cruelly beats, mutilates, or cruelly kills any animal, or causes or procures any animal to be so overdriven, overloaded, driven when overloaded, overworked, tortured, tormented, deprived of necessary sustenance, drink, shelter, or to be cruelly beaten, mutilated, or cruelly killed; and whoever, having the charge or custody of any animal, either as owner or otherwise, subjects any animal to needless suffering, or inflicts unnecessary cruelty upon the animal, or in any manner abuses any animal, or fails to provide the animal with proper food, drink, or shelter or protection from the weather, or who drives, rides, or otherwise uses the animal when unfit for labor, is, for every such offense, guilty of an offense punishable by imprisonment in the county jail for not more than one year or by a fine of not more than twenty thousand dollars ($20,000), or by both the fine and imprisonment.

(c) Every person who maliciously and intentionally maims, mutilates, or tortures any mammal, bird, reptile, amphibian, or fish as described in subdivision (d), is guilty of an offense punishable by imprisonment in the state prison, or by a fine of not more than twenty thousand dollars ($20,000), or by both the fine and imprisonment, or, alternatively, by imprisonment in the county jail for not more than one year, by a fine of not more than twenty thousand dollars ($20,000), or by both the fine and imprisonment.

(d) Subdivision (c) applies to any mammal, bird, reptile, amphibian, or fish which is a creature described as follows:

(1) Endangered species or threatened species as described in Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code.

(2) Fully protected birds described in Section 3511 of the Fish and Game Code.

(3) Fully protected mammals described in Chapter 8 (commencing with Section 4700) of Part 3 of Division 4 of the Fish and Game Code.

(4) Fully protected reptiles and amphibians described in Chapter 2 (commencing with Section 5050) of Division 5 of the Fish and Game Code.

(5) Fully protected fish as described in Section 5515 of the Fish and Game Code.

This subdivision does not supersede or affect any provisions of law relating to taking of the described species, including, but not limited to, Section 12008 of the Fish and Game Code.

(e) For the purposes of subdivision (c), each act of malicious and intentional maiming, mutilating, or torturing a separate specimen of a creature described in subdivision (d) is a separate offense. If any person is charged with a violation of subdivision (c), the proceedings shall be subject to Section 12157 of the Fish and Game Code.

(f) Upon the conviction of a person charged with a violation of this section by causing or permitting an act of cruelty, as defined in Section 599b, all animals lawfully seized and impounded with respect to the violation by a peace officer, officer of a humane society, or officer of a pound or animal regulation department of a public agency shall be adjudged by the court to be forfeited and shall thereupon be awarded to the impounding officer for proper disposition. A person convicted of a violation of this section by causing or permitting an act of cruelty, as defined in Section 599b, shall be liable to the impounding officer for all costs of impoundment from the time of seizure to the time of proper disposition.

Mandatory seizure or impoundment shall not apply to animals in properly conducted scientific experiments or investigations performed under the authority of the faculty of a regularly incorporated medical college or university of this state.

SEC. 2. Section 597 of the Penal Code, as amended by Chapter 127 of the Statutes of 1988, is amended to read:

597. (a) Except as provided in subdivision (c), every person who maliciously and intentionally maims, mutilates, tortures, or wounds a living animal which is the property of the person or which is the property of another, or maliciously and intentionally kills an animal which is the property of the person or which is the property of another, is guilty of an offense punishable by imprisonment in the state prison, or by a fine of not more than twenty thousand dollars ($20,000), or by both the fine and imprisonment, or, alternatively, by imprisonment in the county jail for not more than one year, or by a fine of not more than twenty thousand dollars ($20,000), or by both the fine and imprisonment.

(b) Except as otherwise provided in subdivision (a) or (c), every person who overdrives, overloads, drives when overloaded, overworks, tortures, torments, deprives of necessary sustenance, drink, or shelter, cruelly beats, mutilates, or cruelly kills any animal, or causes or procures any animal to be so overdriven, overloaded, driven when overloaded, overworked, tortured, tormented, deprived of necessary sustenance, drink, shelter, or to be cruelly beaten, mutilated, or cruelly killed; and whoever, having the charge or custody of any animal, either as owner or otherwise, subjects any animal to needless suffering, or inflicts unnecessary cruelty upon the animal, or in any manner abuses any animal, or fails to provide the animal with proper food, drink, or shelter or protection from the weather, or who drives, rides, or otherwise uses the animal when unfit for labor, is, for every such offense, guilty of a crime punishable as a misdemeanor or as a felony or alternatively punishable as a misdemeanor or felony and by a fine of not more than twenty thousand dollars ($20,000).

(c) Every person who maliciously and intentionally maims, mutilates, or tortures any mammal, bird, reptile, amphibian, or fish as described in subdivision (d), is guilty of an offense punishable by imprisonment in the state prison, or by a fine of not more than twenty thousand dollars ($20,000), or by both the fine and imprisonment, or, alternatively, by imprisonment in the county jail for not more than one year, by a fine of not more than twenty thousand dollars ($20,000), or by both the fine and imprisonment.

(d) Subdivision (c) applies to any mammal, bird, reptile, amphibian, or fish which is a creature described as follows:

(1) Endangered species or threatened species as described in Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code.

(2) Fully protected birds described in Section 3511 of the Fish and Game Code.

(3) Fully protected mammals described in Chapter 8 (commencing with Section 4700) of Part 3 of Division 4 of the Fish and Game Code.

(4) Fully protected reptiles and amphibians described in Chapter 2 (commencing with Section 5050) of Division 5 of the Fish and Game Code.

(5) Fully protected fish as described in Section 5515 of the Fish and Game Code.

This subdivision does not supersede or affect any provisions of law relating to taking of the described species, including, but not limited to, Section 12008 of the Fish and Game Code.

(e) For the purposes of subdivision (c), each act of malicious and intentional maiming, mutilating, or torturing a separate specimen of a creature described in subdivision (d) is a separate offense. If any person is charged with a violation of subdivision (c), the proceedings shall be subject to Section 12157 of the Fish and Game Code.

(f) Upon the conviction of a person charged with a violation of this

section by causing or permitting an act of cruelty, as defined in Section 599b, all animals lawfully seized and impounded with respect to the violation by a peace officer, officer of a humane society, or officer of a pound or animal regulation department of a public agency shall be adjudged by the court to be forfeited and shall thereupon be awarded to the impounding officer for proper disposition. A person convicted of a violation of this section by causing or permitting an act of cruelty, as defined in Section 599b, shall be liable to the impounding officer for all costs of impoundment from the time of seizure to the time of proper disposition.

Mandatory seizure or impoundment shall not apply to animals in properly conducted scientific experiments or investigations performed under the authority of the faculty of a regularly incorporated medical college or university of this state.

SEC 3. Section 597 of the Penal Code, as amended by Chapter 127 of the Statutes of 1988, is amended to read:

597. (a) Except as provided in subdivision (c) of this section or Section 599c, every person who maliciously and intentionally maims, mutilates, tortures, or wounds a living animal, or maliciously and intentionally kills an animal , is guilty of an offense punishable by imprisonment in the state prison, or by a fine of not more than twenty thousand dollars ($20,000), or by both the fine and imprisonment, or, alternatively, by imprisonment in the county jail for not more than one year, or by a fine of not more than twenty thousand dollars ($20,000), or by both the fine and imprisonment.

(b) Except as otherwise provided in subdivision (a) or (c), every person who overdrives, overloads, drives when overloaded, overworks, tortures, torments, deprives of necessary sustenance, drink, or shelter, cruelly beats, mutilates, or cruelly kills any animal, or causes or procures any animal to be so overdriven, overloaded, driven when overloaded, overworked, tortured, tormented, deprived of necessary sustenance, drink, shelter, or to be cruelly beaten, mutilated, or cruelly killed; and whoever, having the charge or custody of any animal, either as owner or otherwise, subjects any animal to needless suffering, or inflicts unnecessary cruelty upon the animal, or in any manner abuses any animal, or fails to provide the animal with proper food, drink, or shelter or protection from the weather, or who drives, rides, or otherwise uses the animal when unfit for labor, is, for every such offense, guilty of an offense punishable by imprisonment in the county jail for not more than one year or by a fine of not more than twenty thousand dollars ($20,000) or by both the fine and imprisonment.

(c) Every person who maliciously and intentionally maims, mutilates, or tortures any mammal, bird, reptile, amphibian, or fish as described in subdivision (d), is guilty of an offense punishable by imprisonment in the state prison, or by a fine of not more than twenty thousand dollars ($20,000), or by both the fine and imprisonment, or, alternatively, by imprisonment in the county jail for not more than one year, by a fine of not more than twenty

thousand dollars ($20,000), or by both the fine and imprisonment.

(d) Subdivision (c) applies to any mammal, bird, reptile, amphibian, or fish which is a creature described as follows:

(1) Endangered species or threatened species as described in Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code.

(2) Fully protected birds described in Section 3511 of the Fish and Game Code.

(3) Fully protected mammals described in Chapter 8 (commencing with Section 4700) of Part 3 of Division 4 of the Fish and Game Code.

(4) Fully protected reptiles and amphibians described in Chapter 2 (commencing with Section 5050) of Division 5 of the Fish and Game Code.

(5) Fully protected fish as described in Section 5515 of the Fish and Game Code.

This subdivision does not supersede or affect any provisions of law relating to taking of the described species, including, but not limited to, Section 12008 of the Fish and Game Code.

(e) For the purposes of subdivision (c), each act of malicious and intentional maiming, mutilating, or torturing a separate specimen of a creature described in subdivision (d) is a separate offense. If any person is charged with a violation of subdivision (c), the proceedings shall be subject to Section 12157 of the Fish and Game Code.

(f) Upon the conviction of a person charged with a violation of this section by causing or permitting an act of cruelty, as defined in Section 599b, all animals lawfully seized and impounded with respect to the violation by a peace officer, officer of a humane society, or officer of a pound or animal regulation department of a public agency shall be adjudged by the court to be forfeited and shall thereupon be awarded to the impounding officer for proper disposition. A person convicted of a violation of this section by causing or permitting an act of cruelty, as defined in Section 599b, shall be liable to the impounding officer for all costs of impoundment from the time of seizure to the time of proper disposition.

Mandatory seizure or impoundment shall not apply to animals in properly conducted scientific experiments or investigations performed under the authority of the faculty of a regularly incorporated medical college or university of this state.

SEC. 4. Section 597 of the Penal Code, as amended by Chapter 127 of the Statutes of 1988, is amended to read:

597. (a) Except as provided in subdivision (c) of this section or Section 599c, every person who maliciously and intentionally maims, mutilates, tortures, or wounds a living animal, or maliciously and intentionally kills an animal , is guilty of an offense punishable by imprisonment in the state prison, or by a fine of not more than twenty thousand dollars ($20,000), or by both the fine and imprisonment, or, alternatively, by imprisonment in the county jail for not more than one year, or by a fine of not more than twenty

thousand dollars ($20,000), or by both the fine and imprisonment.

(b) Except as otherwise provided in subdivision (a) or (c), every person who overdrives, overloads, drives when overloaded, overworks, tortures, torments, deprives of necessary sustenance, drink, or shelter, cruelly beats, mutilates, or cruelly kills any animal, or causes or procures any animal to be so overdriven, overloaded, driven when overloaded, overworked, tortured, tormented, deprived of necessary sustenance, drink, shelter, or to be cruelly beaten, mutilated, or cruelly killed; and whoever, having the charge or custody of any animal, either as owner or otherwise, subjects any animal to needless suffering, or inflicts unnecessary cruelty upon the animal, or in any manner abuses any animal, or fails to provide the animal with proper food, drink, or shelter or protection from the weather, or who drives, rides, or otherwise uses the animal when unfit for labor, is, for every such offense, guilty of a crime punishable as a misdemeanor or as a felony or alternatively punishable as a misdemeanor or a felony and by a fine of not more than twenty thousand dollars ($20,000).

(c) Every person who maliciously and intentionally maims, mutilates, or tortures any mammal, bird, reptile, amphibian, or fish as described in subdivision (d), is guilty of an offense punishable by imprisonment in the state prison, or by a fine of not more than twenty thousand dollars ($20,000), or by both the fine and imprisonment, or, alternatively, by imprisonment in the county jail for not more than one year, by a fine of not more than twenty thousand dollars ($20,000), or by both the fine and imprisonment.

(d) Subdivision (c) applies to any mammal, bird, reptile, amphibian, or fish which is a creature described as follows:

(1) Endangered species or threatened species as described in Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code.

(2) Fully protected birds described in Section 3511 of the Fish and Game Code.

(3) Fully protected mammals described in Chapter 8 (commencing with Section 4700) of Part 3 of Division 4 of the Fish and Game Code.

(4) Fully protected reptiles and amphibians described in Chapter 2 (commencing with Section 5050) of Division 5 of the Fish and Game Code.

(5) Fully protected fish as described in Section 5515 of the Fish and Game Code.

This subdivision does not supersede or affect any provisions of law relating to taking of the described species, including, but not limited to, Section 12008 of the Fish and Game Code.

(e) For the purposes of subdivision (c), each act of malicious and intentional maiming, mutilating, or torturing a separate specimen of a creature described in subdivision (d) is a separate offense. If any person is charged with a violation of subdivision (c), the proceedings shall be subject to Section 12157 of the Fish and Game Code.

(f) Upon the conviction of a person charged with a violation of this section by causing or permitting an act of cruelty, as defined in Section 599b, all animals lawfully seized and impounded with respect to the violation by a peace officer, officer of a humane society, or officer of a pound or animal regulation department of a public agency shall be adjudged by the court to be forfeited and shall thereupon be awarded to the impounding officer for proper disposition. A person convicted of a violation of this section by causing or permitting an act of cruelty, as defined in Section 599b, shall be liable to the impounding officer for all costs of impoundment from the time of seizure to the time of proper disposition.

Mandatory seizure or impoundment shall not apply to animals in properly conducted scientific experiments or investigations performed under the authority of the faculty of a regularly incorporated medical college or university of this state.

SEC. 5. (a) Section 2 of this bill incorporates, in substantial part, amendments to Section 597 of the Penal Code proposed by both this bill and SB 2136. It shall only become operative if (1) both bills are enacted and become effective January 1, 1989, (2) each bill amends Section 597 of the Penal Code, (3) AB 2863 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after SB 2136, 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 597 of the Penal Code proposed by both this bill and AB 2863. It shall only become operative if (1) both bills are enacted and become effective January 1, 1989, (2) each bill amends Section 597 of the Penal Code, (3) SB 2136 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 2863 in which case Sections 1, 2, and 4 of this bill shall not become operative.

(c) Section 4 of this bill incorporates, in substantial part, amendments to Section 597 of the Penal Code proposed by this bill, SB 2136, and AB 2863. It shall only become operative if (1) all three bills are enacted and become effective January 1, 1989, (2) all three bills amend Section 597 of the Penal Code, (3) this bill is enacted after SB 2136 and AB 2863, in which case Sections 1, 2, and 3 of this bill shall not become operative.

## CHAPTER 1557

An act to amend Section 4709 of the Labor Code, relating to firefighters.

[Approved by Governor September 29, 1988. Filed with Secretary of State September 30, 1988.]

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

SECTION 1. Section 4709 of the Labor Code is amended to read:

4709. (a) Notwithstanding any other provisions of law to the contrary, each dependent of any chief of police, police officer, sheriff, deputy sheriff, marshal or deputy marshal of the municipal courts, or member of the California Highway Patrol who is killed in the performance of duty or who dies or is totally disabled as a result of an accident or an injury caused by external violence or physical force, incurred in the performance of duty, when the death, accident, or injury is compensable under this division or Division 4.5 (commencing with Section 6100) shall be entitled to a scholarship at any one of the institutions of collegiate grade located in California if the institution offers a two-year junior college or four-year college course and is accredited or is a candidate for accreditation by the Western Association of Schools and Colleges. The scholarship is to include payment of tuition and fees, monthly allowance, books, and supplies. If the dependent attends a four-year college or university, the scholarship award shall not exceed six thousand dollars ($6,000) over a period not to exceed six years, with a maximum of one thousand five hundred dollars ($1,500) per year if he or she has demonstrated his or her financial need for the scholarship. If the dependent attends a community college, the scholarship award shall not exceed five hundred dollars ($500) per year for a period not to exceed four years. This shall not preclude any other benefits provided by law.

(b) Each dependent of an officer or employee of the Department of Corrections or the Department of Youth Authority described in Section 20017.77 of the Government Code who is killed in the performance of duty, or who dies or is totally disabled as a result of an accident or an injury incurred in the performance of duty, when the death, accident, or injury is caused by the direct action of an inmate, and is compensable under this division or Division 4.5 (commencing with Section 6100), shall also be entitled to a scholarship specified in this section.

(c) Notwithstanding any other provisions of law to the contrary, each dependent of any firefighter employed by counties, cities, cities and counties, districts and other political subdivisions of the state, who is killed in the performance of duty or who dies or is totally disabled as a result of an accident or injury incurred in the performance of duty, when the death, accident, or injury is

compensable under this division or Division 4.5 (commencing with Section 6100), shall also be entitled to a scholarship specified in this section. The scholarship provided for by this subdivision shall be paid out of funds annually appropriated in the Budget Act to the Student Aid Commission established by Article 2 (commencing with Section 69510) of Chapter 2 of Part 42 of the Education Code.

(d) Nothing in this section shall be interpreted to allow the admittance of the dependent into a college or university unless the dependent is otherwise qualified to gain admittance to the college or university.

As used in this section, "dependent" means the children (natural or adopted), at the time of his or her death, of the peace officer, law enforcement officer, or firefighter who is killed, or who receives injuries which result in his or her subsequent death.

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 five hundred thousand dollars ($500,000), reimbursement shall be made from the State Mandates Claims Fund.

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## CHAPTER 1558

An act to add and repeal Chapter 10 (commencing with Section 15399.40) of Part 6.7 of Division 3 of Title 2 of, and to add and repeal Section 16429.51 of, the Government Code, relating to economic development, and making an appropriation therefor.

[Approved by Governor September 29, 1988. Filed with Secretary of State September 30, 1988.]

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

SECTION 1. Chapter 10 (commencing with Section 15399.40) is added to Part 6.7 of Division 3 of Title 2 of the Government Code, to read:

### CHAPTER 10. SUPERCOMPUTER CENTER

15399.40. It is the intent of the Legislature to provide an investment package of up to two million dollars ($2,000,000) annually, for the 1989–90, 1990–91, and 1991–92 fiscal years, for the graphics and animations facility at the San Diego Supercomputer Center and seventy thousand dollars ($70,000), including forty-five thousand dollars ($45,000) in private sector matching funds, for a

study regarding the development and operation of an additional supercomputer center in coordination with the Technology Center of Silicon Valley and the San Diego Supercomputer Center.

15399.41. (a) It is the intent of the Legislature that there be established in the state, based on recommendations of the study required by this section, a supercomputer center in coordination with the Technology Center of Silicon Valley and the San Diego Supercomputer Center.

(b) The purpose of the study shall be to do all of the following:

(1) Identify the supercomputer needs in the state considering the availability of existing supercomputers.

(2) Identify the most cost-effective methods for establishing a center pursuant to this section.

(3) Identify potential sources of funding for establishing a center pursuant to this section.

(4) Identify any additional needs and costs for the San Diego Supercomputer Center.

(5) Identify the potential of attracting more business to California as a result of supercomputer capabilities.

(c) The Department of Commerce shall contract for the preparation of the study described in this section and shall submit the completed study to the Legislature no later than September 30, 1989.

15399.42. The sum of twenty-five thousand dollars ($25,000) is hereby appropriated from the moneys deposited in the California Unitary Fund to the Department of Commerce for the purpose of contracting for the study pursuant to Section 15399.41. This appropriation shall be contingent upon the receipt of forty-five thousand dollars ($45,000) in private sector matching funds by the department.

15399.43. This chapter shall become inoperative on June 30, 1992, and, as of January 1, 1993, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 1993, deletes or extends the dates on which it becomes operative and is repealed.

SEC. 2. Section 16429.51 is added to the Government Code, to read:

16429.51. (a) Notwithstanding any other provision of law, there is hereby transferred annually to the Supercomputer Center Account, which is hereby created in the General Fund, on July 1 for each of the 1989–90, 1990–91, and 1991–92 fiscal years the amount of two million dollars ($2,000,000) from the moneys deposited in the California Unitary Fund. Funds so transferred to the account are hereby appropriated for the purposes of Chapter 10 (commencing with Section 15399.40) of Part 6.7.

(b) The Legislature declares the following:

(1) The moneys transferred pursuant to this section are for the one-time purchase of a graphics facility and shall not be used for operating expenses.

(2) The total expenditure of six million dollars ($6,000,000) is being distributed over a three-year period for financing purposes

and to diffuse the impact on the California Unitary Fund.

(3) The graphics facility will promote economic development in this state and is an appropriate use of moneys in the California Unitary Fund.

(c) This section shall become inoperative on June 30, 1992, and, as of January 1, 1993, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 1993, deletes or extends the dates on which it becomes inoperative and is repealed.

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## CHAPTER 1559

An act to add Section 226 to the Revenue and Taxation Code, relating to taxation, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 29, 1988. Filed with Secretary of State September 30, 1988.]

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

SECTION 1. Section 226 is added to the Revenue and Taxation Code, to read:

226. (a) Personal property consisting of qualified computer equipment shall be exempt from taxation.

(b) For purposes of this section:

(1) "Qualified computer equipment" means all computer equipment of the San Diego Supercomputer Center located on the campus of the University of California, San Diego.

(2) "Computer equipment" includes, but is not limited to, any supercomputer and all peripheral computer and other equipment related to the system of which the supercomputer is the principal component and all other equipment that becomes a part of that supercomputer system.

SEC. 2. The Legislature, in enacting Section 1 of this act, finds and declares that a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution due to the following unique circumstances:

The Integrated Supercomputer System located at the San Diego Supercomputer Center on the San Diego campus of the University of California is one of only five supercomputer centers in the United States which is established to fulfill objectives set by the National Science Foundation and is the only center of its kind in this state. This center provides a significant computational resource for research and related educational activities conducted by state-funded public universities and colleges. Funding for the operation of this center comes primarily from the National Science Foundation and the State of California, with the state having also contributed the site for the center and capital improvements for its operation.

SEC. 3. This act would make a classification or exemption of property for purposes of ad valorem property taxation within the meaning of Section 2229 of the Revenue and Taxation Code.

SEC. 4. This act shall be applicable to property taxes levied for the 1988–89 fiscal year and fiscal years thereafter.

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 that the exemption provided by this act may be made applicable to the 1988-89 fiscal year, it is necessary that this act go into immediate effect.

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## CHAPTER 1560

An act to amend the heading of Division 4.1 (commencing with Section 8301) of, to add a chapter heading to Division 4.1 (commencing with Section 8301) of, to amend Section 8301 of, to add Chapter 2 (commencing with Section 8321) to Division 4.1 of, and to repeal Chapter 7.5 (commencing with Section 1361) of Part 1 of Division 1 of, the Public Utilities Code, relating to electricity.

[Approved by Governor September 30, 1988. Filed with Secretary of State September 30, 1988.]

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

SECTION 1. Chapter 7.5 (commencing with Section 1361) of Part 1 of Division 1 of the Public Utilities Code is repealed.

SEC. 2. The heading of Division 4.1 (commencing with Section 8301) of the Public Utilities Code is amended to read:

### DIVISION 4.1. PROVISIONS APPLICABLE TO PRIVATELY OWNED AND PUBLICLY OWNED PUBLIC UTILITIES

SEC. 3. A chapter heading is added to Division 4.1 (commencing with Section 8301) of the Public Utilities Code, immediately preceding Section 8301 thereof, to read:

### CHAPTER 1. NUCLEAR POWERPLANT COMMUNITIES INFORMATION

SEC. 4. Section 8301 of the Public Utilities Code is amended to read:

8301. This chapter shall be known and may be cited as the Nuclear Powerplant Communities Information Act of 1985.

SEC. 5. Chapter 2 (commencing with Section 8321) is added to Division 4.1 of the Public Utilities Code, to read:

## CHAPTER 2. DECOMMISSIONING OF NUCLEAR FACILITIES

8321. This chapter shall be known and may be cited as the Nuclear Facility Decommissioning Act of 1985.

8322. The Legislature hereby finds and declares all of the following:

(a) The citizens of California should be protected from exposure to radiation from nuclear facilities.

(b) It is in the best interests of all citizens of California that the costs of electricity generated by nuclear facilities be fairly distributed among present and future California electric customers so that customers are charged only for costs that are reasonably and prudently incurred.

(c) The costs of electricity generated by nuclear facilities, including the costs of their decontamination and decommissioning, should be reduced to the lowest level consistent with public health and safety.

(d) The ultimate costs of the decommissioning of nuclear facilities are of significant magnitude, and introduce an element of financial risk to both electric customers and investors unless prudent provision is made for defraying those costs.

(e) In order to reduce both risk and ultimate costs for all of its citizens, the State of California should establish a comprehensive framework for timely payment of the costs of decommissioning, and provide for allocation of risks and costs among the respective interests.

(f) The principal considerations in establishing a state policy respecting the economic aspects of decommissioning are as follows:

(1) Assuring that the funds required for decommissioning are available at the time and in the amount required for protection of the public.

(2) Minimizing the cost to electric customers of an acceptable level of assurance.

(3) Structuring payments for decommissioning so that electric customers and investors are treated equitably over time so that customers are charged only for costs that are reasonably and prudently incurred.

(g) Decommissioning nuclear facilities causes electric utility employees to become unemployed through no fault of their own, and these employees are entitled to reasonable job protection the costs of which are properly includable in the costs of decommissioning.

8323. It is the intent of the Legislature in enacting this chapter to protect electric customers, both present and future, from the risks of unreasonable costs associated with ownership and operation of nuclear powerplants. To that end, the commission or board with respect to each electric utility owning or operating a nuclear powerplant, shall develop regulations and guidelines that promote realism in estimating costs, provide periodic review procedures that create maximum incentives for accurate cost estimations, and

provide for decommissioning cost controls.

8324. Unless the context otherwise requires, the definitions in this section govern the construction of this chapter.

(a) "Board" means the board of directors or other governing body of a publicly owned public utility owning or operating a nuclear power plant.

(b) "Commission" means the Public Utilities Commission.

(c) "Electrical utility" includes both an electrical corporation subject to the jurisdiction and control of the commission and a publicly owned public utility subject to the jurisdiction and control of its board, in either case owning or operating nuclear facilities for the generation of electricity.

(d) "Decommissioning" means to remove nuclear facilities safely from service and to reduce residual radioactivity to a level that permits release of the property for unrestricted use and termination of license, or as otherwise defined by the Nuclear Regulatory Commission or its successor. Decommissioning includes other activities and costs, if any, which may be included in Internal Revenue Service regulations implementing Section 468A of the United States Internal Revenue Code.

(e) "Nuclear facilities" means the site, building and contents, and equipment associated with any activity licensed by the Nuclear Regulatory Commission, or as may be otherwise defined by the Nuclear Regulatory Commission or its successor.

8325. (a) Each electrical corporation owning, in whole or in part, or operating nuclear facilities, located in California or elsewhere, shall establish an externally managed, segregated fund for the purposes of this chapter. In addition, each electrical corporation may establish other funds, as appropriate, for payment of decommissioning costs of nuclear facilities.

(b) The externally managed, segregated fund established pursuant to subdivision (a) shall be a fund which qualifies for a tax deduction pursuant to Section 468A of the United States Internal Revenue Code, and applicable regulations of the Internal Revenue Service adopted pursuant thereto, if that tax treatment is determined by the commission to be in the best long-term interests of the customers of the electrical utility.

(c) The commission shall authorize an electrical corporation to collect sufficient revenues in rates to make the maximum contributions to the fund established pursuant to Section 468A of the United States Internal Revenue Code and applicable regulations, that are deductible for federal and state income tax purposes, and to otherwise recover the revenue requirements associated with reasonable and prudent decommissioning costs of the nuclear facilities for purposes of making contributions into other funds established pursuant to subdivision (a).

(d) Notwithstanding any other provision of this section, an electrical utility, which is a publicly owned public utility subject to the jurisdiction and control of its board, shall establish and may

manage a separate fund for purposes of this chapter. The board shall provide that the amounts of all payments into this fund are recoverable through the utility's electric rates.

8326. (a) Each electrical utility owning, in whole or in part, or operating a nuclear facility, located in California or elsewhere, shall provide a decommissioning cost estimate to the commission or the board for all nuclear facilities which shall include all of the following:

(1) An estimate of costs of decommissioning.

(2) A description of changes in regulation, technology, and economics affecting the estimate of costs.

(3) A description of additions and deletions to nuclear facilities.

(4) Upon request of the commission or the board, other information required by the Nuclear Regulatory Commission regarding decommissioning costs.

(b) The decommissioning costs estimate study shall be periodically revised in accordance with procedures adopted by the commission or the board pursuant to Section 8327.

8327. The commission or the board shall review, in conjunction with each proceeding of the electrical utility held for the purpose of considering changes in electrical rates or charges, the decommissioning costs estimate for the electrical utility in order to ensure that the estimate takes account of the changes in the technology and regulation of decommissioning, the operating experience of each nuclear facility, and the changes in the general economy. The review shall specifically include all cost estimates, the basis for the cost estimates, and all assumptions about the remaining useful life of the nuclear facilities.

8328. The expenses associated with decommissioning of nuclear facilities shall be paid from the funds established pursuant to Section 8325. If the money in the funds is insufficient for payment of all decommissioning costs, the commission or the board shall determine whether the costs incurred in excess of the money in the funds are reasonable in amount and prudently incurred. If the commission or the board determines that the excess costs are reasonable in amount and prudently incurred, the commission or the board shall authorize these costs to be charged to the customers of the electric utility.

8329. The commission or the board shall, for purposes of establishing rates or charges, review and approve the estimated service life and estimated retirement date of all nuclear facilities.

8330. Every electrical utility involved in decommissioning, closure, or removal of nuclear facilities, shall provide assistance in finding comparable alternative employment opportunities for its employees who become unemployed as the result of decommissioning, closure, or removal. The commission or the board shall authorize the electrical utility to collect sufficient revenue through electric rates and charges to recover the cost, if any, of compliance with this section.

SEC. 6. 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.

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## CHAPTER 1561

An act to add Sections 16759 and 66474.3 to the Government Code, relating to bonds.

[Approved by Governor September 30, 1988. Filed with Secretary of State September 30, 1988.]

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

SECTION 1. Section 16759 is added to the Government Code, to read:

16759. The Treasurer shall submit to the Chairperson of the Joint Legislative Budget Committee, after each sale of bonds authorized to be sold under this chapter, an update as to the percentage of general fund moneys that would be used to service the resulting general obligation bond obligations.

SEC. 2. Section 66474.3 is added to the Government Code, to read:

66474.3. (a) If the legislative body of a city or county finds, based upon substantial evidence in the record, that any project for which a tentative map or a vesting tentative map has been approved will be affected by a previously enacted initiative measure to the extent that there is likely to be a default on land-secured bonds issued to finance infrastructure on the project, the legislative body shall allow that portion of the project served by that infrastructure to proceed in a manner consistent with the approved tentative map or vesting tentative map.

(b) For purposes of this section, land-secured bond means any bond issued pursuant to the Improvement Act of 1911 (Division 7 (commencing with Section 5000) of the Streets and Highways Code), the Municipal Improvement Act of 1913 (Division 12 (commencing with Section 10000) of the Streets and Highways Code), the Improvement Bond Act of 1915 (Division 10 (commencing with Section 8500) of the Streets and Highways Code), or the Mello-Roos Community Facilities Act of 1982 (Chapter 2.5 (commencing with Section 53311) of Part 1 of Division 2 of Title 5, so long as the bond was issued and sold at least 90 days before the proposed initiative was adopted by either popular vote at an election or by ordinance adopted by the legislative body.

(c) Notwithstanding subdivision (a), the legislative body may condition or deny a permit, approval, extension, or entitlement if it determines any of the following:

(1) A failure to do so would place the residents of the subdivision

or the immediate community, or both, in a condition dangerous to their health or safety, or both.

(2) The condition or denial is required, in order to comply with state or federal law.

(d) An approved or conditionally approved tentative or vesting tentative map shall be subject to the periods of time set forth in Section 66452.6.

(e) The rights conferred by this section shall expire if a final map is not approved prior to the expiration of the tentative map or of the vesting tentative map.

(f) An approved or conditionally approved tentative map or vesting tentative map shall not limit a legislative body from imposing reasonable conditions on subsequent required approvals or permits necessary for the development and authorized by the ordinances, policies, and standards described in Section 66474.2 or 66498.1.

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## CHAPTER 1562

An act to amend Section 3 of Chapter 7 of the 1987–88 First Extraordinary Session, and to amend Section 11.80 of the Budget Act of 1988 (Ch. 313, Stats. 1988), relating to earthquake relief.

[Approved by Governor September 30, 1988 Filed with Secretary of State September 30, 1988 ]

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

SECTION 1. Section 3 of Chapter 7 of the 1987–88 First Extraordinary Session is amended to read:

Sec. 3. (a) The sum of forty-six million five hundred thousand dollars ($46,500,000) is hereby transferred from the Special Fund for Economic Uncertainties to the Disaster Response-Emergency Operations Account for allocation by the Director of Finance in accordance with Section 8690.6 of the Government Code and this section.

(b) Of the funds transferred pursuant to subdivision (a), the sum of thirty-four million five hundred thousand dollars ($34,500,000) shall be allocated to the 1987 Southern California Earthquake Account for assistance to local agencies.

(c) Of the funds transferred pursuant to subdivision (a), the sum of one million eight hundred thousand dollars ($1,800,000) shall be allocated to the 1987 Southern California Earthquake Account for assistance to state agencies.

(d) In addition to any other amounts appropriated in this or any other statute, of the funds appropriated pursuant to subdivision (a), the sum of ten million two hundred thousand dollars ($10,200,000) shall be allocated to the Superintendent of Public Instruction for allocation to school districts and county offices of education.

These funds may only be expended for expenses incurred as a result of the October 1, 1987, earthquake and aftershocks that do not qualify for funding under Section 7 of Public Law 81-874, 20 USC Section 241-1, and do not qualify as minimum school facilities under the regulations implementing Section 16 of Public Law 81-815, 20 USC Section 646.

(e) The funds appropriated in this section shall be available for expenditure until June 30, 1991.

SEC. 2. Section 11.80 of the Budget Act of 1988 (Ch. 313, Stats. 1988) is amended to read:

SEC. 11.80. (a) Notwithstanding any other provision of law, on June 30, 1988, the State Controller shall transfer the amount of twenty-six million fifty-nine thousand dollars ($26,059,000) to the General Fund from the following appropriations:

| | |
|---|---|
| Disaster Response—Emergency Operations Account: | |
| (1) Chapter 1, 1987–88 First Extraordinary Session, Community Colleges | 1,200,000 |
| (2) Chapter 1, 1987–88 First Extraordinary Session, State University Program | 569,000 |
| (3) Chapter 2, 1987–88 First Extraordinary Session, Department of Social Services | 8,800,000 |
| (4) Chapter 7, 1987–88 First Extraordinary Session, Local Agency Program | 15,300,000 |
| (5) Chapter 7, 1987–88 First Extraordinary Session, State Agency Program | 190,000 |

(b) There is hereby appropriated the sum of one million six hundred ninety-one thousand five hundred dollars ($1,691,500) from the funds made available by the reversions specified above in augmentation of the appropriation for the Private Non-Profit Program in Section 2 of Chapter 3 of the 1987–88 First Extraordinary Session.

(c) There is hereby appropriated the sum of three million three hundred ninety thousand dollars ($3,390,000) from the funds made available by the reversions specified above in augmentation of the appropriation for the K-12 School Program in subdivisions (d) and (e) of Section 3 of Chapter 7 of the 1987–88 First Extraordinary Session, as amended by the Statutes of 1988.

# CHAPTER 1563

An act to add Sections 33334.8, 33760.7, 34312.6, 50744.5, 50962, and 52087 to the Health and Safety Code, relating to housing.

[Approved by Governor September 30, 1988. Filed with Secretary of State September 30, 1988.]

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

SECTION 1. Section 33334.8 is added to the Health and Safety Code, to read:

33334.8. The same notice requirements as specified in Section 65863.10 of the Government Code shall apply to multifamily rental housing that receives financial assistance pursuant to Sections 33334.2, 33334.3, and 33334.6.

SEC. 2. Section 33760.7 is added to the Health and Safety Code, to read:

33760.7. The same notice requirements as specified in Section 65863.10 of the Government Code shall apply to multifamily rental housing that receives financial assistance pursuant to Section 33760 or 33760.5.

SEC. 3. Section 34312.6 is added to the Health and Safety Code, to read:

34312.6. The same notice requirements as specified in Section 65863.10 of the Government Code shall apply to multifamily rental housing that receives financial assistance pursuant to Section 34312.3.

SEC. 4. Section 50744.5 is added to the Health and Safety Code, to read:

50744.5. The same notice requirements as specified in Section 65863.10 of the Government Code shall apply to rental housing developments that receive financial assistance pursuant to this chapter.

SEC. 5. Section 50962 is added to the Health and Safety Code, to read:

50962. The same notice requirements as specified in Section 65863.10 of the Government Code shall apply to rental housing developments that receive financial assistance pursuant to this part.

SEC. 6. Section 52087 is added to the Health and Safety Code, to read:

52087. The same notice requirements as specified in Section 65863.10 of the Government Code shall apply to multifamily rental housing that receives financial assistance pursuant to this chapter.

## CHAPTER 1564

An act to amend Section 33334.2 of, and to add Sections 33136 and 33334.9 to, the Health and Safety Code, relating to redevelopment.

[Approved by Governor September 30, 1988. Filed with Secretary of State September 30, 1988.]

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

SECTION 1. Section 33136 is added to the Health and Safety Code, to read:

33136. An agency may finance the cost of premiums necessary for the provision of insurance during the construction or rehabilitation of properties that are administered by governmental entities or nonprofit organizations to provide housing for lower income households, as defined in Section 50079.5, including rental properties, emergency shelters, transitional housing, or special residential care facilities.

SEC. 2. Section 33334.2 of the Health and Safety Code is amended to read:

33334.2. (a) Not less than 20 percent of all taxes which are allocated to the agency pursuant to Section 33670 shall be used by the agency for the purposes of increasing and improving the community's supply of low- and moderate-income housing available at affordable housing cost, as defined by Section 50052.5, to persons and families of low or moderate income, as defined in Section 50093, and very low income households, as defined in Section 50105, unless one of the following findings is made annually by resolution:

(1) That no need exists in the community to improve or increase the supply of low- and moderate-income housing in a manner which would benefit the project area and that this finding is consistent with the housing element of the community's general plan required by Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7 of the Government Code.

(2) That some stated percentage less than 20 percent of the taxes which are allocated to the agency pursuant to Section 33670 is sufficient to meet the housing needs of the community and that this finding is consistent with the housing element of the community's general plan required by Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7 of the Government Code.

(3) That the community is making a substantial effort to meet its existing and projected housing needs, including its share of the regional housing needs, with respect to persons and families of low and moderate income, particularly very low income households, as identified in the housing element of the community's general plan required by Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7 of the Government Code, and that this effort, consisting of direct financial contributions of local funds

used to increase and improve the supply of housing affordable to persons and families of low or moderate income and very low income households, is equivalent in impact to the funds otherwise required to be set aside pursuant to this section. In addition to any other local funds, these direct financial contributions may include federal or state grants paid directly to a community and which the community has the discretion of using for the purposes for which moneys in the Low and Moderate Income Housing Fund may be used. The legislative body shall consider the need which can be reasonably foreseen because of displacement of persons and families of low or moderate income or very low income households from within, or adjacent to, the project area, because of increased employment opportunities, or because of any other direct or indirect result of implementation of the redevelopment plan. No finding under this subdivision may be made until the community has provided or ensured the availability of replacement dwelling units as defined in Section 33411.2 and until it has complied with the provisions of Article 9 (commencing with Section 33410).

(b) Within 10 days following the making of a finding under subdivision (a), the agency shall send the Department of Housing and Community Development a copy of the finding, including the factual information supporting the finding.

(c) In any litigation to challenge or attack a finding made under paragraph (1), (2), or (3) of subdivision (a), the burden shall be upon the agency to establish that the finding is supported by substantial evidence in light of the entire record before the agency.

(d) Nothing in this section shall be construed as relieving any other public entity or entity with the power of eminent domain of any legal obligations for replacement or relocation housing arising out of its activities.

(e) In carrying out the purpose of this section, the agency may exercise any or all of its powers, including the following:

(1) Acquire land or building sites.

(2) Improve land or building sites with onsite or offsite improvements, but only if the improvements directly and specifically improve or increase the community's supply of low- or moderate-income housing.

(3) Donate land to private or public persons or entities.

(4) Finance insurance premiums pursuant to Section 33136.

(5) Construct buildings or structures.

(6) Acquire buildings or structures.

(7) Rehabilitate buildings or structures.

(8) Provide subsidies to, or for the benefit of, very low income households, as defined by Section 50105, lower income households, as defined by Section 50079.5, or persons and families of low or moderate income, as defined by Section 50093, to the extent those households cannot obtain housing at affordable costs on the open market. Housing units available on the open market are those units developed without direct government subsidies. Subsidies for the

purpose of this paragraph include any costs or reduced income resulting from below-market-rate sale or lease, grant, or donation of land to private for-profit and nonprofit organizations for the purpose of providing low- and moderate-income housing, if at least half the units provided as a result of each transfer are affordable to lower income households, as defined in Section 50079.5.

(9) Develop plans, pay principal and interest on bonds, loans, advances, or other indebtedness, or pay financing or carrying charges.

(10) Maintain the community's supply of mobilehomes.

(11) Preserve the availability to lower income households of affordable housing units in housing developments which are assisted or subsidized by public entities and which are threatened with imminent conversion to market rates.

(f) The agency may use these funds to meet, in whole or in part, the replacement housing provisions in Section 33413. However, nothing in this section shall be construed as limiting in any way the requirements of that section.

(g) The agency may use these funds inside or outside the project area. The agency may only use these funds outside the project area upon a resolution of the agency and the legislative body that such use will be of benefit to the project. The determination by the agency and the legislative body shall be final and conclusive as to the issue of benefit to the project area. The Legislature finds and declares that the provision of replacement housing pursuant to Section 33413 is always of benefit to a project. Unless the legislative body finds before the redevelopment plan is adopted, that the provision of low- and moderate-income housing outside the project area will be of benefit to the project, the project area shall include property suitable for low- and moderate-income housing.

(h) The costs of undertaking activities authorized in subdivision (e) may be paid from an agency's Low and Moderate Income Housing Fund to the extent that those activities result in the provision or preservation of housing units which are consistent with this section.

(i) Any reduced income resulting from the below-market-rate sale or lease, grant, or donation of land to private for-profit and nonprofit organizations, as specified in paragraph (8) of subdivision (e), may be debited to an agency's Low and Moderate Income Housing Fund. The amount of any debit shall not be subject to any transfer required by law for failure to expend or encumber the moneys held in a Low and Moderate Income Housing Fund.

(j) The Legislature finds and declares that expenditures or obligations incurred by the agency pursuant to this section shall constitute an indebtedness of the project.

(k) The requirements of this section shall only apply to taxes allocated to a redevelopment agency for which a final redevelopment plan is adopted on or after January 1, 1977, or for any area which is added to a project by an amendment to a

redevelopment plan, which amendment is adopted on or after the effective date of this section. An agency may, by resolution, elect to make all or part of the requirements of this section applicable to any redevelopment project for which a redevelopment plan was adopted prior to January 1, 1977, subject to any indebtedness incurred prior to the election.

(*l*) (1) Notwithstanding Sections 50079.5, 50093, and 50105, for purposes of providing assistance to mortgagors participating in a homeownership residential mortgage revenue bond program pursuant to Section 33750, or a home financing program pursuant to Section 52020, or a California Housing Finance Agency home financing program, "area median income" means the highest of the following:

(A) Statewide median household income.

(B) Countywide median household income.

(C) Median family income for the area, as determined by the United States Department of Housing and Urban Development with respect to either a standard metropolitan statistical area or an area outside of a standard metropolitan statistical area.

Nothing in Section 50093 shall prevent the agency from adopting separate family size adjustment factors or programmatic definitions of income to qualify households, persons, and families for the programs of the agency.

(2) To the extent that any portion of the Low and Moderate Income Housing Fund is expended to provide assistance to mortgagors participating in programs whose income exceeds that of persons and families of low or moderate income, as defined in Section 50093, the agency shall, within two years, expend or enter into a legally enforceable agreement to expend twice that sum exclusively to increase and improve the community's supply of housing available at affordable housing cost, as defined in Section 50052.5, to lower income households, as defined in Section 50079.5, of which at least 50 percent shall be very low income households, as defined in Section 50105.

(3) In addition to the requirements of subdivision (c) of Section 33413, the agency shall require that the lower and very low income dwelling units developed pursuant to this subdivision remain available at affordable housing cost to lower and very low income households for at least 30 years, except as to dwelling units developed with the assistance of federal or state subsidy programs which terminate in a shorter period and cannot be extended or renewed.

(4) The agency shall include within the report required by Section 33080 information with respect to compliance by the agency with the requirements of this subdivision.

SEC. 2.5. Section 33334.2 of the Health and Safety Code is amended to read:

33334.2. (a) Not less than 20 percent of all taxes which are allocated to the agency pursuant to Section 33670 shall be used by the agency for the purposes of (A) increasing and improving the

community's supply of low- and moderate-income housing available at affordable housing cost, as defined by Section 50052.5, to persons and families of low or moderate income, as defined in Section 50093, and very low income households, as defined in Section 50105 and (B), if there is no need for housing funds or there are adequate housing funds, provision of child care facilities, unless one of the following findings is made annually by resolution:

(1) That no need exists in the community to (A) improve or increase the supply of low- and moderate-income housing in a manner which would benefit the project area and that this finding is consistent with the housing element of the community's general plan required by Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7 of the Government Code or (B) no need exists in the community for child-care facilities that would benefit the project area.

(2) That some stated percentage less than 20 percent of the taxes which are allocated to the agency pursuant to Section 33670 is sufficient to meet the housing and child-care needs of the community and that this finding, with respect to housing needs, is consistent with the housing element of the community's general plan required by Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7 of the Government Code.

(3) That the community is making a substantial effort to meet its existing and projected child care and housing needs, including its share of the regional housing needs, with respect to persons and families of low and moderate income, particularly very low income households, as identified in the housing element of the community's general plan required by Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7 of the Government Code, and that this effort, consisting of direct financial contributions of local funds used to increase and improve the supply of housing affordable to persons and families of low or moderate income and very low income households and to provide child-care facilities, is equivalent in impact to the funds otherwise required to be set aside pursuant to this section. In addition to any other local funds, these direct financial contributions may include federal or state grants paid directly to a community and which the community has the discretion of using for the purposes for which moneys in the Low and Moderate Income Housing Fund may be used. The legislative body shall consider the need which can be reasonably foreseen because of displacement of persons and families of low or moderate income or very low income households from within, or adjacent to, the project area, because of increased employment opportunities, or because of any other direct or indirect result of implementation of the redevelopment plan. No finding under this subdivision may be made until the community has provided or ensured the availability of replacement dwelling units as defined in Section 33411.2 and until it has complied with the provisions of Article 9 (commencing with Section 33410).

(b) Within 10 days following the making of a finding under subdivision (a), the agency shall send the Department of Housing and Community Development a copy of the finding, including the factual information supporting the finding.

(c) In any litigation to challenge or attack a finding made under paragraph (1), (2), or (3) of subdivision (a), the burden shall be upon the agency to establish that the finding is supported by substantial evidence in light of the entire record before the agency.

(d) Nothing in this section shall be construed as relieving any other public entity or entity with the power of eminent domain of any legal obligations for replacement or relocation housing arising out of its activities.

(e) In carrying out the purpose of this section, the agency may exercise any or all of its powers, including the following:

(1) Acquire land or building sites.

(2) Improve land or building sites with onsite or offsite improvements, but only if the improvements directly and specifically improve or increase the community's supply of low- or moderate-income housing.

(3) Donate land to private or public persons or entities.

(4) Finance insurance premiums pursuant to Section 33136.

(5) Construct buildings or structures.

(6) Acquire buildings or structures.

(7) Rehabilitate buildings or structures.

(8) Provide subsidies to, or for the benefit of, very low income households, as defined by Section 50105, lower income households, as defined by Section 50079.5, or persons and families of low or moderate income, as defined by Section 50093, to the extent those households cannot obtain housing at affordable costs on the open market. Housing units available on the open market are those units developed without direct government subsidies. Subsidies for the purpose of this paragraph include any costs or reduced income resulting from below-market-rate sale or lease, grant, or donation of land to private for-private and nonprofit organizations for the purpose of providing low- and moderate-income housing, if at least half the units provided as a result of each transfer are affordable to lower income households, as defined in Section 50079.5.

(9) Develop plans, pay principal and interest on bonds, loans, advances, or other indebtedness, or pay financing or carrying charges.

(10) Maintain the community's supply of mobilehomes.

(11) Preserve the availability to lower income households of affordable housing units in housing developments which are assisted or subsidized by public entities and which are threatened with imminent conversion to market rates.

(f) The agency may use these funds to meet, in whole or in part, the replacement housing provisions in Section 33413. However, nothing in this section shall be construed as limiting in any way the requirements of that section.

(g) The agency may use these funds inside or outside the project area. The agency may only use these funds outside the project area upon a resolution of the agency and the legislative body that such use will be of benefit to the project. The determination by the agency and the legislative body shall be final and conclusive as to the issue of benefit to the project area. The Legislature finds and declares that the provision of replacement housing pursuant to Section 33413 is always of benefit to a project. Unless the legislative body finds before the redevelopment plan is adopted, that the provision of low- and moderate-income housing outside the project area will be of benefit to the project, the project area shall include property suitable for low- and moderate-income housing.

(h) The costs of undertaking activities authorized in subdivision (e) may be paid from an agency's Low and Moderate Income Housing Fund to the extent that those activities result in the provision or preservation of housing units which are consistent with this section.

(i) Any reduced income resulting from the below-market-rate sale or lease, grant, or donation of land to private for-profit and nonprofit organizations, as specified in paragraph (8) of subdivision (e), may be debited to an agency's Low and Moderate Income Housing Fund. The amount of any debit shall not be subject to any transfer required by law for failure to expend or encumber the moneys held in a Low and Moderate Income Housing Fund.

(j) The Legislature finds and declares that expenditures or obligations incurred by the agency pursuant to this section shall constitute an indebtedness of the project.

(k) The requirements of this section shall only apply to taxes allocated to a redevelopment agency for which a final redevelopment plan is adopted on or after January 1, 1977, or for any area which is added to a project by an amendment to a redevelopment plan, which amendment is adopted on or after the effective date of this section. An agency may, by resolution, elect to make all or part of the requirements of this section applicable to any redevelopment project for which a redevelopment plan was adopted prior to January 1, 1977, subject to any indebtedness incurred prior to the election.

(*l*) (1) Notwithstanding Sections 50079.5, 50093, and 50105, for purposes of providing assistance to mortgagors participating in a homeownership residential mortgage revenue bond program pursuant to Section 33750, or a home financing program pursuant to Section 52020, or a California Housing Finance Agency home financing program, "area median income" means the highest of the following:

(A) Statewide median household income.

(B) Countywide median household income.

(C) Median family income for the area, as determined by the United States Department of Housing and Urban Development with respect to either a standard metropolitan statistical area or an area

outside of a standard metropolitan statistical area.

Nothing in Section 50093 shall prevent the agency from adopting separate family size adjustment factors or programmatic definitions of income to qualify households, persons, and families for the programs of the agency.

(2) To the extent that any portion of the Low and Moderate Income Housing Fund is expended to provide assistance to mortgagors participating in programs whose income exceeds that of persons and families of low or moderate income, as defined in Section 50093, the agency shall, within two years, expend or enter into a legally enforceable agreement to expend twice that sum exclusively to increase and improve the community's supply of housing available at affordable housing cost, as defined in Section 50052.5, to lower income households, as defined in Section 50079.5, of which at least 50 percent shall be very low income households, as defined in Section 50105.

(3) In addition to the requirements of subdivision (c) of Section 33413, the agency shall require that the lower and very low income dwelling units developed pursuant to this subdivision remain available at affordable housing cost to lower and very low income households for at least 30 years, except as to dwelling units developed with the assistance of federal or state subsidy programs which terminate in a shorter period and cannot be extended or renewed.

(4) The agency shall include within the report required by Section 33080 information with respect to compliance by the agency with the requirements of this subdivision.

SEC. 3. Section 33334.9 is added to the Health and Safety Code, to read:

33334.9. Notwithstanding Sections 33334.2 and 33334.3, assistance provided by an agency to preserve the availability to lower income households of affordable housing units which are assisted or subsidized by public entities and which are threatened with imminent conversion to market rates may be credited and offset against an agency's obligations under Section 33334.2.

SEC. 4. Section 2.5 of this bill incorporates amendments to Section 33334.2 of the Health and Safety Code proposed by both this bill and AB 3358. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1989, (2) each bill amends Section 33334.2 of the Health and Safety Code, and (3) this bill is enacted after AB 3358, in which case Section 2 of this bill shall not become operative.

# CHAPTER 1565

An act to amend Section 34312.5 of, and to add Sections 33080.7, 33334.10, and 33334.12 to, the Health and Safety Code, relating to redevelopment.

[Approved by Governor September 30, 1988. Filed with Secretary of State September 30, 1988.]

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

SECTION 1. This act shall be known and may be cited as the Polanco-Ferguson Housing Assistance Act.

SEC. 2. Section 33080.7 is added to the Health and Safety Code, to read:

33080.7. For puposes of compliance with subdivision (c) of Section 33080.1 and in addition to the requirements of Section 33080.4, the description of the agency's activities shall identify the amount of excess surplus, as defined in Section 33334.10, which has accumulated in the agency's Low and Moderate Income Housing Fund. Of the total excess surplus, the description shall also identify the amount that has accrued to the Low and Moderate Income Housing Fund during each fiscal year. This component of the annual report shall also include any plan required to be reported by subdivision (c) of Section 33334.10.

SEC. 3. Section 33334.10 is added to the Health and Safety Code, to read:

33334.10. (a) Except as otherwise provided in this subdivision, not later than six months following the close of any fiscal year of an agency in which excess surplus accumulates in the agency's Low and Moderate Income Housing Fund, the agency may adopt a plan pursuant to this section for expenditure of all moneys in the Low and Moderate Income Housing Fund within five years from the end of that fiscal year. The plan may be general and need not be site-specific, but shall include objectives respecting the number and type of housing to be assisted, identification of the entities, which will administer the plan, alternative means of ensuring the affordability of housing units for the longest feasible time, as specified in subdivision (e) of Section 33334.3 the income groups to be assisted, and a schedule by fiscal year for expenditure of the excess surplus.

(b) The agency shall separately account for each excess surplus either as part of or in addition to a Low and Moderate Income Housing Fund.

(c) If the agency develops a plan for expenditure of excess surplus or other moneys in the Low and Moderate Income Housing Fund, a copy of that plan and any amendments thereto shall be included in the agency's annual report required by Article 6 (commencing with Section 33080).

SEC. 4. Section 33334.12 is added to the Health and Safety Code,

to read:

33334.12. (a) Upon failure of the agency to expend or encumber excess surplus in the Low and Moderate Income Housing Fund within five years from the date the moneys become excess surplus, within the meaning defined in Section 33334.10, the agency shall disburse that excess surplus to the county housing authority or other housing authority operating within the agency's jurisdiction or another public agency exercising housing development powers within the territorial jurisdiction of the agency in accordance with subdivision (b). The housing authority shall utilize the moneys for the purposes and subject to the same restrictions as applicable to the redevelopment agency under this part, and for that purpose may exercise all of the powers of a housing authority under Part 2 (commencing with Section 34200) to the extent not inconsistent with these limitations.

Notwithstanding Section 34209 or any other provision of law, for the purpose of accepting a transfer of, and using, moneys pursuant to this section, the housing authority of a county may exercise its powers within the territorial jurisdiction of a city redevelopment agency in the county.

(c) The amount of excess surplus which shall be transferred to the housing authority because of failure of the agency to expend or encumber excess surplus within five years shall be the amount of the excess surplus that is not so expended or encumbered.

(d) Nothing in this section shall be construed to limit any authority a redevelopment agency may have under other provisions of this part to contract with a housing authority for increasing or improving the community's supply of low- and moderate-income housing.

(e) For purposes of this section:

(1) "Excess surplus" means any unexpended and unencumbered amount in an agency's Low and Moderate Income Housing Fund that exceeds the greater of five hundred thousand dollars ($500,000) or the aggregate amount deposited into the Low and Moderate Income Housing Fund pursuant to Sections 33334.2 and 33334.6 during the agency's preceding five fiscal years.

(2) Moneys shall be deemed encumbered if committed pursuant to a legally enforceable contract or agreement for expenditure for purposes specified in Section 33334.2 or 33334.3.

SEC. 5. Section 34312.5 of the Health and Safety Code is amended to read:

34312.5. (a) An authority may provide leased housing to persons of low income throughout the county in which it operates, except:

(1) No commitment to provide leased housing outside the area of operation may be made in advance of construction without approval of the local governing body of the city or, if an unincorporated area, the county with jurisdiction of the site of construction; and

(2) Leased housing may not be provided within the area of operation of another authority if the local governing body of the

other authority disapproves in advance.

(b) An authority may contract with the redevelopment agency of any city within the county to exercise its powers in the city pursuant to a contract with the redevelopment agency funded from the redevelopment agency's Low and Moderate Income Housing Fund for the purpose of increasing or improving the city's supply of low- and moderate-income housing.

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 five hundred thousand dollars ($500,000), reimbursement shall be made from the State Mandates Claims Fund.

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## CHAPTER 1566

An act to amend Sections 50533.2, 50533.5, 50668.5, and 50884 of the Health and Safety Code, relating to housing, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 30, 1988. Filed with Secretary of State September 30, 1988.]

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

SECTION 1. Section 50533.2 of the Health and Safety Code is amended to read:

50533.2. (a) The department shall administer the Senior Citizens' Shared Housing Program and select eligible sponsors to establish or continue programs that (1) assist seniors in finding other seniors and nonseniors with whom to share existing housing units or (2) establish and implement the operation of shared group residences for seniors.

(b) Not less than 90 percent of the funds available pursuant to this chapter shall be allocated by the department for the establishment or continuance of programs described in subdivision (a). The department may make up to 10 percent of the funds available to eligible sponsors that have operational shared housing programs and which demonstrate the capability to provide technical assistance to other eligible sponsors inexperienced in the operation of shared housing programs, which intend to establish, or already operate those programs as of January 1, 1987, in areas where there is a demonstrated need for those programs.

(c) "Eligible sponsors," as used in this chapter, means nonprofit corporations, as defined in Section 50091, and local public entities, as

defined in Section 50079.

(d) "Shared group residence" as used in this chapter, means a dwelling unit occupied by three or more unrelated adults, capable of independent living, and sharing the responsibilities of operating and maintaining the dwelling unit. Shared group residence shall not include any of the facilities defined in Section 1502.

SEC. 2. Section 50533.5 of the Health and Safety Code is amended to read:

50533.5. Funds allocated to eligible sponsors pursuant to this chapter shall be utilized only for staff and office operation costs or for reasonable and necessary costs incurred in the establishment of shared group residences for seniors, including, but not limited to, first and last months' rent, damage, cleaning, security and utility deposits, insurance, vacancy reserve, and related administrative costs. No eligible sponsor shall receive more than fifty thousand dollars ($50,000) in any calendar year. The department may utilize funds appropriated for the purposes of this chapter for administrative costs incurred in order to implement this chapter.

SEC. 3. Section 50668.5 of the Health and Safety Code is amended to read:

50668.5. For the purpose of providing financial assistance pursuant to this chapter utilizing bond proceeds transferred to the Housing Rehabilitation Loan Fund pursuant to paragraph (2) of subdivision (a) of Section 53130 and paragraph (2) of subdivision (b) of Section 53130 and Sections 8878.20 and 8878.21 of the Government Code, deferred payment loans made with these funds shall be subject to all of the following special provisions, which shall prevail over conflicting provisions of this chapter:

(a) (1) Applications for fund commitments shall be accepted by the department at any time. Fund commitments shall be based on a ranking of applications, which shall occur at least once every three months until there are insufficient funds available to commit according to this ranking. In making this ranking for rental housing developments, priority shall be given to those projects which (A) serve the greater number of eligible households as defined in Section 50105 with the lowest incomes, (B) provide the greater number of units with three or more bedrooms, (C) are located in areas where the housing need is great as determined by the department, taking into consideration, among other factors, low vacancy rates, high market rents, long waiting lists for subsidized housing, the stock of substandard housing, and the potential loss of subsidized rental housing to market-rate housing through demolition, foreclosure, or subsidy termination, (D) complement the implementation of an existing housing program, (E) maximize private local and other funding sources, and (F) maximize long-term benefits for eligible households, as defined in Sections 50079.5 and 50105. Subparagraph (B) above shall not apply to applications for fund commitments submitted pursuant to Section 50670 or to any application for a residential hotel project submitted pursuant to paragraph (1) of

subdivision (a) of Section 50661. In making this ranking for owner-occupied housing, priority shall be given to those applications which (A) serve the greater number of eligible households, as defined in Section 50105, with the lowest income, (B) provide the greater number of units with three or more bedrooms, (C) are located in areas where the need for rehabilitation is great as determined by the department, taking into consideration, among other factors, the amount of substandard owner-occupied housing, low vacancy rates, and limited availability of affordable housing, (D) complement the implementation of an existing housing program, and (E) maximize available and appropriate private, local, and other funding sources. The department shall also evaluate the capability of the sponsor to rehabilitate, own, and manage the rental housing development or the capability of the applicant for funding for owner-occupied housing to implement the proposed program.

(2) Loans for rental housing developments may be reviewed, approved, and funded by the department directly to the sponsor. In these cases, the department shall ensure that the sponsor notifies the local legislative body of the sponsor's loan application prior to a funding award. Loans to owner-occupants may be made by local public entities or nonprofit corporations which have received fund commitments from the department. When the department certifies a local public entity or nonprofit corporation as being capable of making these loans, the department shall delegate responsibility for reviewing and approving these loans to the local public entity or nonprofit corporation.

(3) A sponsor may apply for loans for one or more rental housing developments.

(b) (1) A housing development may utilize any combination of federal, state, local, and private financial resources necessary to make the development affordable, for the term of the state's regulatory agreement, to the eligible households.

(2) In the case of nonprofit sponsors, loans for rental housing developments, when combined with other indebtedness against the property shall not exceed 100 percent of the after-rehabilitation value of the property, as determined by an appraisal of the property conducted pursuant to guidelines established in regulations of the department.

(3) The maximum loan amounts per unit established in regulations pursuant to Section 50670 shall also apply to rental housing developments rehabilitated or acquired and rehabilitated pursuant to paragraph (1) of subdivision (a) of Section 50661, except that there shall not be a maximum loan amount established per project. These dollar limitations may be increased by the department, as necessary, in high-cost areas of the state or where the correction of severe health and safety defects or the provisions of handicapped accessibility standards necessitate greater assistance.

(4) (A) Loans made to sponsors of rental housing developments for acquisition and rehabilitation shall be for terms of not less than

30 years. Loans made to sponsors of rental housing developments for rehabilitation only shall be for terms of not less than 20 years. However, the term shall not exceed the useful life of the rental housing development for which the loan is made. The sponsor may elect to begin to repay the loan at any time in accordance with the prepayment plan established in accordance with paragraph (6), if it is determined by the department, that the sponsors can continue to maintain the rents at levels affordable to eligible households.

(B) The term of the loan and the time for repayment may be extended by the department for additional 10-year terms as long as the rental housing development is operated in a manner consistent with the regulatory agreement and the sponsor requires an extension in order to continue to operate in a manner consistent with this chapter.

(5) In the case of loans made for rental housing developments, rehabilitation costs shall include those costs relating to (A) real property acquisition; (B) rehabilitation or reconstruction, including the conversion of nonresidential structures to residential use; (C) general property improvements which are necessary to correct unsafe, unhealthy, or unsanitary conditions, including renovations and remodeling, including, but not limited to, remodeling of kitchens and bathrooms, installation of new appliances, landscaping, and purchase or installation of central air conditioning; (D) necessary and related onsite improvements; (E) reasonable administrative expenses in connection with the planning and execution of the project, as determined by the department; (F) reasonable consulting costs; (G) rent-up costs; (H) seismic rehabilitation improvements; and (I) any other costs of rehabilitation authorized by the department. "Rent-up costs," as used in this section, means costs incurred while a unit is on the housing market but not rented to its first tenant. "Seismic rehabilitation improvements," as used in this section, means improvements which are designed to increase seismic structural safety in accordance with a plan developed by a civil engineer, a structural engineer, or an architect for a particular building that has been identified as hazardous by the city or county in which the building is located in accordance with the criteria established by the Seismic Safety Commission pursuant to Section 8875.1 of the Government Code or in accordance with a previously adopted city or county seismic safety ordinance adopted pursuant to Section 19163.

(6) Upon request of the sponsor, the department may permit repayment of a sponsor's loan on the basis of net cash flow. The department shall develop a prepayment plan in conjunction with the sponsor which will ensure the maintenance of affordable rents and the fiscal integrity of the rental housing development. As an incentive to encourage the prepayment of loans, the department may permit the sponsor to retain one-half of the net cash flow. The department shall determine the method for calculating net cash

flow, which may include a factor for excess debt service coverage or a return on cash investment to the sponsor.

(7) If a loan is made pursuant to this chapter for both seismic rehabilitation improvements and other eligible rehabilitation costs, only those costs related to the seismic rehabilitation improvements shall be counted and included for purposes of the fund reservation made by Section 8878.20 of the Government Code.

(c) Principle and accumulated interest is due and payable upon completion of the term of the loan.

(1) "Maintain affordable rent levels," as used in this section, means rents may be automatically increased by the sponsor on an annual basis pursuant to an inflation index to be determined by the department. The inflation index shall reflect anticipated annual changes in rental housing development operating costs from a base year when the rents are initially established. Any sponsor may appeal to the department for a greater adjustment in rents necessary to ensure the fiscal integrity of the rental housing development. If the department does not respond within 60 days, the request shall be deemed approved. A 30-day written notice shall be given to each eligible household prior to an adjustment in the amount of rent.

(2) Upon prior written approval by the department, a sponsor may set income limits for incoming tenants at a level below the limit specified in Section 50079.5. If a tenant's income exceeds this income limit established by the sponsor, but does not exceed the limit specified in Section 50079.5, that fact alone shall neither constitute cause for the tenant's eviction, nor be a violation of the sponsor's loan agreement. If a tenant's income exceeds the income limit for a household specified in Section 50079.5, the tenant shall be required to vacate the assisted unit within six months from the date of income recertification or notice to the sponsor of an increase in income over the permissible income level. That period may be extended by the sponsor for an additional six-month period in high cost rental areas with low vacancy rates, as determined by the department. Any vacant units shall be rented to eligible households until the required residency by eligible households is attained.

(d) Prior to disbursement of any funds for loans to rental housing developments made pursuant to this section, the department shall enter into a regulatory agreement with the sponsor in accordance with subdivision (d) of Section 50670, except that (1) the term of the regulatory agreement shall be for the original term of the loan and the agreement shall be binding upon the sponsor and successors in interest upon sale or transfer of the rental housing development or prepayment of the loan and (2) a nonprofit sponsor, other than a governmental agency, may maintain a debt service coverage ratio of 115 percent and distribute earnings in an amount no greater than 8 percent of the nonprofit sponsor's actual investment. The regulatory agreement also shall contain provisions requiring annual inspections and review of year-end fiscal audits and related reports by the department and provisions to maintain affordable rent levels to

serve eligible households.

(e) Where loans will be used in conjunction with federal or other housing assistance or tax credits and a conflict exists between the other state or federal program requirements and those of this chapter with respect to the calculation of rents, the requirements of the Deferred Payment Rehabilitation Loan Program and the Special User Housing Rehabilitation Program may be waived only to the extent necessary to permit federal or other state financial participation or eligibility for tax credits.

(f) "Sponsor," for purposes of this section, has the same meaning as defined in subdivision (c) of Section 50669.

(g) The department shall adopt emergency regulations to implement this chapter with respect to loans made with funding subject to this section. The regulations shall be conclusively presumed to be necessary for the immediate preservation of the public peace, health, safety, or general welfare within the meaning, and or purposes, of Section 11346.1 of the Government Code.

Notwithstanding conflicting provisions of this chapter, the department may elect to make these regulations additionally applicable until January 1, 1990, to all other deferred payment loan programs authorized by this chapter, except the programs specified in Sections 50662.5 and 50671, if the department determines that the uniformity achieved thereby will avoid significant additional administrative costs.

SEC. 4. Section 50884 of the Health and Safety Code is amended to read:

50884. The department shall implement the program enacted by this chapter after adopting rules and regulations in a manner which will ensure that the initial requests for proposals for assistance to community housing developments and congregate housing developments can be released on or before March 7, 1989.

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 implement Proposition 77 to make bond moneys available in an expeditious manner and to expand the housing options that local housing entities provide to seniors in their communities, it is necessary that this act go into effect immediately.

## CHAPTER 1567

An act to add Sections 17980.6 and 17980.7 to the Health and Safety Code, relating to housing.

[Approved by Governor September 30, 1988. Filed with Secretary of State September 30, 1988.]

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

SECTION 1. Section 17980.6 is added to the Health and Safety Code, to read:

17980.6. (a) If any building is maintained in a manner which violates any provisions of this part, the building standards published in the State Building Standards Code relating to the provisions of this part, or any other rule or regulation promulgated pursuant to the provisions of this part, and the violations are so extensive and of such a nature that the health and safety of residents or the public is substantially endangered, the enforcement agency may issue an order or notice to repair pursuant to this part.

(b) If the owner does not correct the condition that caused the violation within a reasonable time after issuance of the notice or order, the enforcement agency may, in addition to any other remedies provided by law, seek the remedies provided for in Section 17980.7 if the court finds the owner responsible for a violation of this part and orders repairs as part of a civil or criminal judgment against the owner, or in a stipulation to a judgment by the owner which includes provisions governing repairs.

SEC. 2. Section 17980.7 is added to the Health and Safety Code, to read:

17980.7. If the owner fails to comply with the terms of the order or notice pursuant to Section 17980.6, the following provisions shall apply:

(a) The enforcement agency may seek and the court shall order imposition of the penalties provided for under Chapter 6 (commencing with Section 17995).

(b) The enforcement agency may seek and the court may order the owner to not claim any deduction with respect to state taxes for interest, taxes, expenses, depreciation, or amortization paid or incurred with respect to the cited structure, in the taxable year of the initial order or notice, in lieu of the enforcement agency processing a violation in accordance with Sections 17274 and 24436.5 of the Revenue and Taxation Code.

If the owner fails to comply with the terms of the order or notice to correct the condition that caused the violation pursuant to subdivision (a) of Section 17980.5, the court may order the owner to not claim these tax benefits for the following year.

(c) If the court finds that a building is in a condition which substantially endangers the health and safety of residents pursuant

to subdivision (a) of Section 17980.6, upon the entry of any order or judgment the court shall do all of the following:

(1) Order the owner to pay all reasonable and actual costs of the enforcement agency including, but not limited to, inspection costs, investigation costs, enforcement costs, attorney fees or costs, and all costs of prosecution.

(2) Order that the local enforcement agency shall provide the tenant with notice of the court order or judgment.

(d) The initiation of a proceeding or entry of a judgment pursuant to this section or Section 17980.6 shall be deemed to be a "proceeding" or "judgment" as provided by paragraph (4) or (5) of subdivision (a) of Section 1942.5 of the Civil Code.

(e) The term "owner," for the purposes of this section, shall include the owner, including any public entity that owns residential real property, at the time of the initial notice or order and any successor in interest who had actual or constructive knowledge of the notice, order, or prosecution.

(f) These remedies shall be in addition to any other remedies provided by law.

(g) Nothing in this section or in Section 17980.6 shall impair the rights of an owner exercising his or her rights established pursuant to Chapter 12.75 (commencing with Section 7060) of Division 7 of Title 1 of the Government Code.

SEC. 3. 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.

## CHAPTER 1568

An act to amend Sections 39607, 40001, 40400, 40510, 41500, 42301, 42311, 42352, and 43013 of, to amend the heading of Chapter 2 (commencing with Section 41600) of Part 4 of Division 26 of, to add Sections 39608, 39609, 39610, 39611, 40522.5, 40716, 40717, 40717.5, 41503.1, 41503.2, 41503.3, 41503.4, 41503.5, 41712, 42301.1, 42302.1, 42311.2, 42402.5, 43000.5, 43018, and 43019 to, to add Chapter 10 (commencing with Section 40910) to Part 3 of Division 26 of, to amend and renumber Section 41604 of, to add and repeal Sections 39612 and 42311.1 of, to repeal and add Section 41503 of, and to repeal Sections 41600, 41601, 41602, and 41603 of, the Health and Safety Code, relating to air pollution.

[Approved by Governor September 30, 1988. Filed with Secretary of State September 30, 1988.]

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

SECTION 1. (a) This act shall be known as the California Clean Air Act of 1988.

(b) The Legislature finds and declares as follows:

(1) That the State Air Resources Board has adopted ambient air quality standards, based upon the recommendation of the State Department of Health Services, and that attainment of these health-based standards is necessary to protect public health, particularly of children, older people, and those with respiratory diseases.

(2) That it is therefore in the public interest that these standards be attained at the earliest practicable date.

(3) That the basinwide air pollution control plans to attain and maintain the state standards which were prepared by air pollution control districts and air quality management districts and the basinwide coordinating councils and implemented under the supervision of the state board have achieved progress, but are in need of revision to more accurately reflect changes in emission sources, technology, energy availability, and forecasts of population and economic growth, and that the requirements for preparation of the plans and deadlines for attainment should reflect the nature and extent of the air pollution problems of each region.

(4) That most urban areas of the state have not attained federal ambient air quality standards by August 31, 1988, as required by federal law, and that Congress has not extended the deadlines or removed the requirements for sanctions, and does not appear likely to resolve these issues in a timely manner.

(5) That in order to ensure the future health and welfare of the people of the State of California, and the state's environment and economy, are protected despite lack of action or direction from the federal government, it is necessary for the State of California to

develop and implement its own program to attain air quality standards through the application of best available control technology and operating methods, improved motor vehicle maintenance and inspection, control of indirect and areawide sources of emissions, the required use of cleaner burning fuels, the implementation of stricter new vehicle emission standards and warranty requirements, the design and implementation of transportation control and vehicle fleet management measures, and the incorporation of air quality considerations into local land use planning decisions.

(c) It is, therefore, the intent of the Legislature, in enacting this act, that the state board and the districts, to the maximum extent practicable, shall coordinate activities required under this act with similar activities undertaken pursuant to federal law.

SEC. 2. Section 39607 of the Health and Safety Code is amended to read:

39607. The state board shall:

(a) Establish a program to secure data on air quality in each air basin established by the state board.

(b) Inventory sources of air pollution within the air basins of the state and determine the kinds and quantity of air pollutants, including, but not limited to, the contribution of natural sources of emissions, to the extent feasible and necessary to carry out the purposes of this chapter. The state board shall use, to the fullest extent, the data of local agencies and other state and federal agencies in fulfilling this purpose.

(c) Monitor air pollutants in cooperation with districts and with other agencies to fulfill the purpose of this division.

(d) Adopt test procedures to measure compliance with its nonvehicular emission standards and those of districts.

(e) Establish criteria for designating an air basin attainment or nonattainment for any state ambient air quality standard set forth in Section 70200 of Title 17 of the California Code of Regulations. In developing these criteria, the state board shall consider instances where there is poor or limited ambient air quality data, highly irregular or infrequent violations, or projections of substantial growth in population or industrial activity. The state board shall provide an opportunity for public comment on the proposed criteria, and shall adopt the criteria after a public hearing.

(f) Evaluate, in consultation with the districts, air quality-related indicators which may be used to measure or estimate progress in the attainment of state standards and establish a list of approved indicators. The state board shall establish an initial list on or before December 31, 1989, and shall update the list at least every three years thereafter.

SEC. 3. Section 39608 is added to the Health and Safety Code, to read:

39608. (a) On or before September 30, 1989, the state board, in consultation with the districts, shall identify, pursuant to subdivision

(e) of Section 39607, and classify each air basin which is in attainment and each air basin which is in nonattainment for any state ambient air quality standard. This identification and classification shall be made on a pollutant-by-pollutant basis. Where the state board finds that data is not sufficient to determine the attainment or nonattainment status for an air basin, the state board shall identify the air basin as unclassified.

(b) The state board may assign an attainment, nonattainment, or unclassified designation to one or more areas within any air basin unless the state board finds and determines that the pollutant for which the designation applies affects the entire region or is produced by emission sources throughout the region.

(c) Designations made by the state board shall be reviewed annually and updated as new information becomes available.

SEC. 4. Section 39609 is added to the Health and Safety Code, to read:

39609. On or before December 31, 1989, and at least every five years thereafter, the state board shall complete a study on the feasibility of employing air quality models and other analytical techniques to distinguish between emission control measures on the basis of their relative ambient air quality impact. The state board shall consult with districts and affected groups in conducting this study, and, after a public hearing, shall prepare and transmit its findings to each district for its use in developing plans pursuant to Chapter 10 (commencing with Section 40910).

SEC. 5. Section 39610 is added to the Health and Safety Code, to read:

39610. (a) Not later than December 31, 1989, the state board shall identify each district in which transported air pollutants from upwind areas outside the district cause or contribute to a violation of the state ambient air quality standard for ozone and shall identify the district of origin of the transported pollutants, based upon the preponderance of available evidence. The state board shall identify and determine the priorities of information and studies needed to make a more accurate determination, including, but not limited to, emission inventories, pollutant characterization, ambient air monitoring, and air quality models.

(b) The state board shall, in cooperation with the districts, assess the relative contribution of upwind emissions to downwind ambient pollutant levels to the extent permitted by available data, and shall establish mitigation requirements commensurate with the level of contribution.

(c) The state board shall make every reasonable effort to supply air pollutant transport information to heavily impacted districts prior to the development of plans to attain the state ambient air quality standards, shall consult with affected upwind and downwind districts, and shall adopt its findings at a public hearing.

(d) The state board shall review and update its transport analysis at least once every three years.

(e) The state board shall conduct appropriate studies to carry out its responsibilities under this section.

SEC. 6. Section 39611 is added to the Health and Safety Code, to read:

39611. Not later than January 1, 1991, the state board shall report to the Legislature on the prospects for achieving the state ambient air quality standards for suspended particulate matter, visibility reducing particles, lead, hydrogen sulfide, and sulfates. The report shall include, for each pollutant and for each air basin, a consideration of all of the following:

(a) The present and anticipated extent of nonattainment.

(b) Adopted and proposed measures to reduce emissions of the pollutant or its precursors, or both, and their anticipated effectiveness.

(c) The availability of additional control measures, and their potential effectiveness.

(d) The earliest practicable attainment date.

(e) Any legal, technological, or administrative impediments to developing and implementing an attainment plan.

(f) The relative significance of both natural and windblown emissions.

(g) Any additional information needed with respect to ambient air monitoring and air quality computer modeling, and the estimated budgetary requirements to obtain this information.

SEC. 6.5. Section 39612 is added to the Health and Safety Code, to read:

39612. (a) In addition to funds which may be appropriated by the Legislature to the state board to carry out the additional responsibilities and to undertake necessary technical studies required by this chapter, the state board, beginning July 1, 1989, may require districts to impose additional permit fees on nonvehicular sources within their jurisdiction.

(b) The permit fees imposed pursuant to this section shall be expended only for the purposes of recovering costs of additional state programs related to nonvehicular sources.

(c) The permit fees imposed pursuant to this section shall be collected from nonvehicular sources which are authorized by district permits to emit 500 tons or more per year of any nonattainment pollutant or its precursors.

(d) The permit fees collected by a district pursuant to this section, after deducting the administrative costs to the district of collecting the fees, shall be transmitted to the Controller for deposit in the Air Pollution Control Fund.

(e) The total amount of funds collected by fees imposed pursuant to this section, exclusive of district administrative costs, shall not exceed three million dollars ($3,000,000) in any fiscal year.

(f) On or before January 1, 1993, the state board shall prepare and submit to the Legislature a report on the amounts of fees collected and the purposes for which the fees were expended.

(g) This section shall become inoperative on July 1, 1997, and, as of January 1, 1998, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 1998, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 7. Section 40001 of the Health and Safety Code is amended to read:

40001. Subject to the powers and duties of the state board, the districts shall adopt and enforce rules and regulations to achieve and maintain the state and federal ambient air quality standards in all areas affected by emission sources under their jurisdiction, and shall enforce all applicable provisions of state and federal law.

The rules and regulations may, and at the request of the state board shall, provide for the prevention and abatement of air pollution episodes which, at intervals, cause discomfort or health risks to, or damage to property of, a significant number of persons or class of persons.

SEC. 8. Section 40400 of the Health and Safety Code is amended to read:

40400. This chapter shall be known and may be cited as the "Lewis-Presley Air Quality Management Act."

SEC. 8.2. Section 40510 of the Health and Safety Code is amended to read:

40510. The south coast district board may adopt a fee schedule for the issuance of variances and permits to cover the cost of planning, inspection, and monitoring related thereto. Every person applying for a variance or a permit, notwithstanding Section 6103 of the Government Code, shall pay the fees required by the schedule.

The fees may be varied according to the quantity of emissions and the effect of those emissions on the ambient air quality within the south coast district.

SEC. 8.5. Section 40522.5 is added to the Health and Safety Code, to read:

40522.5. (a) In addition to any other fees authorized by this article, the south coast district may adopt, by regulation, a schedule of fees to be assessed on areawide or indirect sources of emissions which are regulated, but for which permits are not issued, by the south coast district to recover the costs of district programs related to these sources.

(b) The south coast district shall not, however, impose any fee under this section for either of the following:

(1) Wildland vegetative management burning, as described in subdivision (c) of Section 39011.

(2) Emergency incident training necessary for the protection of the community and public safety personnel.

SEC. 9. Section 40716 is added to the Health and Safety Code, to read:

40716. (a) In carrying out its responsibilities pursuant to this division with respect to the attainment of state ambient air quality standards, a district may adopt and implement regulations to

accomplish both of the following:

(1) Reduce or mitigate emissions from indirect and areawide sources of air pollution.

(2) Encourage or require the use of ridesharing, vanpooling, flexible work hours, or other measures which reduce the number or length of vehicle trips.

(b) Nothing in this section constitutes an infringement on the existing authority of counties and cities to plan or control land use, and nothing in this section provides or transfers new authority over such land use to a district.

SEC. 10. Section 40717 is added to the Health and Safety Code, to read:

40717. (a) A district shall adopt, implement, and enforce transportation control measures for the attainment of state or federal ambient air quality standards to the extent necessary to comply with Section 40918, 40919, or 40920.

(b) A district which has entered into an agreement with a council of governments or a regional agency to jointly develop a plan for transportation control measures shall develop the plan in accordance with all of the following:

(1) The district shall establish the quantity of emission reductions from transportation sources necessary to attain state and federal ambient air standards.

(2) The council of governments or regional agency, in cooperation with the district and any other person or entity authorized by the council of governments or regional agency, shall develop and adopt a plan to control emissions from transportation sources which will achieve the emission reductions established under paragraph (1). The plan shall include, at a minimum, a schedule for implementing transportation control measures, identification of potential implementing agencies and any agreements entered into by agencies to implement portions of the plan, and procedures for monitoring the effectiveness of and compliance with the measures in the plan. The council of governments or regional agency shall submit the plan to the district for its adoption according to a reasonable schedule developed by the district in consultation with the council of governments or regional agency.

(3) Upon receipt of the plan submitted by the council of governments or regional agency, the district shall review and approve or disapprove the plan in the following manner:

(A) The district shall review, adopt, and enforce the plan if it meets the criteria established by the district pursuant to paragraph (1) and has been submitted pursuant to the schedule established under paragraph (2).

(B) If the district determines that the plan does not meet the criteria established pursuant to paragraph (1), the district shall return the plan to the council of governments or regional agency with comments which identify the reasons the plan does not meet the criteria established pursuant to paragraph (1). Within 45 days,

the council of governments or regional agency shall review the district's comments, revise the plan to meet the criteria established under paragraph (1), and resubmit the plan to the district. The district shall review and approve the revised plan if it meets the criteria established by the district pursuant to paragraph (1) and has been resubmitted to the district within 45 days.

(C) If the plan is not submitted pursuant to the schedule established under paragraph (2), or if a plan revised by a council of governments or regional agency and resubmitted to a district pursuant to this subparagraph does not meet the criteria established under paragraph (1), the district shall develop, adopt, and enforce an alternative plan for transportation control measures.

(4) Whenever the district revises its establishment of the quantity of emission reductions from transportation sources necessary to attain state and federal ambient air standards, the plan shall be revised, adopted, and enforced in accordance with paragraphs (1), (2), and (3).

(c) Subdivision (b) shall not apply to the Sacramento County Air Pollution Control District if Assembly Bill 4355 of the 1987–88 Regular Session is enacted, in which case Assembly Bill 4355 shall govern preparation and enforcement of that plan for transportation control measures. However, if Assembly Bill 4355 is not enacted, subdivision (b) shall govern preparation and enforcement of that plan.

(d) Notwithstanding subdivision (b), a district located in a county of the third class shall develop a plan for transportation control measures as follows:

(1) The district, in consultation with the council of governments, shall develop, approve, and adopt criteria under which the plan shall be developed.

(2) The council of governments shall develop and adopt a plan for transportation control measures which meets the criteria established by the district, and shall submit the plan to the district for its review and adoption according to a reasonable schedule developed by the district in consultation with the council of governments.

(3) Upon receipt of the plan submitted by the council of governments, the district shall review and approve the plan if it meets the criteria established by the district pursuant to paragraph (1) and has been submitted pursuant to the schedule established under paragraph (2). If the district determines that the plan does not meet the criteria established pursuant to paragraph (1) or if the plan is not submitted pursuant to the schedule established under paragraph (2), the district shall develop and adopt an alternative plan for transportation control measures.

(e) A district may delegate any function with respect to implementation of transportation control measures to any local agency, if all of the following conditions are met:

(1) The local agency submits to the district an implementation plan which provides adequate resources to adopt and enforce the

measures, and the district approves the plan.

(2) The local agency adopts and implements measures at least as stringent as those in the district plan.

(3) The district adopts procedures to review the performance of the local agency in implementing the measures to ensure compliance with the district plan.

(f) A district may revoke an authority granted under this section if it determines that the performance of the local agency is in violation of this section or otherwise inadequate to implement the district plan.

(g) For purposes of this section, "transportation control measures" means any strategy to reduce vehicle trips, vehicle use, vehicle miles traveled, vehicle idling, or traffic congestion for the purpose of reducing motor vehicle emissions.

SEC. 10.5. Section 40717.5 is added to the Health and Safety Code, to read:

40717.5. (a) The state board, the Business, Transportation and Housing Agency, and the Department of the California Highway Patrol, using existing resources, shall jointly establish a technical advisory group which shall include, but not be limited to, representatives of the trucking industry, organized labor, shippers, retailers, and districts for the purpose of developing model guidelines and procedures for traffic control measures affecting heavy-duty trucks for use by districts. The technical advisory group shall consult with any interested person or entity in developing the model guidelines and procedures.

(b) The model guidelines and procedures shall, among other things, take into account any requirements of federal or state law which affect safety of operation of heavy-duty trucks, which require heavy-duty trucks and drivers to operate at certain times of day for the protection of public health and safety, and which are established under Section 25633 of the Business and Professions Code.

(c) Upon completion of the model guidelines by the technical advisory group established under subdivision (a), every district shall review and consider the model guidelines and procedures prior to adopting or revising any regulation imposing traffic control measures for heavy-duty trucks.

(d) This section does not apply to the south coast district, and nothing in this section limits or abridges the authority of the south coast district to adopt regulations affecting heavy-duty trucks pursuant to Section 40447.5.

SEC. 11. Chapter 10 (commencing with Section 40910) is added to Part 3 of Division 26 of the Health and Safety Code, to read:

## CHAPTER 10. DISTRICT PLANS TO ATTAIN STATE AMBIENT AIR QUALITY STANDARDS

40910. It is the intent of the Legislature in enacting this chapter that districts shall endeavor to achieve and maintain state ambient

air quality standards for ozone, carbon monoxide, sulfur dioxide, and nitrogen dioxide by the earliest practicable date. In developing attainment plans and regulations to achieve this objective, districts shall consider the full spectrum of emission sources and focus particular attention on reducing the emissions from transportation and areawide emission sources. Districts shall also consider the cost effectiveness of their air quality programs, rules, regulations, and enforcement practices in addition to other relevant factors, and shall strive to achieve the most efficient methods of air pollution control. However, priority shall be placed upon expeditious progress toward the goal of healthful air.

40911. (a) Except as provided in subdivision (b), each district which has been designated a nonattainment area for state ambient air quality standards for ozone, carbon monoxide, sulfur dioxide, or nitrogen dioxide shall prepare and submit a plan for attaining and maintaining the standards to the state board not later than December 31, 1990.

(b) Notwithstanding subdivision (a), any district which is a receptor or contributor of transported air pollutants, as determined by the state board pursuant to subdivision (a) of Section 39610, shall prepare and submit its plan to the state board not later than June 30, 1991.

40912. The plans for districts responsible for or affected by air pollutant transport shall provide for attainment and maintenance of the state and federal standards in both the upwind and downwind district. Each upwind district's plan shall contain, at a minimum, all mitigation requirements established by the state board pursuant to subdivision (b) of Section 39610. Each downwind district's plan shall contain sufficient measures to reduce emissions originating in the district below the level at which violations of state ambient air quality standards would occur in the absence of the transport contribution.

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.

(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.

40914. (a) Each district plan shall be designed to achieve a reduction in districtwide emissions of 5 percent or more per year for each nonattainment pollutant or its precursors, averaged every consecutive three-year period, unless an alternative measure of progress is approved pursuant to Section 39607.

(b) A district may use an alternative emission reduction strategy which achieves less than an average of 5 percent per year reduction in districtwide emissions if the district demonstrates to the state board, and the state board concurs in, either of the following:

(1) That the alternative emission reduction strategy is equal to or more effective than districtwide emission reductions in improving air quality.

(2) That despite the inclusion of every feasible measure in the plan, and an expeditious adoption schedule, the district is unable to achieve at least a 5 percent annual reduction in districtwide emissions.

(c) For purposes of this section and Section 41503.1, reductions in emissions shall be calculated with respect to the actual level of emissions which exist in each district on December 31, 1987. All reductions in emissions occurring after December 31, 1987, including, but not limited to, reductions in emissions resulting from measures adopted prior to December 31, 1987, shall be included in this calculation.

40915. Each district plan shall contain contingency measures to be implemented upon a finding by the state board, pursuant to Section 41503.3, that the district is failing to achieve interim goals or maintain adequate progress toward attainment. Any regulations necessary to implement the contingency measures shall be adopted by the district within 180 days following the state board's determination of inadequate progress.

40916. (a) The state board shall make technical assistance available to a district, at its request, to support attainment planning and air pollutant transport planning and associated analyses. If the state board lacks sufficient resources to make technical assistance available to each district which requests assistance, the state board shall give priority to districts which have limited financial or technical capabilities.

(b) The state board shall develop guidelines for use by the districts to prepare emission inventories, develop monitoring networks, and develop methods for the validation of air quality models.

40917. Two or more districts within the same air basin shall cooperate to the extent reasonable and appropriate in developing plan elements of mutual concern. These elements may include, but are not limited to, emission inventories, air quality models, and growth projections.

40918. (a) Each district with moderate air pollution shall, to the

extent necessary to meet the requirements of the plan developed pursuant to Section 40913, include the following measures in its attainment plan:

(1) A permitting program designed to achieve no net increase in emissions of nonattainment pollutants or their precursors from new or modified stationary sources which emit or have the potential to emit 25 tons per year or more of nonattainment pollutants or their precursors.

(2) Reasonably available control technology for all existing sources.

(3) Reasonably available transportation control measures.

(4) Provisions to develop area source and indirect source control programs.

(5) Provisions to develop and maintain an emissions inventory system to enable analysis and progress reporting and a commitment to develop other analytical techniques to carry out its responsibilities pursuant to subdivision (b) of Section 40924.

(6) Provisions for public education programs to promote actions to reduce emissions from transportation and areawide sources.

(b) A district's air pollution is moderate if the state board finds and determines that the district can attain and maintain the applicable state standard by not later than December 31, 1994.

40919. (a) Each district with serious air pollution shall, to the extent necessary to meet the requirements of the plan adopted pursuant to Section 40913, include the following measures in its attainment plan:

(1) All measures required for moderate nonattainment areas, as specified in Section 40918.

(2) A permitting program designed to achieve no net increase in emissions of nonattainment pollutants or their precursors from all permitted new or modified stationary sources.

(3) Transportation control measures to substantially reduce the rate of increase in passenger vehicle trips and miles traveled per trip.

(4) A requirement for the application of the best available retrofit control technology, as defined in Section 40406, to existing stationary sources.

(b) A district's air pollution is serious if the state board finds and determines that the district cannot attain and maintain the applicable state standard until after December 31, 1994, but can attain and maintain the standard by not later than December 31, 1997.

40920. (a) Each district with severe air pollution shall, to the extent necessary to meet the requirements of Section 40913, include the following measures in its attainment plan:

(1) All measures required for moderate and serious nonattainment areas, as specified in Sections 49018 and 40919.

(2) Transportation control measures to achieve an average during weekday commute hours of 1.5 or more persons per passenger vehicle by 1999, and no net increase in vehicle emissions after 1997.

(3) Measures to achieve the use of a significant number of low-emission motor vehicles by operators of motor vehicle fleets.

(4) Measures sufficient to reduce overall population exposure to ambient pollutant levels in excess of the standard by at least 25 percent by December 31, 1994, 40 percent by December 31, 1997, and 50 percent by December 31, 2000, based on average per capita exposure and the severity of the exceedences, so as to minimize health impacts, using the average level of exposure experienced during 1986 through 1988 as the baseline.

(b) A district's air pollution is severe if the state board finds and determines that the district cannot attain and maintain the applicable state standard until after December 31, 1997, or is unable to identify an attainment date.

40921. For the purposes of Sections 40918, 40919, and 40920, the designation of a district's air pollution as "moderate," "serious," or "severe" for an area which is a receptor of transported air pollutants shall be based on violations of state ambient air quality standards which would occur without regard to the transport contribution.

40922. (a) Each plan prepared pursuant to this chapter shall include an assessment of the cost effectiveness of available and proposed control measures and shall contain a list which ranks the control measures from the least cost-effective to the most cost-effective.

(b) In developing an adoption and implementation schedule for a specific control measure, the district shall consider the relative cost effectiveness of the measure, as determined under subdivision (a), as well as other factors including, but not limited to, technological feasibility, total emission reduction potential, the rate of reduction, public acceptability, and enforceability.

40923. (a) Upon the state board's approval of a district's attainment plan, and annually thereafter, the district shall publish a list of regulatory measures scheduled or tentatively scheduled for consideration during the following year. The district shall not propose a regulatory measure for consideration during any year that is not contained in the district's most recently published list of proposed regulatory measures unless earlier consideration is necessary to satisfy federal requirements, to abate a substantial endangerment to public health or welfare, or to comply with Section 39666 or 40915.

(b) Subdivision (a) does not apply to any modification of existing rules which the district finds and determines is necessary to preserve the original intent of the rules, as stated upon their adoption.

40924. (a) Each year following the state board's approval of a district's attainment plan, the district shall prepare and submit a report to the board summarizing its progress in meeting the schedules for developing, adopting, or implementing the air pollution control measures contained in the plan.

(b) Every third year following the state board's approval of the district's attainment plan, the district shall assess the overall

effectiveness of its air quality program, the quantity of emission reductions actually achieved in the preceding three-year period, and the rate of population and industrial- and vehicular-related emissions growth experienced in the district and projected for the future, and shall contrast all of the preceding to the assumptions and goals contained in the district's attainment plan. The district shall also assess the extent of air quality improvement achieved during the preceding three years, based upon ambient pollutant measurements and best available modeling techniques. Upon completion of each triennial analysis, the district shall adopt its findings at a public hearing and report its findings to the state board.

40925. (a) Every district shall review its attainment plan at least once every three years 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 will not attain the state standard for ozone within five years after approval of its plan by the state board, and which cannot demonstrate attainment by January 1, 2000, shall prepare and submit a comprehensive update of its plan to the state board not later than December 31, 1998. 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.

40926. Nothing in this chapter restricts the authority of the state board or a district to adopt regulations to control suspended particulate matter, visibility reducing particles, lead, hydrogen sulfide, or sulfates, or their precursors.

SEC. 12. Section 41500 of the Health and Safety Code is amended to read:

41500. To coordinate air pollution control activities throughout the state, and to ensure that the entire state is, or will be, in compliance with the standards adopted pursuant to Section 39606, the state board shall do all of the following:

(a) Review the district attainment plans submitted pursuant to Section 40911, and the revised plans submitted pursuant to Section 40925, to determine whether the plans will achieve and maintain the state's ambient air quality standards by the earliest practicable date.

(b) Review the rules and regulations and programs submitted by the districts pursuant to Section 40704 to determine whether they are sufficiently effective to achieve and maintain the state ambient air quality standards.

(c) Review the enforcement practices of the districts and local agencies delegated authority by districts pursuant to Section 40717 to

determine whether reasonable action is being taken to enforce their programs, rules, and regulations.

SEC. 13. Section 41503 of the Health and Safety Code is repealed.

SEC. 14. Section 41503 is added to the Health and Safety Code, to read:

41503. (a) Within 12 months of receiving each district's attainment plan developed pursuant to Section 40911, the state board shall determine whether the attainment date specified in the plan represents the earliest practicable date and whether the measures contained in the plan are sufficient to achieve and maintain state ambient air quality standards.

(b) Where regional air pollution is involved, the state board shall conduct its review to include the plans of every district in the air basin, and shall determine whether the combination of measures in all the plans is sufficient to achieve and maintain state ambient air quality standards throughout the air basin. The state board shall hold at least one public hearing in each affected air basin prior to reaching a final determination of the sufficiency of the plans. The state board shall require control measures for the same emission sources to be uniform throughout the air basin to the maximum extent feasible, unless a district demonstrates to the satisfaction of the state board that adoption of the measure within its jurisdiction is not necessary to achieve or maintain the state ambient air quality standard.

(c) Where air pollutant transport is a factor, the state board shall determine whether the attainment plan is sufficient to satisfy the requirements of Section 40912.

(d) If a district is unable to specify an attainment date and the state board concurs that projecting an attainment date is not feasible, the state board shall determine whether the plan contains every feasible control strategy or measure to ensure progress toward attainment is maintained.

(e) In making determinations under subdivisions (a), (b), (c), and (d), the state board shall consider any emission reductions occurring in, or expected to occur in, the district or air basin.

SEC. 15. Section 41503.1 is added to the Health and Safety Code, to read:

41503.1. The state board may approve an attainment plan which achieves less emission reductions than 5 percent per year, or less than 15 percent every three years, as specified in Section 40914, if the state board determines that the district is unable to meet these requirements, despite the expeditious adoption of all feasible controls, or if the state board determines that the equivalent air quality improvement will be achieved through an alternate level of emissions reduction.

SEC. 16. Section 41503.2 is added to the Health and Safety Code, to read:

41503.2. (a) If the state board concludes that a district's plan does not meet the requirements of Section 41503, the state board shall notify the district of all deficiencies in writing. The district shall

correct the deficiencies identified by the state board, and shall submit its revised plan to the state board for approval.

(b) If the district does not concur with the state board's findings and determinations of deficiency, or the state board determines that the district's plan revisions are inadequate to remedy identified deficiencies, the state board and the district shall attempt to resolve the differences within three months of the board's disapproval. The state board and the districts shall develop a uniform conflict resolution procedure, for purposes of this subdivision, prior to any district's submittal of its attainment plan to the state board.

(c) If a conflict between the state board and district cannot be resolved, the state board shall take all of the following actions:

(1) Conduct a public hearing in the air basin containing the affected district for purposes of hearing testimony on the plan and the deficiencies identified by the state board pursuant to subdivision (a).

(2) Prior to conducting the hearing, provide a 45-day written notice to the affected district and to the public of the date, time, location, and subject of the hearing.

(3) After conducting the public hearing on the plan and the deficiencies identified by the state board, revise the district's plan as it finds and determines necessary.

SEC. 17. Section 41503.3 is added to the Health and Safety Code, to read:

41503.3. Upon receipt of a district's triennial progress report and plan revisions prepared pursuant to subdivision (b) of Section 40924, the state board shall determine whether the district has achieved the minimum rate of progress under Section 40914 or as adjusted by the board pursuant to Section 41503.1. The state board shall require the adoption of one or more contingency measures when the minimum rate of progress has not been achieved, unless the district demonstrates to the satisfaction of the state board that the discrepancy will be corrected and the deficiency restored during the next reporting period.

SEC. 18. Section 41503.4 is added to the Health and Safety Code, to read:

41503.4. All actions of the state board to approve, revise and approve, or disapprove a district's attainment plan or plan revision shall be taken at a noticed public hearing.

SEC. 19. Section 41503.5 is added to the Health and Safety Code, to read:

41503.5. The state board shall ensure that a district's attainment plan and plan revisions meet the requirements of this part and of Part 3 (commencing with Section 40000), and that every reasonable action is taken to achieve the state ambient air quality standards for ozone, carbon monoxide, nitrogen dioxide, and sulfur dioxide at the earliest practicable date.

SEC. 20. The heading of Chapter 2 (commencing with Section 41600) of Part 4 of Division 26 of the Health and Safety Code is

amended to read:

CHAPTER 2. BASINWIDE MITIGATION FOR COGENERATION AND RESOURCE RECOVERY PROJECTS

SEC. 21. Section 41600 of the Health and Safety Code is repealed.

SEC. 22. Section 41601 of the Health and Safety Code is repealed.

SEC. 23. Section 41602 of the Health and Safety Code is repealed.

SEC. 24. Section 41603 of the Health and Safety Code is repealed.

SEC. 25. Section 41604 of the Health and Safety Code is amended and renumbered to read:

41600. (a) The districts shall provide for, and shall periodically revise as appropriate, the growth allowances necessary to accommodate the net air quality impact, if any, of cogeneration technology projects and resource recovery projects expected to be permitted by January 1, 1987, and subsequent periods thereafter, pursuant to Section 42314, so that state and federal ambient air quality standards may be achieved and maintained or that reasonable further progress be made toward attainment.

(b) If appropriate, the districts shall submit to the state board, for inclusion in the next state implementation plan revisions, the necessary control measures for the growth allowances for federally approved nonattainment pollutants and precursors required by subdivision (a).

(c) Any district which lacks a federally approved demonstration of attainment with the national ambient air quality standard for ozone or nitrogen dioxide is not required to provide a growth allowance for any pollutant under this section until two years after the district makes both demonstrations. Federal approval shall be determined, based on regulations adopted by the Environmental Protection Agency, after public notice and opportunity for comment. After a district demonstrates attainment, the district may establish a growth allowance by allocating an air quality increment within the ambient air quality standard or through adoption of further control measures.

SEC. 26. Section 41712 is added to the Health and Safety Code, to read:

41712. (a) On or before January 1, 1992, the state board shall adopt regulations to achieve the maximum feasible reduction in reactive organic compounds emitted by consumer products, if the state board determines that adequate data exists for it to adopt the regulations.

(b) The state board shall not adopt regulations pursuant to subdivision (a) unless the regulations are technologically and commercially feasible, and necessary to carry out this division.

(c) For purposes of this section, a "consumer product" means a chemically formulated product used by household and institutional consumers, including, but not limited to, detergents; cleaning compounds; polishes; floor finishes; cosmetics; personal care

products; home, lawn, and garden products; disinfectants; sanitizers; and automotive speciality products but do not include paint, furniture coatings, or architectural coatings.

(d) Prior to January 1, 1994, a district shall adopt no regulation relating to a consumer product which is different than any regulation adopted by the state board for that purpose.

SEC. 27. Section 42301 of the Health and Safety Code is amended to read:

42301. A permit system established pursuant to Section 42300 shall do all of the following:

(a) Ensure that the article, machine, equipment, or contrivance for which the permit was issued shall not prevent or interfere with the attainment or maintenance of any applicable air quality standard.

(b) Prohibit the issuance of a permit unless the air pollution control officer is satisfied, on the basis of criteria adopted by the district board, that the article, machine, equipment, or contrivance will comply with all applicable orders, rules, and regulations of the district and of the state board and with all applicable provisions of this division.

(c) Require, upon annual renewal, that each permit be reviewed to determine that permit conditions are adequate to ensure compliance with, and the enforceability of, district rules and regulations applicable to the article, machine, equipment, or contrivance for which the permit was issued which were in effect at the time the permit was issued or modified, or which have subsequently been adopted and made retroactively applicable to an existing article, machine, equipment, or contrivance, by the district board and, if the conditions are not consistent, require that the permit be revised to specify the permit conditions in accordance with all applicable rules and regulations.

(d) Provide for the reissuance or transfer of a permit to a new owner or operator of an article, machine, equipment, or contrivance. An application for transfer of ownership only, or change in operator only, of any article, machine, equipment, or contrivance which had a valid permit to operate within the two-year period immediately preceding the application is a temporary permit to operate. Issuance of the final permit to operate shall be conditional upon a determination by the district that the criteria specified in subdivisions (b) and (c) are met, if the permit was not surrendered as a condition to receiving emission reduction credits pursuant to banking or permitting rules of the district. However, under no circumstances shall the criteria specify that a change of ownership or operator alone is a basis for requiring more stringent emission controls or operating conditions than would otherwise apply to the article, machine, equipment, or contrivance.

SEC. 28. Section 42301.1 is added to the Health and Safety Code, to read:

42301.1. Whenever necessary and appropriate to ensure

compliance with all applicable conditions prior to issuance of a permit to operate an article, machine, equipment, or contrivance, a district may issue a temporary permit to operate. The temporary permit to operate shall specify a reasonable period of time during which the article, machine, equipment, or contrivance may be operated in order for the district to determine whether it will operate in accordance with the conditions specified in the authority to construct.

SEC. 28.5. Section 42302.1 is added to the Health and Safety Code, to read:

42302.1. Within 10 days of any decision or action pertaining to the issuance of a permit by a district, any aggrieved person who, in person or through a representative, appeared, submitted written testimony, or otherwise participated in the action before the district may request the hearing board of the district to hold a public hearing to determine whether the permit was properly issued. Within 30 days of the request, the hearing board shall hold a public hearing and shall render a decision on whether the permit was properly issued.

SEC. 29. Section 42311 of the Health and Safety Code is amended to read:

42311. (a) A district board may adopt, by regulation, a schedule of annual fees for the evaluation, issuance, and renewal of permits to cover the cost of district programs related to permitted stationary sources authorized or required under this division that are not otherwise funded. The fees assessed under this section shall not exceed, for any fiscal year, the actual costs for district programs for the immediately preceding fiscal year with an adjustment not greater than the change in the annual California Consumer Price Index, as determined pursuant to Section 2212 of the Revenue and Taxation Code, for the preceding year. Any revenues received by the district pursuant to the fees, which exceed the cost of the programs, shall be carried over for expenditure in the subsequent fiscal year, and the schedule of fees shall be changed to reflect that carryover. Every person applying for a permit, notwithstanding Section 6103 of the Government Code, shall pay the fees required by the schedule. Nothing in this subdivision precludes the district from recovering, through its schedule of annual fees, the estimated reasonable costs of district programs related to permitted stationary sources.

(b) The district board may require an applicant to deposit a fee in accord with the schedule adopted pursuant to subdivision (a) prior to evaluating a permit application, if the district accounts for the costs of its services and refunds to the applicant any significant portion of the deposit which exceeds the actual, reasonable cost of evaluating the application.

(c) Except as provided in Section 42313, all the fees shall be paid to the district treasurer to the credit of the district.

(d) This section does not apply to the south coast district board which is governed by Section 40510.

(e) In addition to providing notice as otherwise required, before

adopting a regulation establishing fees pursuant to this section, the district board shall hold at least one public meeting, at which oral or written presentations can be made, as part of a regularly scheduled meeting. Notice of the time and place of the meeting, including a general explanation of the matter to be considered, and a statement that the information required by this section is available, shall be mailed at least 14 days prior to the meeting to any interested party who files a written request with the district board. Any written request for the mailed notices shall be valid for one year from the date on which it is filed unless a renewal request is filed. Renewal requests for the mailed notices shall be filed on or before April 1 of each year. The district board may establish a reasonable annual charge for sending the notices based on the estimated cost of providing that service. At least 10 days prior to the meeting, the district board shall make available to the public information indicating the amount of cost, or estimated cost, required to provide the service for which the fee is charged and the revenue sources anticipated to provide the service. Any costs incurred by the district board in conducting the required meeting may be recovered from fees charged for the programs which were the subject of the meeting.

(f) In addition to any other fees authorized by this section, a district board may adopt, by regulation, a schedule of annual fees to be assessed against permitted nonvehicular sources emitting toxic air contaminants identified pursuant to the procedure set forth in Sections 39660, 39661, and 39662. A district board shall demonstrate that the fees assessed under this subdivision do not exceed the reasonable, anticipated costs of funding district activities mandated by Section 39666 related to nonvehicular source emissions. In making the demonstration, the district shall account for all direct and indirect costs of district activities related to each toxic air contaminant. If the district does not make this demonstration, it shall make reimbursement for that portion of the fee not determined to be reasonable.

(g) A district may adopt, by regulation, a schedule of fees to be assessed on areawide or indirect sources of emissions which are regulated, but for which permits are not issued, by the district to recover the costs of district programs related to these sources.

(h) A district board may adopt, by regulation, a schedule of fees to cover the reasonable costs of the hearing board incurred as a result of appeals from district decisions on the issuance of permits. However, the hearing board may waive all or part of these fees if it determines that circumstances warrant that waiver.

(i) Nothing in the amendments to this section enacted in 1988 limits or abridges any previously existing authority of a district to vary fees according to quantity of emissions, nor affects any pending litigation which might affect that previous authority.

SEC. 29.2. Section 42311.1 is added to the Health and Safety Code, to read:

42311.1. (a) On or before July 1, 1990, and at least once every two years thereafter, the state board shall prepare a report on the sources of funding for each district with an annual budget which exceeds one million dollars ($1,000,000). The report shall include all of the following:

(1) The annual budget of each district, based upon the most recent fiscal year for which data are available.

(2) A description of each district's budgetary process, including, but not limited to, criteria for allocating costs.

(3) A description of current funding sources for district programs, including, but not limited to, fees, state subventions, federal grants, and local tax revenues, and the approximate amount each source contributes to the district's annual budget.

(4) A comparison of the fees paid by different industries within each district, to the extent these data are available.

(5) A description of program needs, if any, which are not met by current funding levels.

(6) For a district which adopts a schedule of fees for issuance of permits for activities described under Section 42311.2, a comparison between the fees paid by persons or entities issued a permit and district administrative costs for issuing and enforcing those permits.

(b) Every district included within subdivision (a) shall provide data and analyses to the state board for inclusion in the report.

(c) The state board shall consult with districts and other interested parties prior to preparing the report required under subdivision (a).

(d) Upon adoption of the report described in subdivision (a), the state board shall transmit copies of the report to the Governor and the Legislature.

(e) This section shall become inoperative on July 1, 1997, and, as of January 1, 1998, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 1998, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 29.4. Section 42311.2 is added to the Health and Safety Code, to read:

42311.2. (a) Notwithstanding Section 42311, a district shall not adopt or impose fees which exceed actual district administrative costs for processing or enforcing permits applicable to any of the following:

(1) Prescribed burning operations on state responsibility lands conducted under the terms of a permit issued by the Department of Forestry and Fire Protection pursuant to Article 3 (commencing with Section 4491) of Chapter 7 of Part 2 of Division 4 of the Public Resources Code when the purpose of the operation is prevention of high-intensity wildland fires through reduction of the volume and continuity of wildland fuels.

(2) Burning of vegetation or disposal of slash following timber operations required under regulations adopted by the State Board of Forestry pursuant to Section 4551.5 or 4562 of the Public Resources

Code and for the purpose of reducing the incidence and spread of fires on timberlands.

(3) Wildland vegetation management burns. For purposes of this subdivision, "wildland vegetation management burn" means the use of prescribed burning conducted by a public agency, or through a cooperative agreement or contract involving a public agency to burn land predominantly covered with chaparral, trees, grass, or standing brush. For purposes of this subdivision, "prescribed burning" is the planned application of fire to vegetation to achieve any specific objective on lands selected in advance of that application. The planned application of fire may include natural or accidental ignition.

(b) Prior to adopting or revising fees for the activities described in paragraph (1), (2), or (3), a district shall hold a public hearing and shall consider the following:

(1) The costs of the fees on private landowners and other persons who engage in activities specified in paragraph (1), (2), or (3).

(2) Any revenues currently provided to the county for general government by public agencies which administer public lands.

SEC. 30. Section 42352 of the Health and Safety Code is amended to read:

42352. No variance shall be granted unless the hearing board makes all of the following findings:

(a) That the petitioner for a variance is, or will be, in violation of Section 41701 or of any rule, regulation, or order of the district.

(b) That, due to conditions beyond the reasonable control of the petitioner, requiring compliance would result in either (1) an arbitrary or unreasonable taking of property, or (2) the practical closing and elimination of a lawful business.

(c) That the closing or taking would be without a corresponding benefit in reducing air contaminants.

(d) That the applicant for the variance has given consideration to curtailing operations of the source in lieu of obtaining a variance.

(e) During the period the variance is in effect, that the applicant will reduce excess emissions to the maximum extent feasible.

(f) During the period the variance is in effect, that the applicant will monitor or otherwise quantify emission levels from the source, if requested to do so by the district, and report these emission levels to the district pursuant to a schedule established by the district.

SEC. 31. Section 42402.5 is added to the Health and Safety Code, to read:

42402.5. In addition to any civil and criminal penalties prescribed under this article, a district may impose administrative civil penalties for a violation of this part, or any order, permit, rule, or regulation of the state board or of a district, including a district hearing board, adopted pursuant to Part 1 (commencing with Section 39000) to Part 4 (commencing with Section 41500), inclusive, if the district board has adopted rules and regulations specifying procedures for the imposition and amounts of these penalties. No administrative civil

penalty levied pursuant to this section may exceed five hundred dollars ($500) for each violation. However, nothing in this section is intended to restrict the authority of a district to negotiate mutual settlements under any other penalty provisions of law which exceed five hundred dollars ($500).

SEC. 32. Section 43000.5 is added to the Health and Safety Code, to read:

43000.5. The Legislature further finds and declares:

(a) That despite the significant reductions in vehicle emissions which have been achieved in recent years, continued growth in population and vehicle miles traveled throughout California have the potential not only to prevent attainment of the state standards, but in some cases, to result in worsening of air quality.

(b) That the attainment and maintenance of the state air quality standards will necessitate the achievement of substantial reductions in new vehicle emissions and substantial improvements in the durability of vehicle emissions systems.

(c) That the burden for achieving needed reductions in vehicle emissions should be distributed equitably among various classes of vehicles, including both on- and off-road vehicles, light-duty cars and trucks, and heavy-duty vehicles, to accomplish improvements in both the emissions level and in-use performance and durability of all new motor vehicles.

(d) That the state board should take immediate action to implement both short- and long-range programs of across-the-board reductions in vehicle emissions which can be relied upon by the districts in the preparation of their attainment plans or plan revisions pursuant to Sections 40911, 40902, and 40925.

(e) That in order to attain the state and federal standards as expeditiously and equitably as possible, it is necessary for the authority of the state board to be clarified and expanded with respect to the control of motor vehicles and motor vehicle fuels.

SEC. 33. Section 43013 of the Health and Safety Code is amended to read:

43013. (a) The state board may adopt and implement motor vehicle emission standards, in-use performance standards, and motor vehicle fuel specifications for the control of air contaminants and sources of air pollution which the state board has found to be necessary, cost-effective, and technologically feasible to carry out the purposes of this division.

(b) The state board may, consistent with subdivision (a), adopt standards and regulations for light-duty and heavy-duty motor vehicles; medium-duty motor vehicles, as determined and specified by the state board; motorcycles; off-highway vehicles; construction equipment; farm equipment; utility engines; locomotives; and, to the extent permitted by federal law, marine vessels.

(c) Prior to adopting standards and regulations for farm equipment, the state board shall hold a public hearing and find and determine that the standards and regulations are necessary,

cost-effective, and technologically feasible. The state board shall also consider the technological effects of emission control standards on the cost, fuel consumption, and performance characteristics of mobile farm equipment.

(d) Notwithstanding subdivision (b), the state board shall not adopt any standard or regulation affecting locomotives until the final study required under Section 5 of Chapter 1326 of the Statutes of 1987 has been completed and submitted to the Governor and Legislature.

SEC. 34. Section 43018 is added to the Health and Safety Code, to read:

43018. (a) The state board shall endeavor to achieve the maximum degree of emission reduction possible from vehicular and other mobile sources in order to accomplish the attainment of the state standards at the earliest practicable date.

(b) Not later than January 1, 1992, the state board shall take whatever actions are necessary, cost-effective, and technologically feasible in order to achieve, not later than December 31, 2000, a reduction in the actual emissions of reactive organic gases of at least 55 percent, a reduction in emissions of oxides of nitrogen of at least 15 percent from motor vehicles. These reductions in emissions shall be calculated with respect to the 1987 baseline year. The state board also shall take action to achieve the maximum feasible reductions in particulates, carbon monoxide, and toxic air contaminants from vehicular sources.

(c) In carrying out this section, the state board shall adopt standards and regulations which will result in the most cost-effective combination of control measures on all classes of motor vehicles and motor vehicle fuel, including, but not limited to, all of the following:

(1) Reductions in motor vehicle exhaust and evaporative emissions.

(2) Reductions in emissions from in-use emissions from motor vehicles through improvements in emission system durability and performance.

(3) Requiring the purchase of low-emission vehicles by state fleet operators.

(4) Specification of vehicular fuel composition.

(d) In order to accomplish the purposes of this division, and to ensure timely approval of the district's plans for attainment of the state air quality standards by the state board, the state board shall adopt the following schedule for workshops and hearings to consider the adoption of the standards and regulations required pursuant to this section:

(1) Workshops on the adoption of vehicular fuel specifications for aromatic content, diesel fuel quality, light-duty vehicle exhaust emission standards, and revisions to the standards for new vehicle certification and durability to reflect current driving conditions and useful vehicle life shall be held not later than March 31, 1989. Hearings of the state board to consider adoption of proposed regulations pursuant to this subdivision shall be held not later than

November 15, 1989.

(2) Workshops on the adoption of regulations governing gasoline Reid Vapor Pressure, and standards for heavy-duty and medium-duty vehicle emissions, shall be held not later than January 31, 1990. Hearings of the state board to consider adoption of proposed regulations pursuant to this subdivision shall be held not later than November 15, 1990.

(3) Workshops on the adoption of regulations governing detergent content, emissions from off-highway vehicles, vehicle fuel composition, emissions from construction equipment and farm equipment, motorcycles, locomotives, utility engines, and to the extent permitted by federal law, marine vessels, shall be held not later than January 31, 1991. Hearings of the state board to consider adoption of proposed regulations pursuant to this subdivision shall be held not later than November 15, 1991.

SEC. 35. Section 43019 is added to the Health and Safety Code, to read:

43019. The state board may adopt, by regulation, a schedule of annual fees for the certification of motor vehicles and engines sold in the state to cover the costs of state programs authorized or required under this chapter related to mobile sources. The total amount of funds collected pursuant to this section shall not exceed four million five hundred thousand dollars ($4,500,000) in the 1989-90 fiscal year, and in any subsequent year shall not increase by an amount greater than the annual increase in the California Consumer Price Index, as determined pursuant to Section 2212 of the Revenue and Taxation Code, for the preceding year. The fees collected by the state board pursuant to this section shall be deposited in the Air Pollution Control Fund.

SEC. 36. 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.

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## CHAPTER 1569

An act to add Section 40233 to the Health and Safety Code, relating to air pollution.

[Approved by Governor September 30, 1988. Filed with Secretary of State September 30, 1988.]

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

SECTION 1. It is the intent of the Legislature to improve traffic congestion and air quality in the San Francisco Bay Area by implementing transportation control measures which reduce vehicle

trips, vehicle use, vehicle miles traveled, and vehicle idling.

SEC. 2. Section 40233 is added to the Health and Safety Code, to read:

40233. (a) Notwithstanding any other provision of law, the bay district shall adopt, implement, and enforce transportation control measures for the attainment of state or federal ambient air quality standards, in accordance with all of the following procedures:

(1) The bay district shall estimate, by June 30, 1989, the quantity of emission reductions from transportation sources necessary to attain and maintain state and federal ambient air standards.

(2) The Metropolitan Transportation Commission, in cooperation with the bay district, the Association of Bay Area Governments, local entities, and employers, shall develop and adopt a plan to control emissions from transportation sources which will achieve the emission reductions established pursuant to paragraph (1). The plan shall include, at a minimum, a schedule for implementing transportation control measures, identification of potential implementing agencies and any agreements entered into by agencies to implement portions of the plan, and a procedure for monitoring the effectiveness of and compliance with the measures. The commission shall submit the plan to the bay district for its adoption according to a reasonable schedule developed by the bay district in consultation with the commission, but not later than June 30, 1990.

(3) Upon receipt of the plan submitted by the commission, the bay district shall review the plan to determine if it will achieve the emission reductions specified in paragraph (1). If the bay district determines that the plan will achieve those reductions, the bay district shall adopt the plan and implement it immediately. If the bay district determines that the plan will not achieve the emission reductions specified in paragraph (1), it shall notify the commission of the specific deficiencies in the plan and return the plan to the commission for revision. Within 60 days after receipt of the plan, the commission shall revise it and return it to the bay district. If the bay district determines that the revised plan will achieve necessary emission reductions, the bay district shall adopt the plan and implement it immediately. If the bay district determines that the revised plan still will not achieve the emission reductions specified in paragraph (1), or if the plan is not submitted pursuant to the schedule established under paragraph (2), the bay district shall develop and adopt a plan to control emissions from transportation sources.

(4) As the bay district periodically revises its estimates of the emission reductions from transportation sources necessary to attain state and federal ambient air standards specified in paragraph (1), the plan for transportation control measures shall also be revised, adopted, and enforced according to the procedure established pursuant to paragraphs (1), (2), and (3).

(b) The bay district may delegate any function with respect to

transportation control measures to any local agency, if all of the following conditions are met:

(1) The local agency submits to the bay district an implementation plan which provides adequate resources to adopt and enforce the measures, and the bay district approves the plan.

(2) The local agency agrees to adopt and implement measures at least as stringent as those in the district air quality management plan to attain state standards.

(3) The bay district adopts procedures to review the performance of the local agency in implementing the measures to ensure compliance with the district air quality management plan to attain state standards.

(c) The bay district may revoke a delegation under this section if it determines that the performance of the local agency is in violation of this section or is otherwise inadequate to implement the district air quality management plan.

(d) For purposes of this section, "transportation control measures" means any strategy to reduce vehicle trips, vehicle use, vehicle miles traveled, vehicle idling, or traffic congestion for purposes of reducing motor vehicle emissions.

(e) The bay district and the commission shall report, not later than June 30, 1991, to the Legislature on the effectiveness of this section.

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 five hundred thousand dollars ($500,000), reimbursement shall be made from the State Mandates Claims Fund.

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## CHAPTER 1570

An act to amend Section 50841 of, and to repeal Section 50843 of, the Health and Safety Code, and to amend Section 6217 of the Public Resources Code, relating to housing.

[Approved by Governor September 30, 1988. Filed with Secretary of State September 30, 1988.]

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

SECTION 1. Section 50841 of the Health and Safety Code is amended to read:

50841. There is hereby created in the State Treasury the California Housing Trust Fund which shall only be available for the

exclusive trust purposes specified in Section 50842 upon appropriation by the Legislature. Notwithstanding Section 13340 of the Government Code, all money in the fund is continuously appropriated for the purposes of Section 50842. There shall be paid into the fund any fees, repayments, or reimbursements received by the department on account of a loan or grant made or to be made with moneys derived from the California Housing Trust Fund, unless the loan or grant was made from another fund or account and conflicting provisions of law require those moneys to be deposited into that other fund or account. The California Housing Trust Fund shall also consist of bond proceeds or any other moneys which may be made available to the fund for the purposes of the fund from any other source or sources.

All interest or other increment resulting from investment or deposit of moneys in the fund shall be deposited in the fund, notwithstanding Section 16305.7 of the Government Code. Except as otherwise provided by this chapter, or unless specifically appropriated by the Legislature to other funds established pursuant to this division, moneys in the fund shall not be subject to transfer to any other fund pursuant to Part 2 (commencing with Section 16300) of Division 4 of Title 2 of the Government Code, except the Surplus Money Investment Fund.

When utilizing moneys appropriated from the California Housing Trust Fund, the department shall give priority to projects that cannot be financed from bond proceeds, or that complement capital expenditures from bond proceeds.

SEC. 2. Section 50843 of the Health and Safety Code is repealed.

SEC. 3. Section 6217 of the Public Resources Code, as amended by Chapter 888 of the Statutes of 1986, is amended to read:

6217. With the exception of revenues derived from state school lands and from sources described in Sections 6217.6, 6301.5, 6301.6, 6855, and 8551 to 8558, inclusive, and Section 6406 (insofar as the proceeds are from property that has been distributed or escheated to the state in connection with unclaimed estates of deceased persons), the commission shall deposit in the State Treasury all revenues, moneys, and remittances received by it under this division, and under Chapter 138 of the Statutes of 1964, First Extraordinary Session, and these sums shall be applied to the following obligations in the following order:

(a) To the General Fund the revenue necessary to provide in any fiscal year for the following:

(1) Payment of refunds, authorized by the commission and approved by the State Board of Control, out of appropriations made for that purpose by the Legislature.

(2) Payment of expenditures of the commission as provided in the annual Budget Act approved by the Legislature.

(3) Payments to cities and counties of the amounts specified in Section 6817 for the purposes specified in that section, and the revenues so deposited are appropriated for such purpose.

(4) Payments to cities and counties of the amounts agreed to pursuant to the provisions of Section 6875.

(b) To the California Water Fund each fiscal year the amount of twenty-five million dollars ($25,000,000).

(c) To the Central Valley Water Project Construction Fund each fiscal year the amount of five million dollars ($5,000,000).

(d) To the Resources Agency, the amount of five hundred thousand dollars ($500,000) for each of the fiscal years 1984–85, 1985–86, 1986–87, 1987–88, and 1988–89 for distribution for public and private higher education for use as up to two-thirds of the local matching share for projects under the National Sea Grant College and Program Act of 1966 (P.L. 89-688) approved, upon the recommendation of the advisory panel appointed pursuant to this section, by the Secretary of the Resources Agency or his or her designee. During the 1988–89 fiscal year, the Legislature shall consider recommendations from the Secretary of the Resources Agency and other interested parties on the benefits to the people of the State of California derived from this program and shall determine whether or not to continue similar appropriations for subsequent fiscal years.

There shall be an advisory panel to the Secretary of the Resources Agency consisting of 13 members, which shall do all of the following:

(1) Identify state needs that might be met through Sea Grant research projects, including, but not limited to, such fields as living marine resources, aquaculture, ocean engineering, marine minerals, public recreation, coastal physical processes and coastal and ocean resources planning and management, and marine data acquisition and dissemination, establish priorities for those needs, and transmit those needs and priorities to the Legislature not later than January 1 of each year and include them in all announcements of proposals for grants in the following fiscal year.

(2) Review all applications for funding under this section and make recommendations based upon the priorities it establishes.

(3) Periodically review progress on Sea Grant research projects subsequent to their approval and funding under this section.

(4) Make recommendations to the Secretary of the Resources Agency with respect to the implementation of this section.

The Secretary of the Resources Agency shall appoint the following members of the advisory panel, who shall serve at the pleasure of the secretary:

(A) A representative of the Department of Boating and Waterways.

(B) A representative of the Department of Conservation.

(C) A representative of the Department of Fish and Game.

(D) The executive director of the California Coastal Commission or his or her designee.

(E) A representative of the fish industry.

(F) A representative of the aquaculture industry.

(G) A representative of the ocean engineering industry.

(H) A representative of the University of California.

(I) A representative of the California State University.

(J) A representative of a private California institution of higher education which is participating in the National Sea Grant Program.

(K) A representative of the State Lands Commission.

The Senate Committee on Rules shall appoint one Member of the Senate to the panel, who shall serve at the pleasure of the Senate Committee on Rules.

The Speaker of the Assembly shall appoint one Member of the Assembly to the panel, who shall serve at the pleasure of the Speaker. This member shall not be of the same political party as the member appointed by the Senate Committee on Rules.

The Secretary of the Resources Agency shall designate one member of the panel to serve as its chairman. Panel members shall serve without compensation.

The Sea Grant research projects selected for state support under this section shall have a clearly defined benefit to the people of the State of California. The Legislature hereby finds and declares that the funding provided by this section is needed to stimulate the development and utilization of ocean and coastal resources by working constructively with private sector firms and individuals. Nothing in this section shall be construed to preclude the application for funding of any project that would be eligible for funding under the terms of the National Sea Grant College and Program Act of 1966.

(e) To the Capital Outlay Fund for Public Higher Education for the 1984–85 fiscal year the amount of one hundred two million one hundred sixty-eight thousand dollars ($102,168,000), and for each fiscal year thereafter, the amount necessary to provide for an unencumbered balance available for appropriation on July 1 of each fiscal year of one hundred twenty-five million dollars ($125,000,000).

(f) (1) To the State School Building Lease-Purchase Fund, for each of the fiscal years 1985–86, 1986–87, 1987–88, 1988–89, 1989–90, and 1990–91, the amount of one hundred fifty million dollars ($150,000,000).

(2) For the fiscal years 1984–85, 1985–86, 1986–87, 1987–88, 1988–89, 1989–90, and 1990–91, up to 5 percent of the amounts deposited in the State School Building Lease-Purchase Fund pursuant to this section or any other provision of law may be spent in accordance with Sections 17785 to 17795, inclusive, of the Education Code (Emergency School Classroom Law of 1979).

(g) To the Energy and Resources Fund each fiscal year, commencing with the 1985–86 fiscal year, the amount of sixty-five million dollars ($65,000,000).

(h) To the California Housing Trust Fund established pursuant to Section 50841 of the Health and Safety Code, for fiscal year 1989–90, the amount of twenty million dollars ($20,000,000).

(i) To the Special Account for Capital Outlay, the balance of all revenues in excess of the amount distributed under subdivisions (a), (b), (c), (d), (e), (f), (g), and (h).

The commission may, with the approval of the State Board of Control, authorize the refund of moneys received or collected by it illegally or by mistake, inadvertence, or error. Claims authorized by the commission and approved by the State Board of Control shall be filed with the Controller and the Controller shall draw his or her warrant against the General Fund in payment of the refund from any appropriation made for that purpose.

All references in any law to Section 6816 shall be deemed to refer to this section.

SEC. 4. Section 6217 of the Public Resources Code, as amended by Section 3 of this act, is amended to read:

6217. With the exception of revenues derived from state school lands and from sources described in Sections 6217.6, 6301.5, 6301.6, 6855, and 8551 to 8558, inclusive, and Section 6406 (insofar as the proceeds are from property that has been distributed or escheated to the state in connection with unclaimed estates of deceased persons), the commission shall deposit in the State Treasury all revenues, moneys, and remittances received by it under this division, and under Chapter 138 of the Statutes of 1964, First Extraordinary Session, and these sums shall be applied to the following obligations in the following order:

(a) To the General Fund the revenue necessary to provide in any fiscal year for the following:

(1) Payment of refunds, authorized by the commission and approved by the State Board of Control, out of appropriations made for that purpose by the Legislature.

(2) Payment of expenditures of the commission as provided in the annual Budget Act approved by the Legislature.

(3) Payments to cities and counties of the amounts specified in Section 6817 for the purposes specified in that section, and the revenues so deposited are appropriated for such purpose.

(4) Payments to cities and counties of the amounts agreed to pursuant to the provisions of Section 6875.

(b) To the California Water Fund each fiscal year the amount of twenty-five million dollars ($25,000,000).

(c) To the Central Valley Water Project Construction Fund each fiscal year the amount of five million dollars ($5,000,000).

(d) To the General Fund, the amount of five hundred twenty-five thousand dollars ($525,000) for each of the 1989–90, 1990–91, 1991–92, 1992–93, and 1993–94 fiscal years for distribution for public and private higher education for use as up to two-thirds of the local matching share for projects under the National Sea Grant College and Program Act of 1966 (P.L. 89-688) approved, upon the recommendation of the advisory panel appointed pursuant to this section, by the Secretary of the Resources Agency or his or her designee. The Secretary of the Resources Agency shall submit a report to the Legislature on or before January 1, 1993, which evaluates this program and makes recommendations on whether changes should be made to the program or whether it should be

continued. The Legislature shall consider recommendations from the Secretary of the Resources Agency and other interested parties on the benefits to the people of the State of California derived from this program and shall determine whether or not to continue similar appropriations for subsequent fiscal years.

There shall be an advisory panel to the Secretary of the Resources Agency consisting of 16 members, which shall do all of the following:

(1) Identify state needs that might be met through Sea Grant research projects, including, but not limited to, such fields as living marine resources, aquaculture, ocean engineering, marine minerals, public recreation, coastal physical processes and coastal and ocean resources planning and management, and marine data acquisition and dissemination, establish priorities for those needs, and transmit those needs and priorities to the Legislature not later than January 1 of each year and include them in all announcements of proposals for grants in the following fiscal year.

(2) Review all applications for funding under this section and make recommendations based upon the priorities it establishes.

(3) Periodically review progress on Sea Grant research projects subsequent to their approval and funding under this section.

(4) Make recommendations to the Secretary of the Resources Agency with respect to the implementation of this section.

The Secretary of the Resources Agency shall appoint the following members of the advisory panel, who shall serve at the pleasure of the secretary:

(A) A representative of the Department of Boating and Waterways.

(B) A representative of the Department of Conservation.

(C) A representative of the Department of Fish and Game.

(D) The Executive Director of the California Coastal Commission or his or her designee.

(E) A representative of the fish industry.

(F) A representative of the aquaculture industry.

(G) A representative of the ocean engineering industry.

(H) A representative of the University of California.

(I) A representative of the California State University.

(J) A representative of a private California institution of higher education which is participating in the National Sea Grant Program.

(K) A representative of the State Lands Commission.

(L) A representative of the State Department of Health Services.

(M) A representative of the State Water Resources Control Board.

The Senate Committee on Rules shall appoint one Member of the Senate to the panel, who shall serve at the pleasure of the Senate Committee on Rules.

The Speaker of the Assembly shall appoint one Member of the Assembly to the panel, who shall serve at the pleasure of the speaker. This member shall not be of the same political party as the member appointed by the Senate Committee on Rules.

The Secretary of the Resources Agency, or the secretary's designee, shall serve as chairperson of the panel. Panel members shall serve without compensation.

The Sea Grant research projects selected for state support under this section shall have a clearly defined benefit to the people of the State of California. The Legislature hereby finds and declares that the funding provided by this section is needed to stimulate the development and utilization of ocean and coastal resources by working constructively with private sector firms and individuals. The Legislature further recognizes the high productivity of the California Sea Grant program, the only statewide program systematically devoted to supporting fundamental research, education, and extension activities on the diversity of problems related to marine resource protection and development. Nothing in this section shall be construed to preclude the application for funding of any project that would be eligible for funding under the terms of the National Sea Grant College and Program Act of 1966.

(e) To the Capital Outlay Fund for Public Higher Education for the 1984–85 fiscal year the amount of one hundred two million one hundred sixty-eight thousand dollars ($102,168,000), and for each fiscal year thereafter, the amount necessary to provide for an unencumbered balance available for appropriation on July 1 of each fiscal year of one hundred twenty-five million dollars ($125,000,000).

(f) (1) To the State School Building Lease-Purchase Fund, for each of the fiscal years 1985–86, 1986–87, 1987–88, 1988–89, 1989–90, and 1990–91, the amount of one hundred fifty million dollars ($150,000,000).

(2) For the fiscal years 1984–85, 1985–86, 1986–87, 1987–88, 1988–89, 1989–90, and 1990–91, up to 5 percent of the amounts deposited in the State School Building Lease-Purchase Fund pursuant to this section or any other provision of law may be spent in accordance with Sections 17785 to 17795, inclusive, of the Education Code (Emergency School Classroom Law of 1979).

(g) To the Energy and Resources Fund each fiscal year, commencing with the 1985–86 fiscal year, the amount of sixty-five million dollars ($65,000,000).

(h) To the California Housing Trust Fund established pursuant to Section 50841 of the Health and Safety Code, for fiscal year 1989–90, the amount of twenty million dollars ($20,000,000).

(i) To the Special Account for Capital Outlay, the balance of all revenues in excess of the amount distributed under subdivisions (a), (b), (c), (d), (e), (f), (g), and (h).

The commission may, with the approval of the State Board of Control, authorize the refund of moneys received or collected by it illegally or by mistake, inadvertence, or error. Claims authorized by the commission and approved by the State Board of Control shall be filed with the Controller and the Controller shall draw his or her warrant against the General Fund in payment of the refund from any appropriation made for that purpose.

All references in any law to Section 6816 shall be deemed to refer to this section.

SEC. 5. Section 4 of this bill incorporates amendments to Section 6217 of the Public Resources Code proposed by both this bill and AB 3223. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1989, but this bill becomes operative first, (2) each bill amends Section 6217 of the Public Resources Code, and (3) this bill is enacted after AB 3223, in which case Section 6217 of the Public Resources Code, as amended by Section 3 of this bill, shall remain operative only until the operative date of AB 3223, at which time Section 4 of this bill shall become operative.

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## CHAPTER 1571

An act to amend Section 65852.3 of the Government Code, relating to housing.

[Approved by Governor September 30, 1988. Filed with Secretary of State September 30, 1988.]

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

SECTION 1. Section 65852.3 of the Government Code is amended to read:

65852.3. (a) A city, including a charter city, county, or city and county, shall allow the installation of manufactured homes certified under the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. Sec. 5401 et seq.) on a foundation system, pursuant to Section 18551 of the Health and Safety Code, on lots zoned for conventional single-family residential dwellings. Except with respect to architectural requirements, a city, including a charter city, county, or city and county, shall only subject the manufactured home and the lot on which it is placed to the same development standards to which a conventional single-family residential dwelling on the same lot would be subject, including, but not limited to, building setback standards, side and rear yard requirements, standards for enclosures, access, and vehicle parking, aesthetic requirements, and minimum square footage requirements. Any architectural requirements imposed on the manufactured home structure itself, exclusive of any requirement for any and all additional enclosures, shall be limited to its roof overhang, roofing material, and siding material. These architectural requirements may be imposed on manufactured homes even if similar requirements are not imposed on conventional single-family residential dwellings. However, any architectural requirements for roofing and siding material shall not exceed those which would be required of conventional single-family dwellings constructed on the same lot. At

the discretion of the local legislative body, the city or county may preclude installation of a manufactured home in zones specified in this section if more than 10 years have elapsed between the date of manufacture of the manufactured home and the date of the application for the issuance of a permit to install the mobilehome in the affected zone. In no case may a city, including a charter city, county, or city and county, apply any development standards which will have the effect of precluding manufactured homes from being installed as permanent residences.

(b) At the discretion of the local legislative body, any place, building, structure, or other object having a special character or special historical interest or value, which is regulated by a legislative body pursuant to Section 37361, may be exempted from this section provided the place, building, structure, or other object is listed on the National Register of Historic Places.

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## CHAPTER 1572

An act to add Section 65852.4 to the Government Code, relating to land use.

[Approved by Governor September 30, 1988. Filed with Secretary of State September 30, 1988.]

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

SECTION 1. Section 65852.4 is added to the Government Code, to read:

65852.4. A city, including a charter city, a county, or a city and county, shall not subject an application to locate or install a manufactured home certified under the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. Sec. 5401 et seq.) on a foundation system, pursuant to Section 18551 of the Health and Safety Code, on a lot zoned for a single-family residential dwelling, to any administrative permit, planning, or development process or requirement, which is not identical to the administrative permit, planning, or development process or requirement which would be imposed on a conventional single-family residential dwelling on the same lot. However, a city, including a charter city, county, or city and county, may require the application to comply with the city's, county's, or city and county's architectural requirements permitted by Section 65852.3 even if the architectural requirements are not required of conventional single-family residential dwellings.

## CHAPTER 1573

An act to add Part 10.7 (commencing with Section 21001) to Division 2 of, and to repeal Sections 19276.5 and 26428.5 of, the Revenue and Taxation Code, relating to taxation.

[Approved by Governor September 30, 1988. Filed with Secretary of State September 30, 1988.]

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

SECTION 1. Section 19276.5 of the Revenue and Taxation Code is repealed.

SEC. 2. Part 10.7 (commencing with Section 21001) is added to Division 2 of the Revenue and Taxation Code, to read:

21001. This part shall be known and may be cited as the "Katz-Harris Taxpayers' Bill of Rights Act."

21002. The Legislature finds and declares that taxes are the most sensitive point of contact between citizens and their government, and that there is a delicate balance between revenue collection and freedom from government oppression. It is the intent of the Legislature to place guarantees in California law to ensure that the rights, privacy, and property of California taxpayers are adequately protected during the process of the assessment and collection of taxes.

The Legislature further finds that the California tax system is based largely on self-assessment, and the development of understandable tax laws and taxpayers informed of those laws will both improve self-assessment and the relationship between taxpayers and government. It is the further intent of the Legislature to promote improved taxpayer self-assessment by improving the clarity of tax laws and efforts to inform the public of the proper application of those laws.

21003. The Franchise Tax Board shall administer this part. Unless the context indicates otherwise, the provisions of this part shall apply to Part 10 (commencing with Section 17001) and Part 11 (commencing with Section 23001).

For purposes of this part, "board" means the Franchise Tax Board.

21004. (a) The board shall establish the position of the Taxpayers' Rights Advocate. The advocate or his or her designee shall be responsible for coordinating resolution of taxpayer complaints and problems, including any taxpayer complaints regarding unsatisfactory treatment of taxpayers by board employees. The advocate shall report directly to the executive officer of the board.

(b) The advocate or his or her designee shall give highest priority to reviewing and taking prompt and appropriate action, including staying actions where taxpayers have suffered or will suffer irreparable loss as the result of board action. Applicable statutes of

limitation shall be tolled during the pendency of a stay. Any penalties and interest which would otherwise accrue shall not be affected by the granting of a stay.

21005. (a) The board, in consultation with the Taxpayers' Rights Advocate, shall develop and implement a taxpayer education and information program directed at, but not limited to, the following:

(1) Taxpayer or industry groups identified in the annual report described in Section 21006.

(2) Board audit and compliance staff.

(3) (A) Identifying forms, procedures, regulations, or laws which are confusing and lead to taxpayer errors.

(B) Taking appropriate action, including recommending remedial legislation to change those items identified pursuant to subparagraph (A).

(b) The education and information program shall include all of the following:

(1) Communication with the taxpayer groups specified in Section 21006 which explains in simplified terms the most common errors made by the taxpayers or industry group and how those errors may be avoided or corrected.

(2) Participating in small business seminars and similar programs organized by state and local agencies.

(3) Revision of taxpayer educational materials currently produced by the board to explain in simplified terms the most common errors made by taxpayers and how those errors may be avoided or corrected.

(4) Implementation of a continuing education program for audit personnel to include the application of new legislation to taxpayer activities and to minimize recurrent taxpayer noncompliance or inconsistency of administration.

21006. (a) The board shall perform annually a systematic identification of areas of recurrent taxpayer noncompliance and shall report its findings to the Legislature on October 1 of each year.

(b) As part of the identification process described in subdivision (a), the board shall do both of the following:

(1) Compile and analyze sample data from its audit process, including, but not limited to, all of the following:

(A) The statute or regulation violated by the taxpayer.

(B) The amount of tax involved.

(C) The industry or business engaged in by the taxpayer.

(D) The number of years covered in the audit period.

(E) Whether professional tax preparation assistance was utilized by the taxpayer.

(F) Whether income tax or bank and corporation tax returns were filed by the taxpayer.

(2) Conduct an annual hearing before the board itself where industry representatives and individual taxpayers are allowed to present their proposals on changes to the Personal Income Tax Law or the Bank and Corporation Tax Law which may further facilitate

achievement of the legislative findings.

(c) The board shall include in its report recommendations for improving taxpayer compliance and uniform administration, including, but not limited to, all of the following:

(1) Changes in statute or board regulations.

(2) Improvement of training of board personnel.

(3) Improvement of taxpayer communication and education.

(4) Increased enforcement capabilities.

21007. The board shall prepare and publish brief but comprehensive statements in simple and nontechnical language which explain procedures, remedies, and the rights and obligations of the board and taxpayers. As appropriate, these statements shall be provided to taxpayers with the initial notice of audit, the notice of proposed additional taxes, any subsequent notice of tax due, or other substantive notices. Additionally, the board shall include an appropriate statement in the tax booklets which are mailed annually to individuals and corporations.

21008. (a) The amount of revenue collected or assessed by the board shall not be used for any of the following:

(1) To evaluate individual officers or employees.

(2) To impose or suggest production quotas or goals.

(b) The board shall annually certify by letter to the Legislature that revenue collected or assessed is not used in a manner prohibited by subdivision (a).

21009. (a) The board shall develop and implement a program which will evaluate an individual employee's or officer's performance with respect to his or her contact with taxpayers. The development and implementation of the program shall be coordinated with the Taxpayers' Rights Advocate.

(b) The board shall report to the Legislature on the implementation of this program in its annual report.

21010. No later than July 1, 1989, the board shall, in cooperation with the State Board of Equalization, the State Bar of California, the California Society of Certified Public Accountants, the Taxpayers' Rights Advocate, and other interested taxpayer-oriented groups, develop a plan to reduce the time required to resolve amended return claims for refund, protests, and appeals. The plan shall include determination of standard time frames and special review of cases which take more time than the appropriate standard time frame.

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 attorney, accountant, or other designated agent.

21012. (a) If a person's failure to make a timely return or payment is due to the person's reasonable reliance on written advice from the board, the person may be relieved of the taxes assessed or any interest, additions to tax, and penalties added thereto, as follows:

(1) Taxes shall only be relieved, and any interest, additions to tax, and penalties added thereto, if the person's failure to make a timely return or payment was due to a person's reasonable reliance on the written advice of a legal ruling by the chief counsel, and only if the board itself finds all the conditions satisfied.

(2) In the event that the person relied on written advice of other than a chief counsel ruling, taxes shall not be relieved. Interest, additions to tax, and penalties may be waived if the board staff finds all the conditions satisfied.

(b) For purposes of subdivision (a), all of the following conditions shall be satisfied:

(1) The person or the person's representative requested in writing that the board advise him or her whether a particular activity or transaction is subject to tax under the tax laws administered by that agency, and the specific facts and circumstances of the activity or transaction were fully described in the request. If the request is for a legal ruling, the request shall specifically so state.

(2) The board responded in writing to the person regarding the written request for advice, stating whether or not the described activity or transaction is subject to tax, or stating the conditions under which the activity or transaction is subject to tax. In the case where a chief counsel ruling is issued, the ruling shall be signed by the chief counsel or his or her designee.

(3) In reasonable reliance on the board's written advice, the person did not remit the tax due.

(4) The liability for taxes applied to a particular activity or transaction which occurred before the board rescinded or modified the advice so given, by sending written notice to the person of the rescinded or modified advice.

(5) The tax consequences expressed in the board's written advice were not subsequently changed by any of the following:

(A) A change in statutory law or case law.

(B) A change in federal interpretation in cases where the board's written advice was predicated upon federal interpretation.

(C) A change in material facts or circumstances relating to the taxpayer.

(c) Any person seeking relief under this section shall file with the board all of the following:

(1) A copy of the person's written request to the board and a copy of the board's written advice.

(2) A statement signed under penalty of perjury, setting forth the facts on which the claim is based.

(3) Any other information which the board may require.

(d) Only the person making the written request shall be entitled to rely on the board's written advice to that person.

(e) If written advice is issued pursuant to this section, it shall include a declaration that the tax consequences expressed in the advice may be subject to change for any of the reasons specified in paragraph (5) of subdivision (b) and that it is the duty of the taxpayer to be aware of any of these possible changes.

(f) This section does not apply if the taxpayer's request for written advice pursuant to paragraph (1) of subdivision (b) contained a misrepresentation or omission of one or more material facts.

(g) For purposes of subdivision (a), the board shall waive only that portion of tax, penalties, interest, and additions to tax attributable to the actions taken by the taxpayer after receipt of the written advice of the board which were in reasonable reliance on the written advice.

(h) Chief counsel rulings shall be issued as provided in published guidelines.

21013. (a) Every taxpayer is entitled to be reimbursed for any reasonable fees and expenses related to a hearing before the State Board of Equalization if all of the following conditions are met:

(1) The taxpayer files a claim for the fee and expenses with the State Board of Control.

(2) The State Board of Equalization, in its sole discretion, finds that the action taken by the Franchise Tax Board staff was unreasonable.

(3) The State Board of Equalization makes a recommendation to the State Board of Control that the taxpayer be awarded a specific amount of fees and expenses related to the hearing, which shall be determined by the State Board of Equalization.

(4) The State Board of Control concurs with the recommendation and orders the Franchise Tax Board to provide reimbursement of fees and expenses to the taxpayer.

(b) To determine whether the Franchise Tax Board staff has been unreasonable, the State Board of Equalization shall consider whether the taxpayer has established that the position of the Franchise Tax Board staff was not substantially justified.

(c) The amount of reimbursed fees and expenses shall be limited to the following:

(1) Fees and expenses incurred after the date of filing an appeal of a notice of action with respect to a deficiency assessment or jeopardy assessment, or denials of claims for refunds.

(2) If the State Board of Equalization finds that the Franchise Tax Board staff was unreasonable with respect to certain issues but reasonable with respect to other issues, the amount of reimbursed fees and expenses shall be limited to those which relate to the issues where the Franchise Tax Board staff was unreasonable.

21014. (a) An officer or employee of the board acting in connection with any law administered by the board shall not knowingly authorize, require, or conduct any investigation of, or surveillance over, any person for nontax administration related purposes.

(b) Any person violating subdivision (a) shall be subject to disciplinary action in accordance with the State Civil Service Act, including dismissal from office or discharge from employment.

(c) This section shall not apply with respect to any otherwise lawful investigation concerning organized crime activities.

(d) The provisions of this section are not intended to prohibit, restrict, or prevent the exchange of information where the person is being investigated for multiple violations which include income or franchise tax violations.

(e) For the purposes of this section:

(1) "Investigation" means any oral or written inquiry directed to any person, organization, or governmental agency.

(2) "Surveillance" means the monitoring of persons, places, or events by means of electronic interception, overt or covert observations, or photography, and the use of informants.

(f) This section shall not be construed to prohibit audits by the board on behalf of the Fair Political Practices Commission for purposes of administering and enforcing the Political Reform Act of 1974 (Title 9 (commencing with Section 81000) of the Government Code). This section also shall not be construed to prohibit the board from carrying out its duties with respect to other nontax laws.

21015. The Franchise Tax Board may settle any tax matter disputes involving a disputed tax liability of five thousand dollars ($5,000) or less. The settlement shall be approved by the State Board of Control, and the terms of the settlement shall be available to the public. The Franchise Tax Board may delegate the authority provided by this section to its executive officer. The Auditor General shall, on a periodic basis, monitor agreements made pursuant to this section and report its findings to the Legislature.

21016. (a) The board shall release any levy issued pursuant to Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001) of Division 2 on any property in the event of any of the following:

(1) The expense of the sale process to the state exceeds the liability for which the levy is made.

(2) The Taxpayers' Rights Advocate orders the release of the levy upon his or her finding that the levy threatens the health or welfare of the taxpayer or his or her spouse and dependents or family.

(3) The proceeds from the sale would not result in a reasonable reduction of the debt.

(b) The board shall not sell any seized property until it has first notified the taxpayer in writing of the exemptions from levy under Chapter 4 (commencing with Section 703.010) of Title 9 of the Code of Civil Procedure.

(c) This section shall not apply to the seizure of any property as a result of a jeopardy assessment.

21017. Exemptions from levy under Chapter 4 (commencing with Section 703.010) of Title 9 of the Code of Civil Procedure shall be adjusted for purposes of enforcing the collection of debts under

Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001) of Division 2 to reflect changes in the California Consumer Price Index whenever the change is more than 5 percent higher than any previous adjustment.

21018. (a) A person may file a claim with the board for reimbursement of bank charges incurred by the taxpayer as the direct result of an erroneous levy by the board. Bank charges include a financial institution's customary charge for complying with the levy instructions and reasonable charges for overdrafts that are a direct consequence of the erroneous levy, and are paid by the person and not waived or reimbursed by the financial institution. Each claimant applying for reimbursement shall file a claim with the board which shall be in such form as may be prescribed by the board. In order for the board to grant a claim, the board shall determine that both of the following conditions have been satisfied:

(1) The erroneous levy was caused by an error made by the board.

(2) Prior to the levy, the taxpayer responded to all contacts by the board and provided the board with any requested information or documentation sufficient to establish the taxpayer's position. This provision may be waived by the board for reasonable cause.

(b) Claims pursuant to this section shall be filed within 90 days from the date of the levy. Within 30 days from the date the claim is received, the board shall respond to the claim. If the board denies a claim, the taxpayer shall be notified in writing of the reason or reasons for the denial of the claim.

21019. (a) At least 30 days prior to the filing or recording of liens under Chapter 14 (commencing with Section 7150) or Chapter 14.5 (commencing with Section 7220) of Division 7 of Title 1 of the Government Code, the board shall mail to the taxpayer a preliminary notice. The notice shall specify the statutory authority of the board for filing or recording the lien, indicate the earliest date on which the lien may be filed or recorded, and state the remedies available to the taxpayer to prevent the filing or recording of the lien. In the event tax liens are filed for the same liability in multiple counties, only one preliminary notice shall be sent.

(b) The lien shall not be filed or recorded if the taxpayer demonstrates to the board by substantial evidence within 30 days after receiving the notice, that a filing or recording of a lien would be in error. The preliminary notice required by this section shall not apply to jeopardy assessments authorized by Article 4 (commencing with Section 18641) of Chapter 18 of Part 10 or Article 4 (commencing with Section 25761) of Chapter 20 of Part 11.

(c) If after filing or recording the lien, the board determines that its action was in error, it shall mail a release to the taxpayer and the entity recording the lien as soon as possible, but not later than seven working days, after this determination or the receipt of the lien recording information, whichever is later. The release shall contain a statement that the lien was filed in error. If the erroneous lien is obstructing a lawful transaction, the board shall immediately issue a

release of lien to the appropriate party. Upon the request of the taxpayer, a copy of the release shall be mailed to the major credit reporting companies in the county where the lien was filed.

21020. For the purposes of Part 11 (commencing with Section 23001) of Division 2 only, a taxpayer shall not be suspended pursuant to Section 23301, 23301.5, or 23775 unless the board has mailed a notice preliminary to suspension which indicates that the taxpayer will be suspended by a date certain pursuant to Section 23301, 23301.5, or 23775, as the case may be. The notice preliminary to suspension shall be mailed to the taxpayer at least 60 days before the date certain.

21021. (a) If any officer or employee of the board recklessly disregards board published procedures, a taxpayer aggrieved by that action or omission may bring an action for damages against the State of California in superior court.

(b) In any action brought under subdivision (a), upon a finding of liability on the part of the State of California, the state shall be liable to the plaintiff in an amount equal to the sum of all of the following:

(1) Actual and direct monetary damages sustained by the plaintiff as a result of the actions or omissions.

(2) Reasonable litigation costs, as defined for purposes of Sections 19420 and 26491.

(c) In the awarding of damages under subdivision (b), the court shall take into consideration the negligence or omissions, if any, on the part of the plaintiff which contributed to the damages.

(d) Whenever it appears to the court that the taxpayer's position in the proceedings brought under subdivision (a) is frivolous, the court may impose a penalty against the plaintiff in an amount not to exceed ten thousand dollars ($10,000). A penalty so imposed shall be paid upon notice and demand from the board and shall be collected as a tax imposed under Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001).

21022. (a) A taxpayer shall be granted an extension of time for filing a return pursuant to Section 18433 if the taxpayer's timely filed state application for an extension indicates that the taxpayer requested a timely federal extension to file and that the taxpayer paid in full any balance due in order to obtain the federal extension.

(b) An extension of time granted pursuant to subdivision (a) is not an extension of time for payment of tax required to be paid on or before the due date of the return without regard to extension. Underpayment of tax penalties shall be imposed as provided by law without regard to any extension granted under subdivision (a).

(c) This section shall apply to returns required to be filed on or after April 15, 1989.

SEC. 3. Section 26428.5 of the Revenue and Taxation Code is repealed.

SEC. 4. This act shall take effect only if Assembly Bill 2833 is chaptered and takes effect.

SEC. 5. It is the intent of the Legislature that the cost of implementing the provisions of this act shall be covered by the existing resources of state agencies. However, this restriction is not intended to limit any requests for additional resources in future years.

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## CHAPTER 1574

An act to add Article 3 (commencing with Section 7080) to Chapter 8 of Part 1 of Division 2 of, and to add Section 7156 to, the Revenue and Taxation Code, relating to taxation.

[Approved by Governor September 30, 1988. Filed with Secretary of State September 30, 1988.]

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

SECTION 1. Article 3 (commencing with Section 7080) is added to Chapter 8 of Part 1 of Division 2 of the Revenue and Taxation Code, to read:

### Article 3. The California Taxpayers' Bill of Rights

7080. This article shall be known and may be cited as "The Harris-Katz California Taxpayers' Bill of Rights."

7081. The Legislature finds and declares that taxes are the most sensitive point of contact between citizens and their government, and that there is a delicate balance between revenue collection and freedom from government oppression. It is the intent of the Legislature to place guarantees in California law to ensure that the rights, privacy, and property of California taxpayers are adequately protected during the process of the assessment and collection of taxes.

The Legislature further finds that the California tax system is based largely on voluntary compliance, and the development of understandable tax laws and taxpayers informed of those laws will both improve voluntary compliance and the relationship between taxpayers and government. It is the further intent of the Legislature to promote improved voluntary taxpayer compliance by improving the clarity of tax laws and efforts to inform the public of the proper application of those laws.

7082. The board shall administer this article. Unless the context indicates otherwise, the provisions of this article shall apply to this part.

7083. (a) The board shall establish the position of the Taxpayers' Rights Advocate. The advocate or his or her designee shall be responsible for facilitating resolution of taxpayer complaints and problems, including any taxpayer complaints regarding

unsatisfactory treatment of taxpayers by board employees, and staying actions where taxpayers have suffered or will suffer irreparable loss as the result of those actions. Applicable statutes of limitation shall be tolled during the pendency of a stay. Any penalties and interest which would otherwise accrue shall not be affected by the granting of a stay.

(b) The advocate shall report directly to the executive officer of the board.

7084. (a) The board shall develop and implement a taxpayer education and information program directed at, but not limited to, all of the following groups:

(1) Taxpayers newly registered with the board.

(2) Taxpayer or industry groups identified in the annual report described in Section 7085.

(3) Board audit and compliance staff.

(b) The education and information program shall include all of the following:

(1) Mailings to, or appropriate and effective contact with, the taxpayer groups specified in subdivision (a) which explain in simplified terms the most common areas of noncompliance the taxpayers or industry groups are likely to encounter.

(2) A program of written communication with newly registered taxpayers explaining in simplified terms their duties and responsibilities as a resale permitholder and the most common areas of noncompliance encountered by participants in their business or industry.

(3) Participation in small business seminars and similar programs organized by state and local agencies.

(4) Revision of taxpayer educational materials currently produced by the board which explain the most common areas of taxpayer nonconformance in simplified terms.

(5) Implementation of a continuing education program for audit personnel to include the application of new legislation to taxpayer activities and areas of recurrent taxpayer noncompliance or inconsistency of administration.

(c) Electronic media used pursuant to this section shall not represent the voice, picture, or name of members of the board or of the Controller.

7085. (a) The board shall perform annually a systematic identification of areas of recurrent taxpayer noncompliance and shall report its findings in its annual report submitted pursuant to Section 15616 of the Government Code.

(b) As part of the identification process described in subdivision (a), the board shall do both of the following:

(1) Compile and analyze sample data from its audit process, including, but not limited to, all of the following:

(A) The statute or regulation violated by the taxpayer.

(B) The amount of tax involved.

(C) The industry or business engaged in by the taxpayer.

(D) The number of years covered in the audit period.

(E) Whether or not professional tax preparation assistance was utilized by the taxpayer.

(F) Whether sales and use tax returns were filed by the taxpayer.

(2) Conduct an annual hearing before the full board where industry representatives and individual taxpayers are allowed to present their proposals on changes to the Sales and Use Tax Law which may further facilitate achievement of the legislative findings.

(c) The board shall include in its report recommendations for improving taxpayer compliance and uniform administration, including, but not limited to, all of the following:

(1) Changes in statute or board regulations.

(2) Improvement of training of board personnel.

(3) Improvement of taxpayer communication and education.

7086. The board shall prepare and publish brief but comprehensive statements in simple and nontechnical language which explain procedures, remedies, and the rights and obligations of the board and taxpayers. As appropriate, statements shall be provided to taxpayers with the initial notice of audit, the notice of proposed additional taxes, any subsequent notice of tax due, or other substantive notices. Additionally, the board shall include the statement in the annual tax information bulletins which are mailed to taxpayers.

7087. (a) The amount of revenue collected or assessed pursuant to this part shall not be used for any of the following:

(1) To evaluate individual officers or employees.

(2) To impose or suggest production quotas or goals.

(b) The board shall certify in its annual report submitted pursuant to Section 15616 of the Government Code that revenue collected or assessed is not used in a manner prohibited by subdivision (a).

7088. (a) The board shall develop and implement a program which will evaluate an individual employee's or officer's performance with respect to his or her contact with taxpayers. The development and implementation of the program shall be coordinated with the Taxpayers' Rights Advocate.

(b) The board shall report to the Legislature on the implementation of this program in its annual report.

7089. No later than July 1, 1989, the board shall, in cooperation with the State Bar of California, the California Society of Certified Public Accountants, the Taxpayers' Rights Advocate, and other interested taxpayer-oriented groups, develop a plan to reduce the time required to resolve petitions for redetermination and claims for refunds. The plan shall include determination of standard time frames and special review of cases which take more time than the appropriate standard time frame.

7090. Procedures of the board, relating to protest hearings before board hearing officers, 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.

(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 attorney, accountant, or other designated agent.

7091. (a) Every taxpayer is entitled to be reimbursed for any reasonable fees and expenses related to a hearing before the board if all of the following conditions are met:

(1) The taxpayer files a claim for the fee and expenses with the State Board of Control.

(2) The board, in its sole discretion, finds that the action taken by the board staff was unreasonable.

(3) The board makes a recommendation to the State Board of Control that the taxpayer be awarded a specific amount of fees and expenses related to the hearing, which shall be determined by the board.

(4) The State Board of Control concurs with the recommendation and orders the board to provide reimbursement of fees and expenses to the taxpayer.

(b) To determine whether the board staff has been unreasonable, the board shall consider whether the taxpayer has established that the position of the board staff was not substantially justified.

(c) The amount of reimbursed fees and expenses shall be limited to the following:

(1) Fees and expenses incurred after the date of filing petitions for redetermination and claims for refund.

(2) If the board finds that the staff was unreasonable with respect to certain issues but reasonable with respect to other issues, the amount of reimbursed fees and expenses shall be limited to those which relate to the issues where the staff was unreasonable.

7092. (a) An officer or employee of the board acting in connection with any law administered by the board shall not knowingly authorize, require, or conduct any investigation of, or surveillance over, any person for nontax administration related purposes.

(b) Any person violating subdivision (a) shall be subject to disciplinary action in accordance with the State Civil Service Act, including dismissal from office or discharge from employment.

(c) This section shall not apply with respect to any otherwise lawful investigation concerning organized crime activities.

(d) The provisions of this section are not intended to prohibit, restrict, or prevent the exchange of information where the person is being investigated for multiple violations which include sales and use tax violations.

(e) For the purposes of this section:

(1) "Investigation" means any oral or written inquiry directed to any person, organization, or governmental agency.

(2) "Surveillance" means the monitoring of persons, places, or

events by means of electronic interception, overt or covert observations, or photography, and the use of informants.

7093. The board's executive officer or his or her designee may settle any tax matter disputes involving a disputed tax liability of five thousand dollars ($5,000) or less. The settlement shall be approved by the State Board of Control, and the terms of the settlement shall be available to the public. The Auditor General shall, on a periodic basis, monitor agreements made pursuant to this section and report its findings to the Legislature.

7094. (a) The board shall release any levy issued pursuant to this part on any property in the event of any of the following:

(1) The expense of the sale process exceeds the liability for which the levy is made.

(2) The Taxpayers' Rights Advocate orders the release of the levy upon his or her finding that the levy threatens the health or welfare of the taxpayer or his or her spouse and dependents or family.

(b) The board shall not sell any seized property until it has first notified the taxpayer in writing of the exemptions from levy under Chapter 4 (commencing with Section 703.010) of Title 9 of the Code of Civil Procedure.

(c) This section shall not apply to the seizure of any property as a result of a jeopardy assessment.

7095. Exemptions from levy under Chapter 4 (commencing with Section 703.010) of Title 9 of the Code of Civil Procedure shall be adjusted for purposes of enforcing the collection of debts under this part to reflect changes in the California Consumer Price Index whenever the change is more than 5 percent higher than any previous adjustment.

7096. (a) A taxpayer may file a claim with the board for reimbursement of bank charges incurred by the taxpayer as the direct result of an erroneous levy by the board. Bank charges include a financial institution's customary charge for complying with the levy instructions and reasonable charges for overdrafts that are a direct consequence of the erroneous levy. The charges are those paid by the taxpayer and not waived or reimbursed by the financial institution. Each claimant applying for reimbursement shall file a claim with the board which shall be in such form as may be prescribed by the board. In order for the board to grant a claim, the board shall determine that both of the following conditions have been satisfied:

(1) The erroneous levy was caused by board error.

(2) Prior to the levy, the taxpayer responded to all contacts by the board and provided the board with any requested information or documentation sufficient to establish the taxpayer's position. This provision may be waived by the board for reasonable cause.

(b) Claims pursuant to this section shall be filed within 90 days from the date of the levy. Within 30 days from the date the claim is received, the board shall respond to the claim. If the board denies the claim, the taxpayer shall be notified in writing of the reason or reasons for the denial of the claim.

7097. (a) At least 30 days prior to the filing or recording of liens under Chapter 14 (commencing with Section 7150) or Chapter 14.5 (commencing with Section 7220) of Division 7 of Title 1 of the Government Code, the board shall mail to the taxpayer a preliminary notice. The notice shall specify the statutory authority of the board for filing or recording the lien, indicate the earliest date on which the lien may be filed or recorded, and state the remedies available to the taxpayer to prevent the filing or recording of the lien. In the event tax liens are filed for the same liability in multiple counties, only one preliminary notice shall be sent.

(b) The preliminary notice required by this section shall not apply to jeopardy determinations issued under Article 4 (commencing with Section 6536) of Chapter 5.

(c) If the board determines that filing a lien was in error, it shall mail a release to the taxpayer and the entity recording the lien as soon as possible, but no later than seven days, after this determination and the receipt of lien recording information. The release shall contain a statement that the lien was filed in error. In the event the erroneous lien is obstructing a lawful transaction, the board shall immediately issue a release of lien to the taxpayer and the entity recording the lien.

(d) When the board releases a lien erroneously filed, notice of that fact shall be mailed to the taxpayer and, upon the request of the taxpayer, a copy of the release shall be mailed to the major credit reporting companies in the county where the lien was filed.

7098. For the purposes of this part only, a taxpayer shall not be suspended pursuant to Section 6070 or 6072 unless the board has mailed a notice preliminary to suspension which indicates that the taxpayer will be suspended by a date certain pursuant to that section. The notice preliminary to suspension shall be mailed to the taxpayer at least 60 days before the date certain.

7099. (a) If any officer or employee of the board recklessly disregards board-published procedures, a taxpayer aggrieved by that action or omission may bring an action for damages against the State of California in superior court.

(b) In any action brought under subdivision (a), upon a finding of liability on the part of the State of California, the state shall be liable to the plaintiff in an amount equal to the sum of all of the following:

(1) Actual and direct monetary damages sustained by the plaintiff as a result of the actions or omissions.

(2) Reasonable litigation costs, as defined for purposes of Section 7156.

(c) In the awarding of damages under subdivision (b), the court shall take into consideration the negligence or omissions, if any, on the part of the plaintiff which contributed to the damages.

(d) Whenever it appears to the court that the taxpayer's position in the proceedings brought under subdivision (a) is frivolous, the court may impose a penalty against the plaintiff in an amount not to

exceed ten thousand dollars ($10,000). A penalty so imposed shall be paid upon notice and demand from the board and shall be collected as a tax imposed under this part.

SEC. 2. Section 7156 is added to the Revenue and Taxation Code, to read:

7156. (a) In the case of any civil proceeding which is—

(1) Brought by or against the State of California in connection with the determination, collection, or refund of any tax, interest, or penalty under this part, and

(2) Brought in a court of record of this state, the prevailing party may be awarded a judgment for reasonable litigation costs incurred in that proceeding.

(b) (1) A judgment for reasonable litigation costs shall not be awarded under subdivision (a) unless the court determines that the prevailing party has exhausted the administrative remedies available to that party under this part.

(2) An award under subdivision (a) shall be made only for reasonable litigation costs which are allocable to the State of California and not to any other party to the action or proceeding.

(3) No award for reasonable litigation costs may be made under subdivision (a) with respect to any declaratory judgment proceeding.

(4) No award for reasonable litigation costs may be made under subdivision (a) with respect to any portion of the civil proceeding during which the prevailing party has unreasonably protracted that proceeding.

(c) For purposes of this section—

(1) The term "reasonable litigation costs" includes any of the following:

(A) Reasonable court costs.

(B) Based upon prevailing market rates for the kind or quality of services furnished any of the following:

(i) The reasonable expenses of expert witnesses in connection with the civil proceeding, except that no expert witness shall be compensated at a rate in excess of the highest rate of compensation for expert witnesses paid by the State of California.

(ii) The reasonable cost of any study, analysis, engineering report, test, or project which is found by the court to be necessary for the preparation of the party's case.

(iii) Reasonable fees paid or incurred for the services of attorneys in connection with the civil proceeding, except that those fees shall not be in excess of seventy-five dollars ($75) per hour unless the court determines that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys for the proceeding, justifies a higher rate.

(2) (A) The term "prevailing party" means any party to any proceeding described in subdivision (a) (other than the State of California or any creditor of the taxpayer involved) which—

(i) Establishes that the position of the State of California in the

civil proceeding was not substantially justified, and

(ii) (I) Has substantially prevailed with respect to the amount in controversy, or

(II) Has substantially prevailed with respect to the most significant issue or set of issues presented.

(B) Any determination under subparagraph (A) as to whether a party is a prevailing party shall be made—

(i) By the court, or

(ii) By agreement of the parties.

(3) The term "civil proceeding" includes a civil action.

(d) For purposes of this section, in the case of—

(1) Multiple actions which could have been joined or consolidated, or

(2) A case or cases involving a return or returns of the same taxpayer which could have been joined in a single proceeding in the same court, these actions or cases shall be treated as one civil proceeding regardless of whether the joinder or consolidation actually occurs, unless the court in which the action is brought determines, in its discretion, that it would be inappropriate to treat these actions or cases as joined or consolidated for purposes of this section.

(e) An order granting or denying an award for reasonable litigation costs under subdivision (a), in whole or in part, shall be incorporated as a part of the decision or judgment in the case and shall be subject to appeal in the same manner as the decision or judgment.

(f) For purposes of this section, "position of the State of California" includes either of the following:

(1) The position taken by the State of California in the civil proceeding.

(2) Any administrative action or inaction by the State Board of Equalization (and all subsequent administrative action or inaction) upon which that proceeding is based.

SEC. 3. It is the intent of the Legislature that the costs of implementing the provisions of this act shall be covered by the existing resources of state agencies. However, this restriction is not intended to limit any requests for additional resources in future years.

SEC. 4. This act shall take effect only if Assembly Bill 2788 is chaptered and takes effect.

## CHAPTER 1575

An act to amend Section 1491 of, and to repeal Section 1490 of, the Health and Safety Code, to amend Sections 13823.5, and 13823.95 of, to amend and renumber Section 13823.6 of, and to add Section 13823.12 to, the Penal Code, relating to victims of crime.

[Approved by Governor September 30, 1988. Filed with Secretary of State September 30, 1988.]

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

SECTION 1. Section 1490 of the Health and Safety Code is repealed.

SEC. 2. Section 1491 of the Health and Safety Code is amended to read:

1491. In addition to any examination performed without charge to a victim of rape or other sexual assault pursuant to Section 13823.95 of the Penal Code, a county hospital shall, without charge, provide the victim of rape, or other sexual assault, with testing for venereal disease and pregnancy.

SEC. 3. Section 13823.5 of the Penal Code is amended to read:

13823.5. (a) The Office of Criminal Justice Planning, with the assistance of the advisory committee established pursuant to Section 13836, shall establish a protocol for the examination and treatment of victims of sexual assault and attempted sexual assault, including child molestation, and the collection and preservation of evidence therefrom. The protocol shall contain recommended methods for meeting the standards specified in Section 13823.11.

(b) In addition to the protocol, the office shall develop informational guidelines, containing general reference information on evidence collection, examination of victims and psychological and medical treatment for victims of sexual assault and attempted sexual assault, including child molestation.

In developing the protocol and the informational guidelines, the office and the advisory committee shall seek the assistance and guidance of organizations assisting victims of sexual assault; qualified health care professionals, criminalists, and administrators who are familiar with emergency room procedures; victims of sexual assault; and law enforcement officials.

(c) The office, in cooperation with the State Department of Health Services and the Department of Justice, shall adopt a standard and a complete form or forms for the recording of medical and physical evidence data disclosed by a victim of sexual assault or attempted sexual assault, including child molestation.

Each qualified health care professional who conducts an examination for evidence of a sexual assault or an attempted sexual assault, including child molestation, shall use the standard form adopted pursuant to this section, and shall make such observations

and perform such tests as may be required for recording of the data required by the form. The forms shall be subject to the same principles of confidentiality applicable to other medical records.

The office shall make copies of the standard form or forms available to every public or private general acute care hospital, as requested.

The standard form shall be used to satisfy the reporting requirements specified in Sections 11160 and 11161 in cases of sexual assault, and may be used in lieu of the form specified in Section 11168 for reports of child abuse.

(d) The office shall distribute copies of the protocol and the informational guidelines to every general acute care hospital, law enforcement agency, and prosecutor's office in the state.

(e) As used in this chapter, "qualified health care professional" means a physician and surgeon currently licensed pursuant to Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code, or a nurse currently licensed pursuant to Chapter 6 (commencing with Section 2700) of Division 2 of the Business and Professions Code and working in consultation with a physician and surgeon who conducts examinations or provides treatment as described in Section 13823.9 in a general acute care hospital or in a physician and surgeon's office.

SEC. 4. Section 13823.6 of the Penal Code is amended and renumbered to read:

13826.25. The Office of Criminal Justice Planning through its programs established under Title 1.5 (commencing with Section 11500) shall provide special training for prosecutors in the areas of gang violence, vertical prosecution, gang identification, and witness intimidation.

This section shall be operative until January 1, 1991, and on that date is repealed unless a later enacted statute, which becomes effective on or before January 1, 1991, deletes or extends that date.

SEC. 5. Section 13823.12 is added to the Penal Code, to read:

13823.12. Failure to comply fully with Section 13823.11 or with the protocol or guidelines, or to utilize the form established by the Office of Criminal Justice Planning pursuant to Section 13823.5, shall not constitute grounds to exclude evidence, nor shall the court instruct or comment to the trier of fact in any case that less weight may be given to the evidence based on the failure to comply.

SEC. 6. Section 13823.95 of the Penal Code is amended to read:

13823.95. No costs incurred by a qualified health care professional, hospital, or other emergency medical facility for the examination of the victim of a sexual assault, as described in the protocol developed pursuant to Section 13823.5, when the examination is performed, pursuant to Sections 13823.5 and 13823.7, for the purposes of gathering evidence for possible prosecution, shall be charged directly or indirectly to the victim of the assault. Those costs shall be treated as local costs and charged to the appropriate local government agency as follows:

(a) If the examination is provided at a county or city hospital, or hospital district facility, the county shall pay the expenses.

(b) If the examination is performed at a private hospital or in the office of a qualified health care professional, the expenses shall be paid by the local governmental agency in whose jurisdiction the alleged offense was committed.

Bills for these costs shall be submitted to the law enforcement agency in the jurisdiction in which the alleged offense was committed which requests the examination.

The law enforcement agency in the jurisdiction in which the alleged offense was committed which requests the examination has the option of determining whether or not the examination will be performed in the office of a physician and surgeon.

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.

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## CHAPTER 1576

An act to add and repeal Chapter 3.25 (commencing with Section 44695) of Part 25 of the Education Code, and to amend Item 6110-230-001 of Section 2.00 of the Budget Act of 1988 (Chapter 313, Statutes of 1988), relating to education, and making an appropriation therefor.

[Approved by Governor September 30, 1988. Filed with Secretary of State September 30, 1988.]

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

SECTION 1. The Legislature finds and declares as follows:

(a) Teens are increasingly participating in risk-taking behavior which has potential long-term negative emotional, social, physical, and economic consequences for themselves and their families.

(b) These behaviors include, but are not limited to, the following:

(1) Drug and alcohol abuse.

(2) Demonstration of negative attitudes towards family, school, and authority.

(3) Little personal initiative.

(c) The results of the behaviors include, but are not limited to, the following:

(1) School drop-out.

(2) Teenage pregnancy leading to welfare dependency.

(3) Teen prostitution.

(4) Alcoholism and drug dependency.

(5) Runaways.
(6) Crime and violence.

SEC. 2. Chapter 3.25 (commencing with Section 44695) is added to Part 25 of the Education Code, to read:

## CHAPTER 3.25. STAFF DEVELOPMENT IN IDENTIFICATION OF RISK-TAKING BEHAVIOR IN SECONDARY SCHOOL PUPILS

44695. (a) Although families assume the primary responsibility for instilling values in their children, school personnel also share the responsibility to assist our young people in becoming productive individuals.

(b) Eligible school districts, as specified in Section 44696, on behalf of interested schools, may apply for funding to provide in-service training to all certificated personnel who work with pupils in schools that operate school-based pupil motivation and maintenance programs pursuant to Article 6 (commencing with Section 54720) of Chapter 9 of Part 29. Participating school districts shall have the option of providing this training to classified personnel who work with pupils as well. This training shall be sensitive to the socioeconomic, ethnic, and cultural needs of each distinctive community. The purposes of this training are to increase staff knowledge, awareness, and sensitivity to youth in need.

(c) This training shall include, but not be limited to, components which do the following:

(1) Increase personal sensitivity to risk-taking behavior of youth.
(2) Facilitate identification of characteristics of risk-taking behavior.
(3) Inform about legal responsibilities of school personnel.
(4) Provide methods of approaching pupils in need.
(5) Identify referral sources in the school and community.
(6) Inform about the successful program strategies of programs that are currently assisting high-risk youth.

44696. This chapter applies only to school districts that are currently funded and operating pupil motivation and maintenance and dropout recovery programs pursuant to Article 6 (commencing with Section 54720) of Chapter 9 of Part 29.

44697. The Superintendent of Public Instruction, with funds appropriated for the purposes of this chapter, shall do all of the following:

(a) Develop application criteria, including, but not limited to, the duration and intensity of training pursuant to this chapter.
(b) Approve applications for funding.
(c) Grant to each approved school for purposes of this chapter an amount not to exceed one thousand dollars ($1,000) per participating school and two hundred thousand dollars ($200,000) total.

44698. Funding for the purposes of this chapter shall be provided in the annual Budget Act.

44699. This chapter shall become inoperative on June 30, 1990,

and, as of January 1, 1991, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 1991, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 3. Item 6110-230-001 of Section 2.00 of the Budget Act of 1988 (Chapter 313, Statutes of 1988) is amended to read:

6110-230-001—For local assistance, Department of Education, for transfer to Section A of the State School Fund, for allocation by the Superintendent of Public Instruction to school districts and county offices of education for the purposes of educational programs funded in the 1987–88 fiscal year, for school districts and county offices of education to carry out these purposes, in lieu of amounts otherwise provided by statute.....12,099,593,000

Provisions:

1. The Superintendent of Public Instruction shall take necessary and appropriate actions to ensure the orderly administration of local assistance programs for school districts, county offices of education, and other agencies participating in state-subsidized programs during the 1987–88 and 1988–89 fiscal years, and to carry out the purposes of this act. Actions of the superintendent pursuant to this item shall reflect the policies of state as expressed by statute. For purposes of calculating the allocation of these funds to each school district and county office of education, the superintendent shall make the following computations:
   (a) The superintendent shall calculate the amount allocated to each school district and county office of education, including any deficits which were funded, for the 1987–88 fiscal year.
   (b) The superintendent shall compute an amount of funds for each school district and county office of education to reflect allowable growth or decline in enrollment which would be provided under statute in effect as of January 1, 1988, plus an amount to reflect growth or decline which effectuates the intent of the 1988–89 Governor's Budget as introduced.
   (c) (1) In lieu of the amount provided pursuant to law for annual cost-of-living adjustments, the superintendent shall compute an amount for each school district and county office of education to

reflect an inflation adjustment for those programs which receive an adjustment pursuant to statute in effect as of January 1, 1988, except that this adjustment shall not exceed 2.1 percent.

(2) For the 1989–90 fiscal year, the superintendent shall calculate the base and the inflation adjustment as if the 1989 base and inflation adjustment were made pursuant to statute as of June 30, 1988.

(d) (1) Notwithstanding subdivision (c), $300,000,000 of the amount in this item shall be available for the purpose of providing cost-of-living adjustments up to 4.1 percent. However, these funds shall not be available for expenditure if the Director of Finance fails to certify to the Controller by August 1, 1988, that the amount of General Fund revenues available for the 1988–89 fiscal year is at least $36,100,000,000 not counting the enactment of any legislation which would increase General Fund revenues.

(2) The superintendent shall calculate an amount for each school district and county office of education to reflect an inflation adjustment for those programs which would receive an adjustment pursuant to statute in effect as of January 1, 1988, except that this adjustment shall not exceed 4.1 percent, including the amount in subdivision (c).

(e) The allocation of each school district and county office of education shall be first the amount computed pursuant to subdivision (a), then the amount computed pursuant to subdivision (b), and last the amount computed pursuant to subdivisions (c) and (d).

2. Notwithstanding any other provision of law, the county superintendent shall reduce the total revenue limit computed pursuant to Section 42238 of the Education Code by the amount of the decreased employer contributions to the Public Employees' Retirement System resulting from the enactment of Chapter 330 of the Statutes of 1982, adjusted for any changes in those contributions resulting from subsequent

changes in employer contribution rates, excluding rate changes due to the direct transfer of the state-mandated portion of the employer contributions to the Public Employees' Retirement System, through the 1988–89 fiscal year.

The reduction shall be calculated as follows:

(a) Determine the amount of employer contributions which would have been made in the 1988–89 fiscal year if the applicable Public Employees' Retirement System employer contribution rate in effect immediately prior to the enactment of Chapter 330 of the Statutes of 1982 were in effect during the 1988–89 fiscal year.

For purposes of this calculation, no school district shall have a contribution rate higher than 13.020 percent.

(b) Subtract from the amount determined in subdivision (a) the actual amount of employer contributions made to the Public Employees' Retirement System in the 1988–89 fiscal year.

(c) For the purposes of this provision, employer contributions to the Public Employees' Retirement System for any of the following positions shall be excluded from the calculation specified above.

(1) Positions supported totally by federal funds which are subject to supplanting restrictions.

(2) Positions supported by funds received pursuant to Section 42243.6 of the Education Code.

(3) Positions supported, to the extent of employer contributions not exceeding $25,000 by any single educational agency, from a revenue source determined on the basis of equity to be properly excludable from this subdivision by the Superintendent of Public Instruction with the approval of the Director of Finance.

(d) For accounting purposes, the reduction made by this provision may be reflected as an expenditure from appropriate sources of revenue as directed by the Superintendent of Public Instruction.

It is the intent of the Legislature to make adjustments to school district revenue lim-

its for the 1988–89 fiscal year to reflect savings that these districts will realize in the contributions to the Public Employees' Retirement System due to a reduced contribution rate for the 1988–89 fiscal year.

(e) Notwithstanding any other provision of law, the county superintendent shall recompute the adjustment to total revenue limits pursuant to Provision 6.3 of Item 6100-101-001 of Section 37 of Chapter 917 of the Statutes of 1987, excluding rate changes due to the direct transfer of the state-mandated portion of the employer contributions to the Public Employees' Retirement System, through the 1987–88 fiscal year. Funds appropriated in this item shall be available to reimburse local education agencies in the event that the recomputation pursuant to this provision demonstrates that an excessive amount was reduced from total revenue limits under Provision 6.3 of Item 6100-101-001 of Section 37 of Chapter 917 of the Statutes of 1987.

3. Notwithstanding any other provision of law, the county superintendent shall reduce the total revenue limit computed pursuant to Section 2558 of the Education Code by the amount of the decreased employer contributions to the Public Employees' Retirement System resulting from the applicable employer contributions rate reductions made through the 1988–89 fiscal year, excluding rate changes due to the direct transfer of the state-mandated portion of the employer contributions to the Public Employees' Retirement System.

The reduction shall be calculated as follows:

(a) Determine the amount of employer contributions which would have been made in the 1988–89 fiscal year if the applicable Public Employees' Retirement System employer contribution rate were in effect immediately prior to July 1, 1988.

(b) Subtract from the amount determined in subdivision (a) the actual amount of employer contributions made to the Public Employees' Retirement System in the 1988–89 fiscal year.

(c) For the purposes of this provision, employ-

er contributions to the Public Employees' Retirement System for any of the following positions shall be excluded from the calculation specified above.

(1) Positions supported totally by federal funds which are subject to supplanting restrictions.

(2) Positions supported by funds received pursuant to Section 42243.6 of the Education Code.

(3) Positions supported, to the extent of employer contributions not exceeding $25,000 by any single educational agency, from a revenue source determined on the basis of equity to be properly excludable from this subdivision by the Superintendent of Public Instruction with the approval of the Director of Finance.

(d) For accounting purposes, the reduction made by this provision may be reflected as an expenditure from appropriate sources of revenue as directed by the Superintendent of Public Instruction.

It is the intent of the Legislature to make adjustments to county office of education revenue limits for the 1988–89 fiscal year to reflect savings that these districts will realize in the contributions to the Public Employees' Retirement System due to a reduced contribution rate for the 1988–89 fiscal year.

4. Of the funds appropriated in this item, $1,000,000 shall be allocated for a sixth technology demonstration site to be located at the Port Hueneme Elementary School District. The funds shall be utilized for a program of research, development, and evaluation of interactive instructional technology, which shall be compatible with the provisions of the Educational Technology Local Assistance Program, created pursuant to Article 15 (commencing with Section 51870) of Chapter 5 of Part 28. Prior district expenditures on interactive technology shall count toward any required local funding match. No funds shall be expended until a program plan has been approved by the State Board of Education.

5. Of the funds appropriated in this item, in addi-

tion to any other amounts authorized for the Administrator Training and Evaluation Program, $600,000 shall be available for the expansion of the Administrator Training and Evaluation Program in 1988–89.

6. Of the funds appropriated in this item, $500,000 shall be available for a grant to the Exploratorium in San Francisco for exhibit-based teacher training.
7. Of the funds appropriated in this item, $9,096,000 shall be available for the purpose of recomputing adjustments to district revenue limits in 1987–88 pursuant to Provisions 2 and 3 of this item.
8. Of the funds appropriated in this item, $200,000 shall be available for matching funds with the Department of Rehabilitation to provide coordinated services to handicapped pupils through an interagency agreement to continue the Transition Partnership Program.
9. (a) (1) Notwithstanding subdivision (b) of Section 2 of Chapter 249 of the Statutes of 1988, at the first principal apportionment of the 1988–89 fiscal year, the Superintendent of Public Instruction shall report to the Director of Finance and the Controller the amounts by which the actual 1987–88 local revenues received by the county offices of education for revenue limit purposes, by county offices of education for special education programs, and by school districts for revenue limit purposes, as reported at the 1987–88 annual apportionment, exceed the amount of local revenues received by county offices of education and school districts, as reported at the 1987–88 second principal apportionment.

(2) Notwithstanding subdivision (b) of Section 2 of Chapter 249 of the Statutes of 1988, at the first principal apportionment of the 1988–89 fiscal year, the Superintendent of Public Instruction shall report to the Director of Finance and the Controller the amounts by which the actual reductions in the Public Employees' Retirement System employer contributions, required by

Provision 6.3 of Item 6100-101-001 of Section 37 of Chapter 917 of the Statutes of 1987, excluding rate changes due to the direct transfer of the state-mandated portion of the employer contributions to the Public Employees' Retirement System, exceed the amount of the reductions in the Public Employees' Retirement System employer contributions as reported at the 1987–88 second principal apportionment, as adjusted pursuant to Provisions 2 and 3 of this item.

(3) Notwithstanding subdivision (b) of Section 2 of Chapter 249, of the Statutes of 1988, the Controller shall transfer the amounts calculated pursuant to paragraphs (1) and (2), as adjusted pursuant to subdivision (b), from the funds appropriated in this item to the unappropriated balance of the General Fund.

(b) The local revenue increases and reductions to the Public Employees' Retirement System employer contributions specified in subdivision (a) may be adjusted by the following amounts:

(1) The net amounts of any adjustment made to county offices of education and district revenue limits and to special education entitlements, pursuant to Section 41341 of the Education Code, between the 1987–88 second principal apportionment and the 1987–88 annual apportionment.

(2) The net amounts of any adjustments necessary to fund entitlements authorized by this item as certified by the Superintendent of Public Instruction.

10. In the event the funds appropriated in this item are insufficient to fully fund the allocations required pursuant to subdivisions (c) and (d) of Provision 1 and Provisions 2 through 8, inclusive, the Superintendent shall prorate these allocations such that the total amount of funds allocated for subdivisions (c) and (d) of Provision 1 and Provisions 2 through 8, inclusive, does not exceed the funds available for those allocations.

11. From the funds appropriated in this item, a school eligible for funding pursuant to Section 42281, Section 42282, or Section 42284 of the Education Code, shall be allowed to claim during 1988–89 the level of average daily attendance claimed in 1987–88 or the actual amount of average daily attendance.
12. Notwithstanding any other provision of law, a school district which was a direct service school district in 1987–88 pursuant to the provisions of Section 2557 of the Education Code shall be treated for funding purposes in 1988–89 as a direct service district for the purposes of Section 2557.
13. The State Department of Education shall allow full replacement value for any schoolbus purchased prior to July 1, 1983. Any schoolbus purchased after July 1, 1987, and which does not meet the 1977 federal safety standards, may receive a replacement grant of no more than the purchase price of the used bus at the time it was purchased by the replacing school district.

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## CHAPTER 1577

An act to amend Sections 196, 4700, and 7010 of the Civil Code, to amend Sections 10061, 10125, and 10125.5 of, and to add Section 10125.6 to, the Health and Safety Code, relating to parent and child.

[Approved by Governor September 30, 1988. Filed with Secretary of State September 30, 1988.]

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

SECTION 1. The Legislature finds and declares that it is in the best interest of the State of California to improve the condition of children's lives. This bill is not intended to restrict the existing rights of children under common law or statute.

SEC. 2. Section 196 of the Civil Code is amended to read:

196. (a) The father and mother of a child have an equal responsibility to support and educate their child in the manner suitable to the child's circumstances, taking into consideration the respective earnings or earning capacities of the parents.

(b) A judgment or order for support may, in appropriate circumstances, based on all relevant facts, require one parent to pay to the other parent a reasonable amount for the cost of the support of the child for the shortest of the following periods prior to the filing

of the action:

(1) Three years.

(2) The date of the mailing of the birth certificate or the mailing of the written notification by the custodial parent, pursuant to subdivision (c).

(3) The date of separation of the parties until the date of the filing of the action.

This subdivision shall only apply to a child born on or after January 1, 1989.

(c) In circumstances where paternity has not been legally established or the parties were married but separated before the date of the child's date of birth, the court shall not award child support under subdivision (b), under any circumstances, unless the father has received a copy of the birth certificate from the State Registrar as provided in Section 10061 of the Health and Safety Code, or the custodial parent has provided written notification by first-class mail, with return receipt requested, to the father of his paternity and of his obligation to support the child. In determining whether the judgment or order may be awarded, the court shall consider the diligence on the part of the custodial parent in bringing the action for support. Any support ordered pursuant to subdivision (b) shall not be in an amount that reduces a parent's ability to provide appropriate support for any other child for whom a duty of support is owed if the support is actually being paid. The court shall review the incomes and expenses of the parents each year, or other relevant period of time, for which support is being requested and may apply its guidelines and the child support laws in effect for each period. This subdivision shall only apply to a child born on or after January 1, 1989.

(d) As used in this section, "relevant facts" has the meaning given in subdivision (d) of Section 7010.

SEC. 3. Section 4700 of the Civil Code is amended to read:

4700. (a) (1) In any proceeding where there is at issue the support of a minor child or a child for whom support is authorized under Section 206, the court may order either or both parents to pay any amount necessary for the support, maintenance, and education of the child. At the request of either party, the court shall make appropriate findings with respect to the circumstances on which the order for the support of a minor child is based. Upon a showing of good cause, the court may order the parent or parents required to make the payment of support to give reasonable security therefor. All payments of support shall be made by the person owing the support payment prior to the payment of any debts owing to creditors. Any order for child support may be modified or revoked as the court may deem necessary, except as to any amount that may have accrued prior to the date of the filing of the notice of motion or order to show cause to modify or revoke. Any order for child support, as well as any order of modification or revocation of such an order, may be made retroactive to the date of the filing of the notice

of motion or order to show cause therefor, or to any subsequent date, except as provided by federal law (42 U.S.C. Sec. 666(a)(9)). An order of modification or revocation may include an award of attorney fees and court costs to the prevailing party.

(2) A judgment or order for support may, in appropriate circumstances, based on all relevant facts, require one parent to pay to the other parent a reasonable amount for the cost of the support of the child for the shortest of the following periods prior to the filing of the action:

(A) Three years.

(B) The date of the mailing of the birth certificate or the mailing of the written notification by the custodial parent, pursuant to paragraph (3).

(C) The date of separation of the parties until the date of the filing of the action.

This paragraph shall only apply to a child born on or after January 1, 1989.

(3) In circumstances where paternity has not been established or the parties were married but separated before the child's date of birth, the court shall not award child support under paragraph (2), under any circumstances, unless the father has received a copy of the birth certificate from the State Registrar as provided in Section 10061 of the Health and Safety Code, or the custodial parent has provided written notification by first-class mail, with return receipt requested, to the father of his paternity and of his obligation to support the child. In determining whether the judgment or order may be awarded, the court shall consider the diligence on the part of the custodial parent in bringing the action for support. Any support ordered pursuant to paragraph (2) shall not be in an amount that reduces a parent's ability to provide appropriate support for any other child for whom a duty of support is owed if the support is actually being paid. The court shall review the incomes and expenses of the parents each year, or other relevant period of time, for which support is being requested and may apply its guidelines and the child support law in effect for each period. This paragraph shall only apply to a child born on or after January 1, 1989.

As used in this paragraph, "relevant facts" has the meaning given in subdivision (d) of Section 7010.

(b) The court may order financial compensation for periods when a parent fails to assume the caretaker responsibility, or when a parent has been thwarted by the other parent when attempting to exercise visitation or custody rights, contemplated by a custody or visitation order entered pursuant to this part, including, but not limited to, an order for joint physical custody or by a written or oral agreement between the parents. The compensation shall be limited to (1) the reasonable expenses incurred for, or on behalf of, a child, resulting from the other parent's failure to assume his or her caretaker responsibility or (2) reasonable expenses incurred by a parent for, or on behalf of, a child resulting from the other parent's thwarting his

or her efforts to exercise visitation or custody rights. These expenses may include the value of caretaker services, but are not limited to the cost of services provided by a third party during the relevant period.

The compensation may be requested by noticed motion or an order to show cause and shall allege, under penalty of perjury, a minimum of one hundred dollars ($100) of expenses so incurred or, at least three occurrences of failure to exercise visitation or custody rights or at least three occurrences of the thwarting of efforts to exercise visitation or custody rights within the six months prior to filing of the motion or order.

Attorney's fees shall be awarded to the prevailing party, upon a showing of the nonprevailing party's ability to pay.

(c) When a court orders a person to make specified payments for support of a child during the child's minority, or until the child is married or otherwise emancipated, or until the death of, or the occurrence of a specified event as to, a child for whom support is authorized under Section 206, the liability of the person ordered to pay support terminates upon the happening of the contingency. If the custodial parent or other person having physical custody of the child, to whom payments are to be made, fails to notify the person ordered to make those payments, or the attorney of record of the person ordered to pay support, of the happening of the contingency, and continues to accept support payments, the person shall refund any and all moneys received which accrued after the happening of the contingency, except that the overpayments shall first be applied to any and all support payments which are then in default. The court may, in the original order for support, order the custodial parent or other person to whom payments are to be made to notify the person ordered to make the payments, or his or her attorney of record, of the happening of the contingency.

(d) In the event obligations for support of a child are discharged in bankruptcy, the court may make all proper orders for the support, maintenance, and education of the child, as the court may deem just.

SEC. 4. Section 7010 of the Civil Code is amended to read:

7010. (a) The judgment or order of the court determining the existence or nonexistence of the parent and child relationship is determinative for all purposes except for actions brought pursuant to Section 270 of the Penal Code.

(b) If the judgment or order of the court is at variance with the child's birth certificate, the court shall order that a new birth certificate be issued as prescribed in Article 6 (commencing with Section 10450) of Chapter 8 of Division 9 of the Health and Safety Code.

(c) (1) The judgment or order may contain any other provision directed against the appropriate party to the proceeding, concerning the duty of support, the custody and guardianship of the child, visitation privileges with the child, the furnishing of bond or other security for the payment of the judgment, or any other matter in the best interest of the child. The judgment or order may direct the

father to pay the reasonable expenses of the mother's pregnancy and confinement.

(2) The judgment or order may, in appropriate circumstances, based on all relevant facts, require one parent to pay to the other parent a reasonable amount for the cost of the support of the child for the shortest of the following periods prior to the filing of the action:

(A) Three years.

(B) The date of the mailing of the birth certificate or the mailing of the written notification by the custodial parent, pursuant to paragraph (3).

(C) The date of separation of the parties until the date of the filing of the action.

This paragraph shall only apply to a child born on or after January 1, 1989.

(3) In circumstances where paternity has not been legally established or the parties were married but separated before the child's date of birth, the court shall not award child support under paragraph (2), under any circumstances, unless the father has received a copy of the birth certificate from the State Registrar as provided in Section 10061 of the Health and Safety Code, or the custodial parent has provided written notification by first-class mail, with return receipt requested, to the father of his paternity and of his obligation to support the child. In determining whether the judgment or order may be awarded, the court shall consider the diligence on the part of the custodial parent in bringing the action for support. Any support ordered pursuant to paragraph (2) shall not be in an amount that reduces a parent's ability to provide appropriate support for any other child for whom a duty of support is owed if the support is actually being paid. The court shall review the incomes and expenses of the parents each year, or other relevant period of time, for which support is being requested and may apply its guidelines and the child support laws in effect for each period. This paragraph shall only apply to a child born on or after January 1, 1989.

(d) In determining the amount to be paid by a parent for support of the child and the period during which the duty of support is owed, a court enforcing the obligation of support shall consider all relevant facts, including, but not limited to, all of the following:

(1) Any agreements made between the parents before the date of the filing of the action.

(2) Any previous payments made for the support of the child by the parent from whom support is sought.

(3) Any bad faith on the part of either parent.

(4) Any undue delay in seeking to establish an order for child support; the reasons for the undue delay; and whether either parent has been prejudiced as a result of the delay.

(5) Any other factors deemed relevant by the court.

SEC. 5. Section 10061 of the Health and Safety Code is amended

to read:

10061. (a) The local registrar of births and deaths shall transmit each week to the State Registrar all original certificates accepted for registration by him during the preceding week.

(b) Upon receipt of an original certificate of birth pursuant to subdivision (a), the State Registrar shall only mail a copy of the certificate to the father identified in the certificate upon the written or in-person request of the mother. A mother requesting such a mailing shall provide the State Registrar with the mailing address of the father and shall be charged a fee for the mailing in an amount not to exceed the State Registrar's actual cost for mailing the certificate by first-class, return receipt requested, mail.

SEC. 6. Section 10125.5 of the Health and Safety Code is amended to read:

10125.5. (a) The second section of the certificate of live birth as specified in subdivision (b) of Section 10125 shall be confidential. Access to such portion of any certificate of live birth shall be limited to the following:

(1) State Department of Health Services staff.

(2) Local registrar's staff and local health department staff when approved by the local registrar or local health officer, respectively.

(3) Persons with a valid scientific interest as determined by the State Registrar, who are engaged in demographic, epidemiological or other similar studies related to health, and who agree to maintain confidentiality as prescribed by this division and by regulation of the State Registrar.

(4) The mother or father identified in the certificate.

(5) The person named on the certificate.

(6) Any person who has petitioned to adopt the person named on the certificate, subject to the provisions of Section 10439 of the Health and Safety Code and Section 227 of the Civil Code.

(b) The State Department of Health Services shall maintain an accurate record of all persons who are given access to the confidential portion of the certificate. Such record shall include: the name of the person authorizing access; name, title, and organizational affiliation of persons given access; dates of access; and specific purpose for which information is to be used. The record of access shall be open to public inspection during normal operating hours of the State Department of Health Services.

(c) All research proposed to be conducted using the confidential medical and social information on the birth certificate shall first be reviewed by the appropriate committee constituted for the protection of human subjects which is approved by the federal Department of Health, Education, and Welfare and has a general assurance pursuant to Part 46 of Title 45 of the Code of Federal Regulations. No information shall be released until the request for information has been reviewed by the Vital Statistics Advisory Committee and such committee has recommended to the State Registrar that such information shall be released.

SEC. 7. Section 10125.6 is added to the Health and Safety Code, to read:

10125.6. (a) The State Registrar of Vital Statistics and the State Department of Social Services shall cooperatively develop an informational notice which advises the mother of a newborn child of her right to retroactive child support as provided by Sections 196, 4700, and 7010 of the Civil Code. The notice shall also advise the mother of her right to have an original certificate of birth mailed to the father pursuant to subdivision (b) of Section 10061.

(b) The State Registrar of Vital Statistics and the State Department of Social Services shall distribute copies of the notice formulated pursuant to subdivision (a) to each health facility licensed pursuant to Division 2 (commencing with Section 1200) that provides care and treatment relating to pregnancy. Each such health facility shall provide a copy of the notice to each pregnant woman at the time she is admitted for care or treatment relating to her pregnancy.

(c) The State Registrar shall provide a copy of this notice to each mother with each original birth certificate.

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.

However, nothwithstanding 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 five hundred thousand dollars ($500,000), reimbursement shall be made from the State Mandates Claims Fund.

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## CHAPTER 1578

An act to amend Section 4104 of, and to repeal Section 4100.5 of, the Public Contract Code, relating to public works.

[Approved by Governor September 30, 1988. Filed with Secretary of State September 30, 1988.]

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

SECTION 1. The Legislature finds that the practices of bid shopping and bid peddling in connection with the construction, alteration, and repair of public improvements often result in poor

quality of material and workmanship to the detriment of the public, deprive the public of the full benefits of fair competition among prime contractors and subcontractors, and lead to insolvencies, loss of wages to employees, and other evils.

SEC. 2. Section 4100.5 of the Public Contract Code is repealed.

SEC. 3. Section 4104 of the Public Contract Code is amended to read:

4104. Any officer, department, board or commission taking bids for the construction of any public work or improvement shall provide in the specifications prepared for the work or improvement or in the general conditions under which bids will be received for the doing of the work incident to the public work or improvement that any person making a bid or offer to perform the work, shall, in his or her bid or offer, set forth:

(a) The name and the location of the place of business of each subcontractor who will perform work or labor or render service to the prime contractor in or about the construction of the work or improvement, or a subcontractor licensed by the State of California who, under subcontract to the prime contractor, specially fabricates and installs a portion of the work or improvement according to detailed drawings contained in the plans and specifications, in an amount in excess of one-half of 1 percent of the prime contractor's total bid or, in the case of bids or offers for the construction of streets or highways, including bridges, in excess of one-half of 1 percent of the prime contractor's total bid or ten thousand dollars ($10,000), whichever is greater.

(b) The portion of the work which will be done by each subcontractor under this act. The prime contractor shall list only one subcontractor for each portion as is defined by the prime contractor in his or her bid.

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 five hundred thousand dollars ($500,000), reimbursement shall be made from the State Mandates Claims Fund.

# CHAPTER 1579

An act to add Section 199.222 to the Health and Safety Code, and to add Title 8 (commencing with Section 7500) to Part 3 of the Penal Code, relating to AIDS, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 30, 1988. Filed with Secretary of State September 30, 1988.]

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

SECTION 1. Section 199.222 is added to the Health and Safety Code, immediately preceding Section 199.23, to read:

199.222. Actions taken pursuant to Title 8 (commencing with Section 7500) of Part 3 of the Penal Code shall not be subject to subdivisions (a) to (c), inclusive, of Section 199.21. In addition, the requirements of subdivision (a) of Section 199.22 shall not apply to testing performed pursuant to that title.

SEC. 2. Title 8 (commencing with Section 7500) is added to Part 3 of the Penal Code, to read:

## TITLE 8. MEDICAL TESTING OF PRISONERS

### CHAPTER 1. GENERAL PROVISIONS

7500. The Legislature finds and declares all of the following:

(a) The public peace, health, and safety is endangered by the spread of acquired immune deficiency syndrome (AIDS) within state and local correctional institutions.

(b) The spread of AIDS within prison and jail populations presents a grave danger to inmates within those populations, law enforcement personnel, and other persons in contact with a prisoner infected with the AIDS virus, both during and after the prisoner's confinement. Law enforcement personnel and prisoners are particularly vulnerable to this danger, due to the high number of assaults and other violent acts which occur within correctional institutions.

(c) AIDS has the frightening potential of spreading more rapidly within the closed society of correctional institutions than outside these institutions. This major public health problem is compounded by the further potential of rapid spread of communicable disease outside correctional institutions, through contacts of an infected prisoner who is not treated and monitored upon his or her release.

(d) New diseases of epidemic proportions, such as AIDS may suddenly and tragically infect large numbers of people. This title primarily addresses a current problem of this nature, the spread of AIDS among those in correctional institutions and among the people of California.

(e) AIDS and AIDS-related conditions pose a major threat to the public health and safety of those governmental employees and others whose responsibilities bring them into most direct contact with persons afflicted with those illnesses, and the protection of the health and safety of these personnel is of equal importance to the people of the State of California as is the protection of the health of those afflicted with the diseases who are held in custodial situations.

(f) Testing described in this title of individuals housed within state and local correctional facilities for evidence of infection by the human immunodeficiency virus (HIV), AIDS, or AIDS-related complex would help provide a level of information necessary for effective disease control within these institutions and would help preserve the health of public employees, inmates, and persons in custody, as well as that of the public at large. This testing is not intended to be, and shall not be construed as, a prototypical method of disease control for the public at large.

7501. In order to address the public health crisis described in Section 7500, it is the intent of the Legislature to do all of the following:

(a) Establish a procedure through which custodial and law enforcement personnel are required to report certain situations and may request and be granted a confidential HIV test of an inmate convicted of a crime, or a person arrested or taken into custody, if the custodial or law enforcement officer has reason to believe he or she has come into contact with the blood or semen of an inmate or in any other manner has come into contact with the inmate in a way that could result in HIV infection, based on the latest determinations and conclusions by the federal Centers for Disease Control and the State Department of Health Services on means for the transmission of AIDS, and if appropriate medical authorities, as provided for in this title, reasonably believe there is good medical reason for the test.

(b) Permit inmates to file similar requests stemming from contacts with other inmates.

(c) Require that probation and parole officers be notified when an inmate being released from incarceration is infected with AIDS, and permit these officers to notify certain persons who will come into contact with the parolee or probationer, if authorized by law.

(d) Authorize prison medical staff authorities to require tests of a jail or prison inmate under certain circumstances, if they reasonably believe, based upon the existence of supporting evidence, that the inmate may be suffering from AIDS or AIDS-related diseases and is a danger to other inmates or staff.

(e) Require supervisory and medical personnel of correctional institutions to which this title applies to notify staff if they are coming into close and direct contact with persons in custody who have tested positive or who have AIDS, and provide appropriate counseling and safety equipment.

7502. As used in this title, the following terms shall have the following meanings:

(a) "Correctional institution" means any state prison, county jail, city jail, California Youth Authority facility, county or city-operated juvenile facility, including juvenile halls, camps, or schools, or any other state or local correctional institution.

(b) "Counseling" means counseling by a licensed physician and surgeon, registered nurse, or other health professional who meets guidelines which shall be established by the State Department of Health Services for purposes of providing counseling on AIDS to inmates, persons in custody, and other persons pursuant to this title.

(c) "Law enforcement employee" means correctional officers, peace officers, and other staff of a correctional institution, California Highway Patrol officers, county sheriff's deputies, city police officers, parole officers, probation officers, and city, county, or state employees including but not limited to, judges, bailiffs, court personnel, and public defenders, who, as part of the judicial process involving an inmate of a correctional institution, or a person charged with a crime, including a minor charged with an offense for which he or she may be made a ward of the court under Section 602 of the Welfare and Institutions Code, are engaged in the custody, transportation, or care of these persons.

(d) "AIDS" means acquired immune deficiency syndrome.

(e) "Human immunodeficiency virus" or "HIV" means the etiologic virus of AIDS.

(f) "HIV test" or "HIV testing" means any clinical laboratory test approved by the federal Food and Drug Administration for HIV, component of HIV, or antibodies to HIV.

(g) "Inmate" means any of the following:

(1) A person in a state prison, or city and county jail, who has been either convicted of a crime or arrested or taken into custody, whether or not he or she has been charged with a crime.

(2) Any person in a California Youth Authority facility, or county- or city-operated juvenile facility, who has committed an act, or been charged with committing an act specified in Section 602 of the Welfare and Institutions Code.

(h) "Bodily fluids" means blood, semen, or any other bodily fluid identified by either the federal Centers for Disease Control or State Department of Health Services in appropriate regulations as capable of transmitting HIV.

(i) "Minor" means a person under 15 years of age.

7503. The State Department of Health Services shall adopt guidelines permitting a chief medical officer to delegate his or her medical responsibilities under this title to other qualified physicians and surgeons, and his or her nonmedical responsibilities to other qualified persons, as appropriate. The chief medical officer shall not, however, delegate the duty to determine whether mandatory testing is required as provided for in Chapter 2 (commencing with Section 7510).

7504. Actions taken pursuant to this title shall not be subject to subdivisions (a) to (c), inclusive, of Section 199.21 of the Health and

Safety Code. In addition, the requirements of subdivision (a) of Section 199.22 of the Health and Safety Code, shall not apply to testing performed pursuant to this title.

## CHAPTER 2. PROCEDURES FOR REQUIRING HIV TESTING

7510. (a) A law enforcement employee who believes that he or she came into contact with bodily fluids of either an inmate of a correctional institution, a person not in a correctional institution who has been arrested or taken into custody whether or not the person has been charged with a crime, including a person detained for or charged with an offense for which he or she may be made a ward of the court under Section 602 of the Welfare and Institutions Code, or a person on probation or parole due to conviction of a crime, shall report the incident through the completion of a form provided by the State Department of Health Services. The form shall be directed to the chief medical officer, as defined in subdivision (c), who serves the applicable law enforcement agency. Utilizing this form the law enforcement employee may request an HIV test of the person who is the subject of the report. The forms may be combined with regular incident reports or other forms used by the correctional institution or law enforcement agency.

(b) The report required by subdivision (a) shall be submitted by the end of the law enforcement employee's shift during which the incident occurred, or if not practicable, as soon as possible, but no longer than two days after the incident, except that that the chief medical officer may waive this filing period requirement if he or she finds that good cause exists. The report shall include names of witnesses to the incident, names of persons involved in the incident, and if feasible, any written statements from these parties. The law enforcement employee shall assist in the investigation of the incident, as requested by the chief medical officer.

(c) For purposes of this section and Section 7511, "chief medical officer" means:

(1) In the case of a report filed by a staff member of a state prison, the chief medical officer of that facility.

(2) In the case of a parole officer filing a report, the chief medical officer of the nearest state prison.

(3) In the case of a report filed by an employee of the California Youth Authority, the chief medical officer of the facility.

(4) In the case of a report filed against a subject who is an inmate of a city or county jail or a county- or city-operated juvenile facility, or who has been arrested or taken into custody whether or not the person has been charged with a crime, but who is not in a correctional facility, including a person detained for or charged with an offense for which he or she may be made a ward of the court under Section 602 of the Welfare and Institutions Code, the county health officer of the county in which the individual is jailed or charged with the crime.

(5) In the case of a report filed by a probation officer, the county health officer of the county in which the probation officer is employed.

(6) In any instance where the chief medical officer, as determined pursuant to this subdivision, is not a physician or surgeon, the chief medical officer shall designate a physician or surgeon to perform his or her duties under this title.

7511. (a) The chief medical officer shall, regardless of whether a report filed pursuant to Section 7510 contains a request for HIV testing, decide whether or not to require HIV testing of the inmate or other person who is the subject of the report filed pursuant to Section 7510, within five calendar days of receipt of the report. If the chief medical officer decides to require HIV testing, he or she shall specify in his or her decision the circumstances, if any, under which followup testing will also be required.

(b) The chief medical officer shall take the following factors into account in determining whether to order an HIV test and followup testing:

(1) Whether an exchange of bodily fluids occurred which could have resulted in AIDS infection, based on the latest written guidelines and standards established by the federal Centers for Disease Control and the State Department of Health Services.

(2) Whether the person exhibits medical conditions or clinical findings categorizing him or her as a possible AIDS victim.

(3) Whether the health of the institution staff or inmates may have been endangered as to AIDS infection resulting from the reported incident.

(c) Prior to reaching a decision, the chief medical officer shall receive written or oral testimony from the law enforcement employee filing the report, from the subject of the report, and from witnesses to the incident, as he or she deems necessary for a complete investigation. The decision shall be in writing and shall state the reasons for the decision. A copy shall be provided by the chief medical officer to the law enforcement employee who filed the report and to the subject of the report, and where the subject is a minor, to the parents or guardian of the minor, unless the parent or guardian of the minor cannot be located.

7512. (a) An inmate of a correctional institution may request HIV testing of another inmate of that institution if he or she has reason to believe that he or she has come into contact with the bodily fluids of that inmate, in situations, which may include, but are not limited to, rape or sexual contact with a potentially infected inmate, tattoo or drug needle sharing, an incident involving injury in which bodily fluids are exchanged, or confinement with a cellmate under circumstances involving possible mingling of bodily fluids. A request may be filed under this section only within two calendar days of the date when the incident causing the request occurred, except that the chief medical officer may waive this filing period requirement when he or she finds that good cause exists.

(b) An inmate in a California Youth Authority facility or any county- or city-operated juvenile facility who is 15 years of age or older, may file a request for a test of another inmate in that facility, in the same manner as an inmate in a state prison, and is subject to the same procedures and rights. An inmate in a California Youth Authority facility or a county- or city-operated juvenile facility who is a minor may file such a request through a staff member of the facility in which he or she is confined. A staff member may file this request on behalf of a minor on his or her own volition if he or she believes that a situation meeting the criteria specified in subdivision (a) has occurred warranting the request. The filing of a request by staff on behalf of an inmate of a California Youth Authority facility or a local juvenile facility shall be within two calendar days of its discovery by staff, except that the chief medical officer may waive this filing period requirement if he or she finds that good cause exists.

When a request is filed on behalf of a minor, the facility shall notify the parent or guardian of the minor of the request and seek permission from the parent or guardian for the test request to proceed. If the parent or guardian refuses to grant permission for the test, the Director of the Youth Authority may request the juvenile court in the county in which the facility is located, to rule on whether the test request procedure set forth in this title shall continue. The juvenile court shall make a ruling within five days of the case being brought before the court.

If the parent or guardian cannot be located, the superintendent of the facility shall approve or disapprove the request for a test.

(c) Upon receipt of a request for testing as provided in this section, a law enforcement employee shall submit the request to the chief medical officer, the identity of which shall be determined as if the request had been made by an employee of the facility. The chief medical officer shall follow the procedures set forth in Section 7511 with respect to investigating the request and reaching a decision as to mandatory testing of the inmate who is the subject of the request. The inmate submitting the request shall provide names or testimony of witnesses within the limits of his or her ability to do so. The chief medical officer shall make his or her decision based on the criteria set forth in Section 7511. A copy of the chief medical officer's decision shall be provided to the person submitting the request for HIV testing, to the subject of the request, and to the superintendent of the correctional institution. In the case of a minor, a copy of the decision shall be provided to the parents or guardian of the minor, unless the parent or guardian of the minor cannot be located.

7512.5. In the absence of the filing of a report pursuant to Section 7510 or a request pursuant to Section 7512, the chief medical officer, may order a test of an inmate if he or she concludes there are clinical symptoms of AIDS or AIDS-related complex, as recognized by the Centers for Disease Control,.

A copy of the decision shall be provided to the inmate, and where the inmate is a minor, to the parents or guardian of the minor, unless

the parent or guardian of the minor cannot be located. Any decision made pursuant to this section shall not be appealable to a three-member panel provided for under Section 7515.

7513. A description of the right to appeal a chief medical officer's decision shall accompany the copies of the decision required to be provided by Sections 7511, 7512, and 7512.5.

7514. It shall be the chief medical officer's responsibility to see that personal counseling is provided to a law enforcement employee filing a report pursuant to Section 7510, an inmate filing a request pursuant to Section 7512, and any potential test subject, at the time the initial report or request for tests is made, at the time when tests are ordered, and at the time when test results are provided to the employee, inmate, or test subject.

The chief medical officer may provide additional counseling to any of these individuals, upon his or her request, or whenever the chief medical officer deems advisable, and may arrange for the counseling to be provided in other jurisdictions. The chief medical officer shall encourage the subject of the report or request, the law enforcement employee who filed the report, the person who filed the request pursuant to Section 7512, or in the case of a minor, the minor on whose behalf the request was filed, to undergo voluntary HIV testing if the chief medical officer deems it medically advisable. All testing required by this title or any voluntary testing resulting from the provisions of this title, shall be at the expense of the appropriate correctional institution.

7515. (a) A decision of the chief medical officer made pursuant to Section 7511, 7512, or 7516 may be appealed, within three calendar days of receipt of the decision, to a three-person panel, either by the person required to be tested, or his or her parent or guardian when the subject is a minor, the law enforcement employee filing a report pursuant to either Section 7510 or 7516, or the person requesting testing pursuant to Section 7512, whichever is applicable, or the chief medical officer, upon his or her own motion. If no request for appeal is filed under this subdivision, the chief medical officer's decision shall be final.

(b) A panel required pursuant to subdivision (a) shall consist of three members, as follows:

(1) The chief medical officer making the original decision.

(2) When the decision arises out of a report filed pursuant to Section 7510, a supervisory representative from the law enforcement agency employing the person who filed the report. When a decision arises out of a chief medical officer's decision made pursuant to Section 7512.5, a supervisory representative of the correctional institution appointed by the institution's superintendent. When the decision arises out of a request filed pursuant to Section 7512, a supervisory representative of the law enforcement agency with jurisdiction over the facility.

(3) A physician and surgeon not on the staff of, or under contract with, a state, county, or city correctional institution or with an

employer of a law enforcement employee as defined in subdivision (b) of Section 7502, and who has knowledge of the diagnosis and treatment of AIDS. The physician and surgeon appointed pursuant to this paragraph shall be selected by the State Department of Health Services from among a list of persons to be compiled by that department. The State Department of Health Services shall adopt standards for selecting persons for the list required by this paragraph, as well as for their reimbursement, and shall, to the extent possible, utilize its normal process for selecting consultants in compiling this list. The physician and surgeon appointed pursuant to this paragraph shall preside at the hearing and serve as chairperson.

A correctional institution or a county may create an ongoing panel or panels to hear appeals under this section, except that one member each shall meet the requirements of paragraphs (1), (2), and (3).

No panel shall be created under this paragraph by a state correctional institution except with the prior approval of the State Department of Health Services, and no panel shall be created pursuant to this paragraph by a county or city correctional institution except with the prior approval of the county health officer.

(c) A hearing conducted pursuant to this section shall be closed, except that each of the following persons shall have the right to attend the hearing, speak on the issues presented at the hearing, and call witnesses to testify at the hearing:

(1) The chief medical officer, who may also bring staff essential to the hearing, as well as the other two members of the panel.

(2) The subject of the chief medical officer's decision, except that a subject who is a minor may attend only with the consent of his or her parent or guardian, and if the subject is a minor, his or her parent or guardian.

(3) The law enforcement employee filing the report pursuant to Section 7510, or the person requesting HIV testing pursuant to Section 7512, whichever is applicable, and if the person is a minor, his or her parent or guardian.

(d) The subject of the test, or the person requesting the test pursuant to Section 7512, or who filed the report pursuant to Section 7510, whichever is applicable, may appoint a representative to attend the hearing in order to assist him or her.

(e) When a hearing is sought pursuant to this section, the decision shall be rendered within 10 days of the date upon which the appeal is filed pursuant to subdivision (a). A unanimous vote of all the panel shall be necessary in order to require that the subject of the hearing undergo HIV testing.

The criteria specified in Section 7511 for use by the chief medical officer shall also be utilized by the panel in making its decision.

The decision shall be in writing, stating reasons for the decision, and shall be signed by the members. A copy shall be provided by the chief medical officer to the person requesting the test, or filing the report, whichever is applicable, to the subject of the test, and, when the subject is in a correctional institution, to the superintendent of

the institution, except that when the subject of the test or the person upon whose behalf the request for the test was made is a minor, copies shall also be provided to the parent or guardian of the person, unless the parent or guardian cannot be located.

7516. (a) When a custodial officer or staff person of a correctional institution, observes or is informed of activity in a correctional institution that is classified as causing, or known to cause, the transmission of the AIDS virus, as described in subdivision (b), he or she may file a written report with the facility's chief medical officer which, in the case of city or county jails, shall be the county health officer.

(b) Reportable activities within a correctional institution for which a report may be filed pursuant to subdivision (a) include, but are not limited to, all of the following activities, if they could result in the transmission of AIDS, according to the standards provided for in this chapter:

(1) Sexual activity resulting in exchange of bodily fluids.

(2) IV drug use.

(3) Incidents involving injury to inmates or staff in which bodily fluids are exchanged.

(4) Tampering with medical and food supplies or medical or food equipment.

(5) Tattooing among inmates.

(c) The medical officer may investigate the report, conduct interviews, and determine whether the situation reported caused the probable exchange of body fluids in a manner that could result in the transmission of HIV, utilizing the criteria set forth in Section 7511, and pose a danger to the health and safety of the institution's staff and inmate population.

If the chief medical officer concludes this may have occurred, he or she shall require HIV testing of any inmate which he or she deems necessary pursuant to the investigation. Whenever an inmate is required to undergo an HIV test pursuant to this subdivision, he or she may appeal that decision as provided for in Section 7515.

(d) Testing under this section may only be required by a unanimous vote of all three members of the panel. The rights guaranteed inmates under Section 7515 shall apply.

When a hearing is convened pursuant to this section, the hearing shall be closed, except that both the person filing the original report and the chief medical officer as well as other panel members may also call witnesses to testify at the hearing.

When a hearing is sought pursuant to this section, the decision shall be rendered within 20 days of the date the hearing is sought by the medical officer.

(e) This section shall apply to situations involving individual inmates or group situations but shall not be utilized to require testing of all inmates in a correctional institution.

(f) The findings of the panel shall be set forth in writing, including reasons for the panel's decision, and shall be signed by the members

of the panel. A copy of the decision shall be provided to the superintendent of the correctional institution, the subjects of the report and to any inmates or officers whom the panel concludes may have been exposed to HIV infection as established by provisions of this title.

7516.5. Any decision by a panel pursuant to Section 7515 or 7516 may be appealed to the superior court, either by a law enforcement employee filing a report pursuant to Section 7510, a person requesting an HIV test pursuant to Section 7512, a medical officer convening a panel pursuant to Section 7516, or any person required to be tested pursuant to a panel's decision. A person required to be tested pursuant to Section 7512.5 may also appeal the decision to the superior court.

The court shall schedule a hearing as expeditiously as possible to review the decision of the panel or a decision made pursuant to Section 7512.5. The court shall uphold the decision being appealed if that decision is based upon substantial evidence.

7516.8. It shall be the responsibility of the chief medical officer to see that copies of the hearing decision are distributed in accordance with requirements of this chapter.

7517. Except as otherwise permitted by this title or any provision of law, any records, including decisions of a chief medical officer or an appeals panel, compiled pursuant to this chapter shall be confidential.

7518. (a) The State Department of Health Services shall, in consultation with local and state law enforcement agencies, county health officers, and federal health authorities, adopt guidelines for the making of decisions pursuant to this chapter.

(b) Oversight responsibility for implementation of Section 7515 in state prisons shall be vested with the Chief of Medical Services in the Department of Corrections. Oversight responsibility for implementation of Section 7515 in California Youth Authority facilities shall be vested with the Chief of Medical Services in the Department of the Youth Authority. Oversight responsibility for implementation of Section 7515 with respect to reports involving parole or probation officers shall be vested with the Chief of Parole and Community Services Division in the Department of Corrections.

Oversight responsibility at the county level shall rest with the county health officer.

7519. (a) When an individual, including a minor charged with an offense for which he or she may be made a ward of the court under Section 602 of the Welfare and Institutions Code, has either been charged with a crime, but is not being held in a correctional institution due to his or her release, either through the granting of bail, a release on the individual's own recognizance, or for any other reason, or been convicted of a crime, but not held in a correctional institution due to the imposition of probation, a fine, or any other alternative sentence, and the individual is required to undergo initial or followup testing pursuant to this title, the failure of the individual

to submit to the test may be grounds for revocation of the individual's release or probation or other sentence, whichever is applicable.

(b) Any refusal by a parolee or probationer to submit to testing required pursuant to this title may be ruled as a violation of the person's parole or probation.

## CHAPTER 3. NOTIFICATION REQUIREMENT

7520. Upon the release of an inmate from a correctional institution, a medical representative of the institution shall notify the inmate's parole or probation officer, where it is the case, that the inmate has tested positive for infection with HIV, or has been diagnosed as having AIDS or AIDS-related conditions. The representative of the correctional institution shall obtain the latest available medical information concerning any precautions which should be taken under the circumstances, and shall convey that information to the parole or probation officer.

When a parole or probation officer learns from responsible medical authorities that a parolee or probationer under his or her jurisdiction has AIDS, or AIDS-related conditions, or has tested positive for HIV infection, the parole or probation officer shall be responsible for ensuring that the parolee or probationer contacts the county health department in order to be, or through his or her own physician and surgeon is, made aware of counseling and treatment for AIDS commensurate with that available to the general population of that county.

7521. (a) When a parole or probation officer learns from responsible medical authorities that a parolee or probationer in his or her custody has any of the conditions listed in Section 7520, but that the parolee or probationer has not properly informed his or her spouse, the officer may ensure that this information is relayed to the spouse only through either the chief medical officer of the institution from which the person was released or the physician and surgeon treating the spouse or the parolee or probationer. The parole or probation officer shall seek to ensure that proper counseling accompanies release of this information to the spouse, through the person providing the information to the inmate's spouse.

(b) If a parole or probation officer has received information from appropriate medical authorities that one of his or her parolees or probationers has AIDS or AIDS-related conditions, and the parolee or probationer has a record of assault on a peace officer, and the officer seeks the aid of local law enforcement officers to apprehend or take into custody the parolee or probationer, he or she shall inform the officers assisting him or her in apprehending or taking into custody the parolee or probationer, of the person's condition, to aid them in protecting themselves from contracting AIDS.

(c) Local law enforcement officers receiving information pursuant to this subdivision shall maintain confidentiality of information received pursuant to subdivision (b). Willful use or

disclosure of this information is a misdemeanor. Parole or probation officers who willfully or negligently disclose information about AIDS infection, other than as prescribed under this title or any other provision of law, shall also be guilty of a misdemeanor.

7522. (a) Supervisory and medical personnel in correctional institutions shall notify all law enforcement employees when those employees have had direct contact with the bodily fluids of, inmates or persons charged or in custody who either have tested positive for infection with HIV, or been diagnosed as having AIDS or AIDS-related conditions.

(b) Supervisory and medical personnel at correctional institutions shall provide to employees covered by this section the latest medical information regarding precautions to be taken under the circumstances, and shall furnish proper protective clothing and other necessary protective devices or equipment, and instruct staff on the applicability of this title.

7523. Information obtained by a law enforcement employee pursuant to this chapter shall be confidential, and shall not be disclosed except as specifically authorized by this chapter. Information obtained by a member of a panel pursuant to Section 7515 or 7516 shall not be disclosed except as authorized by this title.

## CHAPTER 4. TESTING PROCEDURES

7530. The following procedures shall apply to testing conducted under this title:

(a) The withdrawal of blood shall be performed in a medically approved manner. Only a physician, registered nurse, licensed vocational nurse, licensed medical technician, or licensed phlebotomist may withdraw blood specimens for the purposes of this title.

(b) The chief medical officer, as specified in Chapter 2 (commencing with Section 7510), shall order that the blood specimens be transmitted to a licensed medical laboratory which has been approved by the State Department of Health Services for the conducting of HIV testing, and that tests including all readily available confirmatory tests, be conducted thereon for medically accepted indications of exposure to or infection with HIV. The State Department of Health Services shall adopt standards for the approval of medical laboratories for the conducting of HIV testing under this title. The State Department of Health Services shall adopt standards for the conducting of tests under Section 7530.

(c) Copies of the test results shall be sent by the laboratory to the chief medical officer who made the decision under either Section 7511 or 7512 or who convened the panel under Section 7515 or 7516. The laboratory shall be responsible for protecting the confidentiality of these test results. Willful or negligent breach of this responsibility shall be grounds for a violation of the contract.

(d) The test results shall be sent by the chief medical officer to the

designated recipients with the following disclaimer:

"The tests were conducted in a medically approved manner but tests cannot determine exposure to or infection by AIDS or other communicable diseases with absolute accuracy. Persons receiving this test result should continue to monitor their own health and should consult a physician as appropriate."

(e) If the person subject to the test is a minor, copies of the test result shall also be sent to the minor's parents or guardian.

(f) All persons, other than the test subject, who receive test results shall maintain the confidentiality of personal identifying data relating to the test results, except for disclosure which may be necessary to obtain medical or psychological care or advice, or to comply with this title.

(g) The specimens and the results of the tests shall not be admissible evidence in any criminal or disciplinary proceeding.

(h) Any person performing testing, transmitting test results, or disclosing information in accordance with this title shall be immune from civil liability for any action undertaken in accordance with this title.

7531. Notwithstanding any other provision of law, no positive test results obtained pursuant to this title shall be disclosed to any person unless the initial positive test result has been confirmed by appropriate confirmatory tests for positive reactors.

## CHAPTER 5. PENALTIES

7540. A person committing any of the following acts shall be guilty of a misdemeanor:

(a) Willful false reporting in conjunction with a report or a request for testing under this title.

(b) Willful use or disclosure of test results or confidential information in violation of any of the provisions of this title.

## CHAPTER 6. MISCELLANEOUS PROVISIONS

7550. The State Department of Health Services shall prepare standardized forms for the reports, notices, and findings required by this title, and distribute these forms to the Department of Corrections, the Department of the Youth Authority, and to each county health officer within three months of the effective date of this title.

7551. A correctional, custodial, or law enforcement agency to which this title applies shall be responsible for informing staff of the provisions of this title, and assisting in its implementation as it applies to the respective agency.

7552. (a) It is recommended that every city or county correctional, custodial, and law enforcement agency to which this title applies have a comprehensive AIDS and HIV prevention and education program in operation, by March 31, 1989. Recommended

goals for the programs include all of the following:

(1) Education. Implementation of an educational plan which includes education and training for officers, support staff, and inmates on the prevention and transmission of HIV, with regular updates, at least every three months, with all persons held in custody for at least 12 hours in a correctional institution being provided at least with a pamphlet approved by the county health officer, with more detailed education for persons kept beyond three days.

(2) Body fluid precautions. Because all bodily fluids are considered as potentially infectious, supplying all employees of correctional institutions with the necessary equipment and supplies to follow accepted universal bodily fluids precautions, including gloves and devices to administer cardiopulmonary resuscitation, when dealing with infected persons or those in high-risk groups for HIV infection.

(3) Separate housing for infected individuals. Making available adequate separate housing facilities for housing inmates who have tested positive for HIV infection and who continue to engage in activities which transmit HIV, with facilities comparable to those of other inmates with access to recreational and educational facilities, commensurate with the facilities available in the correctional institution.

(4) Adequate AIDS medical services. The provision of medical services appropriate for the diagnosis and treatment of HIV infection.

(5) These guidelines are advisory only and do not constitute a state mandate.

(b) The program shall require confidentiality of information in accordance with this title and other provisions of the law.

(c) The Board of Corrections and the State Department of Health Services shall assist in developing the programs.

7553. With the approval of the county health officer, the State Department of Health Services, as it deems necessary for HIV detection and prevention, may conduct periodic anonymous unlinked serologic surveys of all or portions of the inmate population or persons under custody within a city or county.

SEC. 2. The Department of Corrections and the California Youth Authority, respectively, shall report to the Legislature and the Joint Prisons Committee within three months of the effective date of this act, regarding the use of AIDS protective equipment or devices and AIDS educational programs at each prison, including, but not limited to, the following: (1) the number and percentage of staff, wards, and inmates who have seen videos on AIDS; (2) the number of pamphlets and educational materials distributed to staff, wards, and inmates; and (3) the number of training and education sessions held for staff and inmates, and the number of staff, wards, and inmates attending these sessions. The report shall be accompanied with samples of pamphlets and educational materials.

SEC. 3. (a) The office of the Legislative Analyst, in cooperation

with the State Department of Health Services, shall, within six months of the effective date of this act, report to the Legislature on both of the following:

(1) Whether the Department of Corrections and the Department of the Youth Authority have adequate AIDS education, prevention, and treatment programs for staff and inmates and, where warranted, for visitors.

(2) Whether, based on a random analysis of the programs in at least six state prisons and six California Youth Authority facilities, the programs are being properly implemented.

(b) The Legislative Analyst, in cooperation with the Board of Corrections, shall within eight months of the effective date of this act, provide a report to the Senate and Assembly health committees and the Senate and Assembly fiscal committees on the quality of AIDS education and prevention programs in local correctional facilities, based on a sampling of 15 counties and 15 cities and the guidelines established in this act.

SEC. 4. Except as otherwise provided in this act, any regulations or guidelines required to be adopted by a state agency shall be adopted as emergency regulations within three months from the effective date of this act in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, except that for the purpose of adopting emergency regulations, any regulations adopted pursuant to this act are hereby deemed to be necessary for the immediate preservation of the public peace, health and safety or general welfare, and no additional agency findings to that effect shall be required. Except as otherwise provided in this act, state and local agencies shall implement their responsibilities under this act within two months from the date upon which the emergency regulations are adopted by the State Department of Health Services.

SEC. 5. 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.

SEC. 6. 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 five hundred thousand dollars

($500,000), reimbursement shall be made from the State Mandates Claims Fund.

SEC. 7. This act shall remain operative only until July 1, 1991, and as of January 1, 1992, is repealed, unless a later enacted statute, which is enacted before January 1, 1992, deletes or extends the dates upon which the bill becomes inoperative and is repealed.

Notwithstanding this section, whenever, prior to July 1, 1991, a law enforcement agency employee has filed a report pursuant to Section 7510 of the Penal Code, or a request for a human immunodeficiency virus (HIV) test has been filed pursuant to Section 7512 of the Penal Code, or any other procedure for requiring a test has been commenced pursuant to Title 8 (commencing with Section 7500) of the Penal Code, the proceedings shall be permitted to continue on or after July 1, 1991, until they have been concluded.

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 reduce the spread of AIDS in correctional institutions, as soon as possible, it is necessary that this act go into immediate effect.

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## CHAPTER 1580

An act to amend Sections 11165.8, 11166, and 11167.5 of, and to add Sections 11166.7 and 11166.8 to, the Penal Code, relating to crimes, and making an appropriation therefor.

[Approved by Governor September 30, 1988 Filed with Secretary of State September 30, 1988.]

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

SECTION 1. Section 11165.8 of the Penal Code is amended to read:

11165.8. As used in this article, "health practitioner" means a physician and surgeon, psychiatrist, psychologist, dentist, resident, intern, podiatrist, chiropractor, licensed nurse, dental hygienist, optometrist, or any other person who is currently licensed under Division 2 (commencing with Section 500) of the Business and Professions Code; a marriage, family and child counselor; any emergency medical technician I or II, paramedic, or other person certified pursuant to Division 2.5 (commencing with Section 1797) of the Health and Safety Code; a psychological assistant registered pursuant to Section 2913 of the Business and Professions Code; a marriage, family and child counselor trainee, as defined in subdivision (c) of Section 4980.03 of the Business and Professions Code; an unlicensed marriage, family and child counselor intern

registered under Section 4980.44 of the Business and Professions Code; a state or county public health employee who treats a minor for venereal disease or any other condition; a coroner; a medical examiner, or any other person who performs autopsies; or a religious practitioner who diagnoses, examines, or treats children.

SEC. 2. Section 11166 of the Penal Code is amended to read:

11166. (a) Except as provided in subdivision (b), any child care custodian, health practitioner, or employee of a child protective agency who has knowledge of or observes a child in his or her professional capacity or within the scope of his or her employment whom he or she knows or reasonably suspects has been the victim of child abuse shall report the known or suspected instance of child abuse to a child protective agency immediately or as soon as practically possible by telephone and shall prepare and send a written report thereof within 36 hours of receiving the information concerning the incident. A child protective agency shall be notified and a report shall be prepared and sent even if the child has expired, regardless of whether or not the possible abuse was a factor contributing to the death, and even if suspected child abuse was discovered during an autopsy. For the purposes of this article, "reasonable suspicion" means that it is objectively reasonable for a person to entertain such a suspicion, based upon facts that could cause a reasonable person in a like position, drawing when appropriate on his or her training and experience, to suspect child abuse. For the purpose of this article, the pregnancy of a minor does not, in and of itself, constitute the basis of reasonable suspicion of sexual abuse.

(b) Any child care custodian, health practitioner, or employee of a child protective agency who has knowledge of or who reasonably suspects that mental suffering has been inflicted on a child or his or her emotional well-being is endangered in any other way, may report such known or suspected instance of child abuse to a child protective agency.

(c) Any commercial film and photographic print processor who has knowledge of or observes, within the scope of his or her professional capacity or employment, any film, photograph, video tape, negative or slide depicting a child under the age of 14 years engaged in an act of sexual conduct, shall report such instance of suspected child abuse to the law enforcement agency having jurisdiction over the case immediately or as soon as practically possible by telephone and shall prepare and send a written report of it with a copy of the film, photograph, video tape, negative or slide attached within 36 hours of receiving the information concerning the incident. As used in this subdivision, "sexual conduct" means any of the following:

(1) Sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex or between humans and animals.

(2) Penetration of the vagina or rectum by any object.

(3) Masturbation, for the purpose of sexual stimulation of the viewer.

(4) Sadomasochistic abuse for the purpose of sexual stimulation of the viewer.

(5) Exhibition of the genitals, pubic or rectal areas of any person for the purpose of sexual stimulation of the viewer.

(d) Any other person who has knowledge of or observes a child whom he or she knows or reasonably suspects has been a victim of child abuse may report the known or suspected instance of child abuse to a child protective agency.

(e) When two or more persons who are required to report are present and jointly have knowledge of a known or suspected instance of child abuse, and when there is agreement among them, the telephone report may be made by a member of the team selected by mutual agreement and a single report may be made and signed by such selected member of the reporting team. Any member who has knowledge that the member designated to report has failed to do so, shall thereafter make the report.

(f) The reporting duties under this section are individual, and no supervisor or administrator may impede or inhibit the reporting duties and no person making such a report shall be subject to any sanction for making the report. However, internal procedures to facilitate reporting and apprise supervisors and administrators of reports may be established provided that they are not inconsistent with the provisions of this article.

The internal procedures shall not require any employee required to make reports by this article to disclose his or her identity to the employer.

(g) A county probation or welfare department shall immediately or as soon as practically possible report by telephone to the law enforcement agency having jurisdiction over the case, to the agency given the responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code, and to the district attorney's office every known or suspected instance of child abuse as defined in Section 11165.6, except acts or omissions coming within subdivision (b) of Section 11165.2, which shall only be reported to the county welfare department. A county probation or welfare department shall also send a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it is required to make a telephone report under this subdivision.

A law enforcement agency shall immediately or as soon as practically possible report by telephone to the agency given responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code and to the district attorney's office every known or suspected instance of child abuse reported to it, except acts or omissions coming within subdivision (b) of Section 11165.2, which shall only be reported to the county welfare department. A law enforcement agency shall report to the county welfare department every known or suspected instance of child

abuse reported to it which is alleged to have occurred as a result of the action of a person responsible for the child's welfare, or as the result of the failure of a person responsible for the child's welfare to adequately protect the minor from abuse when the person responsible for the child's welfare knew or reasonably should have known that the minor was in danger of abuse. A law enforcement agency shall also send a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it is required to make a telephone report under this subdivision.

SEC. 3. Section 11166.7 is added to the Penal Code, to read:

11166.7. (a) Each county may establish an interagency child death team to assist local agencies in identifying and reviewing suspicious child deaths and facilitating communication among persons who perform autopsies and the various persons and agencies involved in child abuse cases. Interagency child death teams have been used successfully to ensure that incidents of child abuse are recognized and other siblings and nonoffending family members receive the appropriate services in cases where a child has expired.

(b) Each county may develop a protocol that may be used as a guideline by persons performing autopsies on children to assist coroners and other persons who perform autopsies in the identification of child abuse, in the determination of whether child abuse contributed to death or whether child abuse had occurred prior to but was not the actual cause of death, and in the proper written reporting procedures for child abuse, including the designation of the cause and mode of death.

(c) In developing an interagency child death team and an autopsy protocol, each county, working in consultation with local members of the California State Coroner's Association and county child abuse prevention coordinating councils, may solicit suggestions and final comments from persons, including but not limited to, the following:

(1) Experts in the field of forensic pathology.

(2) Pediatricians with expertise in child abuse.

(3) Coroners and medical examiners.

(4) Criminologists.

(5) District attorneys.

(6) Child protective services staff.

(7) Law enforcement personnel.

(8) Representatives of local agencies which are involved with child abuse reporting.

(9) County health department staff who deals with children's health issues.

(10) Local professional associations of persons described in paragraphs (1) to (9), inclusive.

SEC. 4. Section 11166.8 is added to the Penal Code, to read:

11166.8. Subject to available funding, the Attorney General, working with the California Consortium of Child Abuse Councils, shall develop a protocol for the development and implementation of

interagency child death teams for use by counties, which shall include relevant procedures for both urban and rural counties. The protocol shall be designed to facilitate communication among persons who perform autopsies and the various persons and agencies involved in child abuse cases so that incidents of child abuse are recognized and other siblings and nonoffending family members receive the appropriate services in cases where a child has expired. The protocol shall be completed on or before January 1, 1991.

SEC. 5. Section 11167.5 of the Penal Code is amended to read:

11167.5. (a) The reports required by Sections 11166 and 11166.2 shall be confidential and may be disclosed only as provided in subdivision (b). Any violation of the confidentiality provided by this article shall be a misdemeanor punishable by up to six months in jail or by a fine of five hundred dollars ($500) or by both.

(b) Reports of suspected child abuse and information contained therein may be disclosed only to the following:

(1) Persons or agencies to whom disclosure of the identity of the reporting party is permitted under Section 11167.

(2) Persons or agencies to whom disclosure of information is permitted under subdivision (b) of Section 11170.

(3) Persons or agencies with whom investigations of child abuse are coordinated under the regulations promulgated under Section 11174.

(4) Multidisciplinary personnel teams as defined in subdivision (d) of Section 18951 of the Welfare and Institutions Code.

(5) Persons or agencies responsible for the licensing of facilities which care for children, as specified in Section 11165.7.

(6) The State Department of Social Services, as specified in paragraph (3) of subdivision (b) of Section 11170, when an individual has applied for a community care license or child day care license, or for employment in an out-of-home care facility, or when a complaint alleges child abuse by an operator or employee of an out-of-home care facility.

(7) Hospital scan teams. As used in this paragraph, "hospital scan team" means a team of three or more persons established by a hospital, or two or more hospitals in the same county, consisting of health care professionals and representatives of law enforcement and child protective services, the members of which are engaged in the identification of child abuse. The disclosure authorized by this section includes disclosure among hospital scan teams located in the same county.

(8) Coroners and medical examiners when conducting a postmortem examination of a child.

(c) Nothing in this section shall be interpreted to require the Department of Justice to disclose information contained in records maintained under Section 11169 or under the regulations promulgated pursuant to Section 11174, except as otherwise provided in this article.

(d) This section shall not be interpreted to allow disclosure of any

reports or records relevant to the reports of child abuse if the disclosure would be prohibited by any other provisions of state or federal law applicable to the reports or records relevant to the reports of child abuse.

SEC. 6. The sum of thirty-five thousand dollars ($35,000) is hereby appropriated from the General Fund to the Department of Justice for expenditure from January 1, 1989, through June 30, 1989, for the purpose of developing the interagency child death team protocol pursuant to Section 11166.8 of the Penal Code. Any additional moneys needed from July 1, 1989, to January 1, 1991, to complete the protocol shall be funded through the Budget Act.

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.

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## CHAPTER 1581

An act to amend Section 4300 of the Civil Code, and to amend Sections 199.21, 199.22, 199.27, and 1603.1 of, and to add Sections 26 and 199.215 to, the Health and Safety Code, relating to AIDS.

[Approved by Governor September 30, 1988. Filed with Secretary of State September 30, 1988.]

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

SECTION 1. Section 4300 of the Civil Code is amended to read:

4300. (a) Before any person, who is authorized to issue marriage licenses, shall issue the license, each applicant therefor shall file with him or her a certificate from a duly licensed physician stating that the applicant has been given the examination, including a standard serological test, as may be necessary for the discovery of syphilis, made not more than 30 days prior to the date of issuance of the license, and that, in the opinion of the physician, the person either is not infected with syphilis, or if so infected, is not in a stage of that disease which is or may become communicable to the marital partner.

(b) The certificate shall also state whether the female applicant has laboratory evidence of immunological response to rubella (German measles). The certificate shall not contain evidence of response to rubella where the female applicant (1) is over 50 years of age, or (2) has had a surgical sterilization or (3) presents laboratory evidence of a prior test declaring her immunity to rubella.

(c) The certificate shall indicate that an HIV test, as defined in Section 26 of the Health and Safety Code, including any appropriate

confirmatory tests for positive reactors, was offered. It is the intention of the Legislature that the results of the tests shall be transmitted to the marriage license applicant, and that followup counseling by a knowledgeable and experienced person shall be made available.

(d) Disclosure of the results of any test performed in accordance with subdivision (c) shall not be made except as provided in Chapter 1.11 (commencing with Section 199.20) of Division 1 of the Health and Safety Code.

(e) Any person who by law is validly able to obtain a marriage license in the State of California is validly able to give consent to any examinations and tests required by this article. In submitting the blood specimen to the laboratory the physician shall designate that this is a premarital test.

SEC. 2. Section 26 is added to the Health and Safety Code, to read:

26. As used in this code:

(a) "AIDS" means acquired immune deficiency syndrome.

(b) "Human immunodeficiency virus" or "HIV" means the etiologic virus of AIDS.

(c) "HIV test" means any clinical laboratory test approved by the federal Food and Drug Administration for HIV, component of HIV, or antibodies to HIV.

SEC. 3. Section 199.21 of the Health and Safety Code is amended to read:

199.21. (a) Any person who negligently discloses results of an HIV test to any third party, in a manner which identifies or provides identifying characteristics of the person to whom the test results apply, except pursuant to a written authorization, as described in subdivision (h), or except as provided in Section 1603.1 or 1603.3, shall be assessed a civil penalty in an amount not to exceed one thousand dollars ($1,000) plus court costs, as determined by the court, which penalty and costs shall be paid to the subject of the test.

(b) Any person who willfully discloses the results of an HIV test to any third party, in a manner which identifies or provides identifying characteristics of the person to whom the test results apply, except pursuant to a written authorization, as described in subdivision (g), or except as provided in Section 1603.1 or 1603.3, shall be assessed a civil penalty in an amount not less than one thousand dollars ($1,000) and not more than five thousand dollars ($5,000) plus court costs, as determined by the court, which penalty and costs shall be paid to the subject of the test.

(c) Any person who willfully or negligently discloses the results of an HIV test to a third party, in a manner which identifies or provides identifying characteristics of the person to whom the test results apply, except pursuant to a written authorization, as described in subdivision (g), or except as provided in Section 1603.1 or 1603.3, which results in economic, bodily, or psychological harm to the subject of the test, is guilty of a misdemeanor, punishable by

imprisonment in the county jail for a period not to exceed one year or a fine of not to exceed ten thousand dollars ($10,000) or both.

(d) Any person who commits any act described in subdivision (a) or (b) shall be liable to the subject for all actual damages, including damages for economic, bodily, or psychological harm which is a proximate cause of the act.

(e) Each disclosure made in violation of this chapter is a separate and actionable offense.

(f) The results of a blood test to detect antibodies to the probable causative agent of acquired immune deficiency syndrome, which identifies or provides identifying characteristics of the person to whom the test results apply, shall not be used in any instance for the determination of insurability.

(g) The results of an HIV test shall not be used in any instance for the determination of suitability for employment.

(h) "Written authorization," as used in this section, applies only to the disclosure of test results by a person responsible for the care and treatment of the person subject to the test. Written authorization is required for each separate disclosure of the test results, and shall include to whom the disclosure would be made.

(i) Nothing in this section limits or expands the right of an injured subject to recover damages under any other applicable law. Nothing in this section shall impose civil liability or criminal sanction for disclosure of the results of tests performed on cadavers to public health authorities or tissue banks.

(j) Nothing in this section imposes liability or criminal sanction for disclosure of results of an HIV test in accordance with any reporting requirement for a diagnosed case of AIDS by the state department or the Centers for Disease Control under the United States Public Health Service.

(k) The state department may require blood banks and plasma centers to submit monthly reports summarizing statistical data concerning the results of tests to detect the presence of viral hepatitis and of HIV. This statistical summary shall not include the identity of individual donors or identifying characteristics which would identify individual donors.

(*l*) "Disclosed," as used in this section, means to disclose, release, transfer, disseminate, or otherwise communicate all or any part of any record orally, in writing, or by electronic means to any person or entity.

SEC. 4. Section 199.215 is added to the Health and Safety Code, to read:

199.215. (a) Notwithstanding Section 199.21, the results of an HIV test which identifies or provides identifying characteristics of the person to whom the test results apply may be recorded by the physician who ordered the test in the test subject's medical record or otherwise disclosed without written authorization of the subject of the test, or the subject's representative as set forth in Section 199.27, to the test subject's providers of health care, as defined in

subdivision (d) of Section 56.05 of the Civil Code, for purposes of diagnosis, care, or treatment of the patient, except that for purposes of this section "providers of health care" does not include a health care service plan regulated pursuant to Chapter 2.2 (commencing with Section 1340) of Division 2.

(b) Recording or disclosure of HIV test results pursuant to subdivision (a) does not authorize further disclosure unless otherwise permitted by law.

SEC. 5. Section 199.22 of the Health and Safety Code is amended to read:

199.22. (a) No person shall order an HIV test of another person without obtaining the informed consent of the subject of the test. Except where otherwise required by law, any person may refuse to submit to an HIV test.

This requirement does not apply to a test performed at an alternative site, as established pursuant to Article 8 (commencing with Section 1630) of Chapter 4 of Division 2. This requirement also does not apply to any blood and blood products specified in paragraph (2) of subdivision (a) of Section 1603.1. This requirement does not apply when testing is performed as part of the medical examination performed pursuant to Section 7152.5.

(b) Nothing in this section shall preclude a medical examiner or other physician from ordering or performing an HIV test on a cadaver when an autopsy is performed or body parts are donated pursuant to the Uniform Anatomical Gift Act, provided for pursuant to Chapter 3.5 (commencing with Section 7150) of Part 1 of Division 7.

(c) The requirements of subdivision (a) do not apply when blood is tested as part of a scientific investigation conducted either by medical researchers operating under institutional review board approval or by the state department in accordance with a protocol for unlinked testing. For purposes of this section, unlinked testing means that blood samples are obtained anonymously or that the individual's name and other identifying information is removed in a manner that precludes the test results from ever being linked to a particular individual in the study.

SEC. 6. Section 199.27 of the Health and Safety Code, as added by Chapter 1427 of the Statutes of 1987, is amended to read:

199.27. (a) (1) When the subject of an HIV test is not competent to give consent for the test to be performed, written consent for the test may be obtained from the subject's parents, guardians, conservators, or other person lawfully authorized to make health care decisions for the subject. For purposes of this paragraph, a minor shall be deemed not competent to give consent if he or she is under 12 years of age.

(2) Notwithstanding paragraph (1), when the subject of the test is a minor adjudged to be a dependent child of the court pursuant to Section 360 of the Welfare and Institutions Code, written consent for the test to be performed may be obtained from the court

pursuant to its authority under Section 362 or 369 of the Welfare and Institutions Code.

(b) Written consent shall only be obtained for the subject pursuant to subdivision (a) when necessary to render appropriate care or to practice preventative measures.

(c) The person authorized to consent to the test pursuant to subdivision (a) shall be permitted to do any of the following:

(1) Notwithstanding Sections 199.20 and 199.21, receive the results of the test on behalf of the subject without written authorization.

(2) Disclose the test results on behalf of the subject in accordance with Sections 199.20 and 199.21.

(3) Provide written authorization for the disclosure of the test results on behalf of the subject in accordance with Sections 199.20 and 199.21.

SEC. 7. Section 1603.1 of the Health and Safety Code is amended to read:

1603.1. (a) Except as provided in this subdivision, no blood or blood components shall be used in vivo for humans in this state, unless the blood or blood components have been tested and found nonreactive for HIV or the blood or blood components are used for research or vaccination programs pursuant to an informed consent.

Additional exceptions to the requirement of this subdivision are as follows:

(1) Frozen red blood cells of a rare type, as determined by the blood bank or plasma center, collected prior to the effective date of this paragraph, for which no specimen is available.

(2) Inventories of blood and blood components collected prior to 60 days after the effective date of this paragraph or the date of licensing of a test by the Federal Drug Administration to determine exposure to the antibodies to the probable causative agent of AIDS, whichever is later.

(3) Blood or blood products released for transfusion in emergency circumstances, as determined by the state department.

(4) Blood used for autologous purposes.

(b) Blood banks and plasma centers shall make laboratory tests of all human whole blood and plasma received to detect the presence of viral hepatitis and HIV in the manner specified in Section 1603.3. If the blood bank or plasma center finds the presence of viral hepatitis, or an antigen thereof, in the blood tested, it shall report that finding, the date of the human whole blood donation, the name, address, and social security number of the person who donated the blood, and the name and address of the blood bank which received the human whole blood from the person and any additional information required by the department, to the department and the county health officer within 72 hours of the confirmation of the presence of viral hepatitis, or an antigen thereof, in the blood tested.

(c) As soon as practicable following diagnosis, a physician shall report to the department and the county health officer the name,

date of birth, address, and social security number of all carriers of viral hepatitis under his or her treatment, the type of viral hepatitis contracted if known, and any additional information required by the department and shall report immediately all transfusion-associated hepatitis and transfusion-associated AIDS cases to the county health officer for investigation.

(d) As soon as practicable following hospitalization, a hospital shall report to the department and to the county health officer the name, date of birth, address, and social security number of all confirmed cases of AIDS carriers, as determined by a person responsible for the care and treatment of a person with AIDS, and all carriers of viral hepatitis hospitalized for treatment of viral hepatitis or AIDS, the name of the hospital, the date of hospitalization, the type of viral hepatitis contracted if known, and any additional information required by the department and shall report immediately all transfusion-associated hepatitis and all confirmed transfusion-associated AIDS cases, as determined by a person responsible for the care and treatment of a person with AIDS, to the county health officer for investigation.

(e) The county health officer shall investigate all transfusion-associated hepatitis cases and transfusion-associated AIDS cases and shall, if possible, trace the sources of human whole blood which was transfused. The county health officer shall report to the department within 72 hours following an investigation the name, date of birth, address, and social security number of carrier donors, possible carrier donors and carriers of viral hepatitis and any additional information required by the department.

(f) The department shall compile two times each month a list of carrier donors, possible carrier donors, and carriers of viral hepatitis and persons who test reactive for HIV and shall distribute the list to blood banks and plasma centers two times each month. The list shall include the name, date of birth, address, and social security number of people who are carrier donors, possible carrier donors and carriers of viral hepatitis and persons who test reactive for HIV, and confirmed cases of AIDS, as determined by a person responsible for the care and treatment of a person with AIDS, the date of the human whole blood donation if applicable, the name and address of the blood bank who received the human whole blood donation if applicable, and any other information which the department deems necessary to protect the public health and safety. This list shall be known as the Donor Deferral Register and shall include names of individuals who are indefinitely deferred from blood donations without identifying the reasons for the deferral. The state department may develop guidelines governing the instances when a person is to be removed from the register. These guidelines may include, but shall not be limited to nor be required to include, death of an identified donor or the licensure by the Federal Food and Drug Administration of a new, confirmatory test for AIDS which would allow the state department to more accurately determine if a person

should be kept on the registry due to any threat to the state's blood supply that the prospective donor may represent.

(g) The department shall, if possible, contact carrier donors to inform them that they may be carriers of viral hepatitis and should not make blood donations, and shall suggest appropriate treatment alternatives. County health or state department officials shall contact all persons who have confirmed cases of AIDS, as determined by a person responsible for the care and treatment of the person with AIDS, to suggest appropriate treatment alternatives and for the purposes of epidemiological studies and followup.

(h) The department may adopt regulations governing the procedures in this section as it deems necessary to protect the public health and safety.

(i) "Plasma center," as used in this chapter, means any place where the process of plasmapheresis is conducted, as defined in Section 1025 of Title 17 of the California Code of Regulations and includes a place where leukopheresis or platelet pheresis, or both, is conducted.

(j) "AIDS," as used in this chapter, means acquired immune deficiency syndrome.

(k) "Blood components," as used in this chapter, means preparations separated from single units of whole blood or prepared for hemapheresis and intended for use as final products for transfusions.

(*l*) The department or a county health officer may disclose to a blood bank, on a confidential basis, any information reported pursuant to subdivision (b), (c), or (d). This information shall be used by the blood bank solely to determine whether blood previously transfused may have been donated by a person infected with HIV, in order to implement the blood bank's program to notify a recipient of blood which might have transmitted HIV and which was donated prior to implementation of testing procedures for the presence of antibodies to the probable causative agent of HIV. The blood bank shall not disclose information which would identify a donor to which this subdivision applies and shall destroy information communicated to it as authorized by this subdivision immediately after reviewing its records as necessary to implement this program.

## CHAPTER 1582

An act to amend Sections 199.21 and 199.22 of, and to add Section 199.24 to, the Health and Safety Code, relating to health, and making an appropriation therefor.

[Approved by Governor September 30, 1988. Filed with Secretary of State September 30, 1988.]

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

SECTION 1. Section 199.21 of the Health and Safety Code is amended to read:

199.21. (a) Any person who negligently discloses results of a blood test to detect antibodies to the probable causative agent of acquired immune deficiency syndrome to any third party, in a manner which identifies or provides identifying characteristics of the person to whom the test results apply, except pursuant to a written authorization, as described in subdivision (g), or except as provided in Section 1603.1 or 1603.3, shall be assessed a civil penalty in an amount not to exceed one thousand dollars ($1,000) plus court costs, as determined by the court, which penalty and costs shall be paid to the subject of the test.

(b) Any person who willfully discloses the results of a blood test to detect antibodies to the probable causative agent of acquired immune deficiency syndrome to any third party, in a manner which identifies or provides identifying characteristics of the person to whom the test results apply, except pursuant to a written authorization, as described in subdivision (g), or except as provided in Section 1603.1 or 1603.3, shall be assessed a civil penalty in an amount not less than one thousand dollars ($1,000) and not more than five thousand dollars ($5,000) plus court costs, as determined by the court, which penalty and costs shall be paid to the subject of the test.

(c) Any person who willfully or negligently discloses the results of a blood test to detect antibodies to the probable causative agent of acquired immune deficiency syndrome to a third party, in a manner which identifies or provides identifying characteristics of the person to whom the test results apply, except pursuant to a written authorization, as described in subdivision (g), or except as provided in Section 1603.1 or 1603.3, which results in economic, bodily, or psychological harm to the subject of the test, is guilty of a misdemeanor, punishable by imprisonment in the county jail for a period not to exceed one year or a fine of not to exceed ten thousand dollars ($10,000) or both.

(d) Any person who commits any act described in subdivision (a) or (b) shall be liable to the subject for all actual damages, including damages for economic, bodily, or psychological harm which is a proximate cause of the act.

(e) Each disclosure made in violation of this chapter is a separate and actionable offense.

(f) The results of a blood test to detect antibodies to the probable causative agent of acquired immune deficiency syndrome, which identifies or provides identifying characteristics of the person to whom the test results apply, shall not be used in any instance for the determination of insurability or suitability for employment.

(g) "Written authorization," as used in this section, applies only to the disclosure of test results by a person responsible for the care and treatment of the person subject to the test. Written authorization is required for each separate disclosure of the test results, and shall include to whom the disclosure would be made.

(h) Nothing in this section limits or expands the right of an injured subject to recover damages under any other applicable law. Nothing in this section shall impose civil liability or criminal sanction for disclosure of the results of tests performed on cadavers to public health authorities or tissue banks.

(i) Nothing in this section imposes liability or criminal sanction for disclosure of a blood test to detect antibodies to the probable causative agent of AIDS in accordance with any reporting requirement for a diagnosed case of AIDS or ARC by the state department or the Centers for Disease Control under the United States Public Health Service.

(j) The state department may require blood banks and plasma centers to submit monthly reports summarizing statistical data concerning the results of tests to detect the presence of viral hepatitis and antibodies to the probable causative agent of AIDS. This statistical summary shall not include the identity of individual donors or identifying characteristics which would identify individual donors.

(k) "Disclosed," as used in this section, means to disclose, release, transfer, disseminate, or otherwise communicate all or any part of any record orally, in writing, or by electronic means to any person or entity.

(*l*) When the results of the blood test to detect antibodies to the probable causative agent of AIDS are included in the medical record of the patient who is the subject of the test, the inclusion is not a disclosure for purposes of this section.

SEC. 2. Section 199.22 of the Health and Safety Code is amended to read:

199.22. (a) Except in the case of a person treating a patient, no person shall test a person's blood for evidence of antibodies to the probable causative agent of AIDS without the written consent of the subject of the test or the written consent of the subject, as provided in Section 199.27, and the person giving the test shall have a written statement signed by the subject or conservator or other person, as provided in Section 199.27 confirming that he or she obtained the consent from the subject. In the case of a physician and surgeon treating a patient, the consent required under this subdivision shall be informed consent, by the patient, conservator, or other person

provided for in Section 199.27.

This requirement does not apply to a test performed at an alternative site, as established pursuant to Article 8 (commencing with Section 1630) of Chapter 4 of Division 2. This requirement also does not apply to any blood and blood products specified in paragraph (2) of subdivision (a) of Section 1603.1. This requirement does not apply when testing is performed as part of the medical examination performed pursuant to Section 7152.5.

(b) Nothing in this section shall preclude a medical examiner or other physician from ordering or performing a blood test to detect antibodies to the probable causative agent of AIDS on a cadaver when an autopsy is performed or body parts are donated pursuant to the Uniform Anatomical Gift Act, provided for pursuant to Chapter 3.5 (commencing with Section 7150) of Part 1 of Division 7.

(c) The requirements of subdivision (a) do not apply when blood is tested as part of a scientific investigation conducted either by medical researchers operating under institutional review board approval or by the state department in accordance with a protocol for unlinked testing. For purposes of this section, unlinked testing means that blood samples are obtained anonymously or that the individual's name and other identifying information is removed in a manner that precludes the test results from ever being linked to a particular individual in the study.

SEC. 3. Section 199.24 is added to the Health and Safety Code, to read:

199.24. Notwithstanding Section 199.20 or 199.21, the results of a blood test to detect antibodies to the probable causative agent of AIDS may be disclosed to any of the following persons without written authorization of the subject of the test:

(a) To the subject of the test or the subject's legal representative, conservator, or to any person authorized to consent to the test pursuant to subdivision (b) of Section 199.22.

(b) To a test subject's provider of health care, as defined in subdivision (d) of Section 56.05 of the Civil Code, except that for purposes of this section, "provider of health care" does not include a health care service plan regulated pursuant to Chapter 2.2 (commencing with Section 1340) of Division 2.

(c) To an agent or employee of the test subject's provider of health care who provides direct patient care and treatment.

(d) To a provider of health care who procures, processes, distributes, or uses a human body part donated pursuant to the Uniform Anatomical Gift Act (Chapter 3.5 (commencing with Section 7150) of Part 1 of Division 7).

# CHAPTER 1583

An act to amend Sections 430, 665, 11713 and 11713.1 of the Vehicle Code, relating to vehicles.

[Approved by Governor September 30, 1988. Filed with Secretary of State September 30, 1988.]

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

SECTION 1. 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 sold or registered with the department, or registered with the appropriate agency of authority, or sold and operated upon the highways of any other state, District of Columbia, territory or possession of the United States, or foreign state, province, or country. The word "sold" does not include or extend to: (1) any sale made by a manufacturer or a distributor to a dealer, or (2) any sale by a new motor vehicle dealer franchised to sell a particular line-make to another new motor vehicle dealer franchised to sell the same line-make, or (3) any sale by a dealer to another dealer licensed under this code involving a mobilehome, as defined in Section 396, a recreational vehicle, as defined in Section 18010.5 of the Health and Safety Code, a commercial coach, as defined in Section 18012 of the Health and Safety Code, an off-highway motor vehicle subject to identification, as defined in Section 38012, or a commercial vehicle, as defined in Section 260.

A vehicle shall be considered new, if previously unregistered, for financing purposes only.

SEC. 2. Section 665 of the Vehicle Code is amended to read:

665. A "used vehicle" is a vehicle that has been sold, or has been registered with the department, or has been sold and operated upon the highways, or has been registered with the appropriate agency of authority, of any other state, District of Columbia, territory or possession of the United States or foreign state, province or country, or unregistered vehicles regularly used or operated as demonstrators in the sales work of a dealer or unregistered vehicles regularly used or operated by a manufacturer in the sales or distribution work of such manufacturer. The word "sold" does not include or extend to: (1) any sale made by a manufacturer or a distributor to a dealer, (2) any sale by a new motor vehicle dealer franchised to sell a particular line-make to another new motor vehicle dealer franchised to sell the same line-make, or (3) any sale by a dealer to another dealer licensed under this code involving a mobilehome, as defined in Section 396, a recreational vehicle, as defined in Section 18010.5 of the Health and Safety Code, a commercial coach, as defined in Section 18012 of the Health and Safety Code, an off-highway motor vehicle subject to identification, as defined in Section 38012, or a commercial vehicle, as defined in Section 260.

SEC. 3. Section 11713 of the Vehicle Code is amended to read:

11713. It is unlawful and a violation of this code for the holder of any license issued under this article to do any of the following:

(a) To 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) To 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 from the manufacturer or distributor of the vehicle at the time of the advertisement or offer. However, a dealer not franchised to sell new motor vehicles of a particular line-make, may advertise that it has the ability to purchase for resale, vehicles available from franchised dealers provided that any such advertisement or offer clearly and conspicuously states: "Dealer is not franchised to sell or service new vehicles. All vehicles purchased directly from dealer must be purchased as used and are subject to availability from a franchised dealer."

(c) To fail, within 48 hours, in writing to withdraw any advertisement of a vehicle that has been sold or withdrawn from sale.

(d) To advertise or represent a vehicle as a new vehicle if the vehicle falls within the purview of Section 665.

(e) To engage in the business for which the licensee is licensed without having in force and effect a bond as required by this article.

(f) For any licensed dealer to 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) To include, as an added cost to the selling price of a vehicle, an amount for licensing or transfer of title of the vehicle, which amount 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) To 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 to fail to willfully notify the department

by mail within 10 days of the employment or termination of employment of a salesperson.

(i) To 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) To 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) To advertise or otherwise represent, or knowingly to allow to be advertised or represented on behalf of, or at the place of business of, the license holder 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*) To 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) To 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 sale of vehicles required to be registered under this code, or to 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 sold by, or the business of, or branch location used by, the other person.

(n) To violate any provisions of Article 10 (commencing with Section 28050) of Chapter 5 of Division 12.

(o) To 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) To 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. A purchase deposit relative to the sale of a vehicle by a dealer not franchised to sell new motor vehicles of a particular line-make shall be subject to all of the following conditions: (i) there is a written purchase order; (ii) the deposit shall not exceed 2.5 percent of the total purchase price specified in the written purchase order; (iii) the deposit shall be deposited in a federally insured depository institution in a trust account held in favor of the purchaser; (iv) the deposit is entirely refundable upon written notice to the dealer; (v) the purchaser is advised in writing of his right to rescind the transaction prior to the delivery of the vehicle; and, (vi) each purchase agreement shall contain a provision for liquidated damages in the event of default under the purchase agreement, which shall not limit the dealer's right of offset against funds held in favor of the purchaser in the trust account.

(q) To consign for sale to another dealer a new vehicle.

SEC. 4. Section 11713.1 of the Vehicle Code is amended to read:

11713.1. It is unlawful and a violation of this code for the holder of any dealer's license issued under this article to do any of the following:

(a) To advertise any specific vehicle for sale without identifying the vehicle by either its vehicle identification number or license number.

(b) To advertise the total price of a vehicle without including all costs to the purchaser at time of sale, except sales tax, vehicle registration fees, certificate of compliance or noncompliance fees not exceeding twenty-five dollars ($25) pursuant to any statute or a certificate of waiver pursuant to Section 9889.56 of the Business and Professions Code, finance charges, and any dealer documentary preparation charge. The dealer documentary preparation charge shall not exceed twenty-five dollars ($25).

(c) To 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 or a certificate of waiver pursuant to Section 9889.56 of the Business and Professions Code, finance charges, and any dealer documentary 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) To represent the dealer documentary preparation charge or certificate of compliance or noncompliance fee, as a governmental fee.

(e) To fail to sell a vehicle to any person at the advertised total price, exclusive of 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 or a certificate of waiver pursuant to Section 9889.56 of the Business and Professions Code, 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 documentary preparation charge, which charges shall not exceed twenty-five dollars ($25) 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) To advertise for sale or sell as new any 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 as defined in Section 396 of this code, a recreational vehicle as defined in Section 18010.5 of the Health and Safety Code, a commercial coach as defined in Section 18012 of the Health and Safety Code, an off-highway motor vehicle subject to identification

as defined in Section 38012, or a commercial vehicle as defined in Section 260.

(g) To sell a park trailer, as defined in subdivision (f) of Section 799.24 of the Civil 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.

SEC. 5. It is not the intent of the Legislature in enacting this act to change the so-called hold for resale registration exemption procedure between automobile dealers in effect on and after January 1, 1988.

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.

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## CHAPTER 1584

An act to amend Section 11713.1 of the Vehicle Code, relating to vehicles.

[Approved by Governor September 30, 1988. Filed with Secretary of State September 30, 1988.]

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

SECTION 1. Section 11713.1 of the Vehicle Code is amended to read:

11713.1. It is unlawful and a violation of this code for the holder of any dealer's license issued under this article to do any of the following:

(a) To advertise any specific vehicle for sale without identifying the vehicle by either its vehicle identification number or license number.

(b) To advertise the total price of a vehicle without including all costs to the purchaser at time of sale, except sales tax, vehicle registration fees, certificate of compliance or noncompliance fees not exceeding twenty-five dollars ($25) pursuant to any statute or a certificate of waiver pursuant to Section 9889.56 of the Business and Professions Code, finance charges, and any dealer documentary preparation charge. The dealer documentary preparation charge shall not exceed twenty-five dollars ($25).

(c) To 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 or a certificate of waiver pursuant to Section 9889.56 of the Business and Professions Code, finance charges, and any dealer documentary 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) To represent the dealer documentary preparation charge or certificate of compliance or noncompliance fee, as a governmental fee.

(e) To fail to sell a vehicle to any person at the advertised total price, exclusive of 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 or a certificate of waiver pursuant to Section 9889.56 of the Business and Professions Code, 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 documentary preparation charge, which charges shall not exceed twenty-five dollars ($25) 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) To advertise for sale as new any new vehicle of a line-make for which the dealer does not hold a franchise, unless the dealer discloses, prior to the sale of the new vehicle, that the dealer is not franchised to sell the vehicle and that the dealer will receive a commission or other compensation as a result of the sale.

This subdivision does not apply to any transaction involving a mobilehome as defined in Section 396 of this code, a recreational vehicle as defined in Section 18010.5 of the Health and Safety Code, a commercial coach as defined in Section 18012 of the Health and Safety Code, an off-highway motor vehicle subject to identification as defined in Section 38012, or a commercial vehicle as defined in Section 260.

(g) To sell a park trailer, as defined in subdivision (f) of Section 799.24 of the Civil 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) To 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) To advertise vehicles and related goods or services with intent not to supply reasonably expectable demand, unless the advertisement discloses a limitation of quantity.

(j) To 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) To 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*) To advertise a guaranteed trade-in allowance unless the guarantee is provided by the manufacturer or distributor.

(m) To misrepresent the authority of a salesperson, representative, or agent to negotiate the final terms of a transaction.

(n) To advertise a vehicle at a specified amount above, below, or at the manufacturer's or distributor's invoice price to the dealer, unless the advertisement clearly and conspicuously states that the invoice amount may exceed the actual dealer cost because of allowances provided to the dealer by the manufacturer or distributor.

(o) To 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) To 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) To 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 additonal price of each item. If the supplemental sticker price is greater than the sum of the manufactuer'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) To 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 dealer 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) To 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.

SEC. 2. Section 11713.1 of the Vehicle Code is amended to read:

11713.1. It is unlawful and a violation of this code for the holder of any dealer's license issued under this article to do any of the following:

(a) To advertise any specific vehicle for sale without identifying the vehicle by either its vehicle identification number or license number.

(b) To advertise the total price of a vehicle without including all costs to the purchaser at time of sale, except sales tax, vehicle registration fees, certificate of compliance or noncompliance fees not exceeding twenty-five dollars ($25) pursuant to any statute or a certificate of waiver pursuant to Section 9889.56 of the Business and Professions Code, finance charges, and any dealer documentary preparation charge. The dealer documentary preparation charge shall not exceed twenty-five dollars ($25).

(c) To 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 or a certificate of waiver pursuant to Section 9889.56 of the Business and Professions Code, finance charges, and any dealer documentary 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) To represent the dealer documentary preparation charge or certificate of compliance or noncompliance fee, as a governmental fee.

(e) To fail to sell a vehicle to any person at the advertised total price, exclusive of 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 or a certificate of waiver pursuant to Section 9889.56 of the Business and Professions Code,

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 documentary preparation charge, which charges shall not exceed twenty-five dollars ($25) 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) To advertise for sale as new 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 as defined in Section 396 of this code, a recreational vehicle as defined in Section 18010.5 of the Health and Safety Code, a commercial coach as defined in Section 18012 of the Health and Safety Code, an off-highway motor vehicle subject to identification as defined in Section 38012, or a commercial vehicle as defined in Section 260.

(g) To sell a park trailer, as defined in subdivision (f) of Section 799.24 of the Civil 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) To 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) To advertise vehicles and related goods or services with intent not to supply reasonably expectable demand, unless the advertisement discloses a limitation of quantity.

(j) To 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) To 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*) To advertise a guaranteed trade-in allowance unless the guarantee is provided by the manufacturer or distributor.

(m) To misrepresent the authority of a salesperson, representative, or agent to negotiate the final terms of a transaction.

(n) To advertise a vehicle at a specified amount above, below, or at the manufacturer's or distributor's invoice price to the dealer, unless the advertisement clearly and conspicuously states that the invoice amount may exceed the actual dealer cost because of allowances provided to the dealer by the manufacturer or distributor.

(o) To 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) To 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) To 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 additonal price of each item. If the supplemental sticker price is greater than the sum of the manufactuer'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) To 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 dealer 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) To 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.

SEC. 3. Section 2 of this bill incorporates amendments to Section 11713.1 of the Vehicle Code proposed by both this bill and AB 582. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1989, (2) each bill amends Section 11713.1 of the Vehicle Code, and (3) this bill is enacted after AB 582, in which case Section 1 of this bill shall not become operative.

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.

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## CHAPTER 1585

An act to amend Sections 25503, 25506, 25507, 25509, and 25513 of, and to add Sections 13143.9, 25501.4, 25503.1, 25503.8, 25505.5, and 25507.1 to, the Health and Safety Code, relating to hazardous materials.

[Approved by Governor September 30, 1988. Filed with Secretary of State September 30, 1988.]

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

SECTION 1. Section 13143.9 is added to the Health and Safety Code, to read:

13143.9. The State Fire Marshal shall, in carrying out Section 13143, prepare, adopt, and submit building standards for approval pursuant to Chapter 4 (commencing with Section 18935) of Part 2.5 of Division 13 establishing minimum requirements for the storage and handling in commercial buildings of acutely hazardous materials, as defined in Section 25532. The State Fire Marshal shall seek the advice of the Office of Emergency Services in establishing these requirements. This section does not prohibit a city, county, or district from adopting an ordinance, resolution, or regulation imposing stricter or more stringent requirements than a standard adopted pursuant to this section.

SEC. 2. Section 25501.4 is added to the Health and Safety Code, to read:

25501.4. (a) Notwithstanding subdivision (c) of Section 25501, "business" also includes the federal government, to the extent authorized by federal law, or any agency, department, office, board, commission, or bureau of state government, including, but not limited to, the campuses of the California Community Colleges, the California State University, and the University of California.

(b) Notwithstanding subdivision (d) of Section 25505, and except as provided in subdivision (c), any public agency which is a business pursuant to subdivision (a) shall be in compliance with this chapter on or before January 1, 1990.

(c) From January 1, 1990, to January 1, 1992, the campuses of the California community colleges, the California State University, and the University of California are not required to include in their annual inventory, prepared pursuant to Section 25509, any quantity

of a hazardous material which is handled in quantities less than the quantities specified in subdivision (a) of Section 25503.5. The campuses of the California community colleges, the California State University, and the University of California shall, until January 1, 1992, post signs in accordance with the standards and orders adopted by the Occupational Safety and Health Standards Board pursuant to Section 142.3 of the Labor Code.

SEC. 3. Section 25503 of the Health and Safety Code is amended to read:

25503. (a) Not later than September 1, 1986, the office shall adopt, after public hearing and consultation with the office of the State Fire Marshal and other appropriate public entities, regulations for minimum standards for business plans and area plans. All business plans and area plans shall meet the standards adopted by the office.

(b) The standards for business plans in the regulations adopted pursuant to subdivision (a) shall do all of the following:

(1) Set forth minimum requirements of adequacy, and not preclude the imposition of additional or more stringent requirements by local government.

(2) Take into consideration and adjust for the size and nature of the business, the proximity of the business to residential areas and other populations, and the nature of the damage potential of its hazardous materials in establishing standards for subdivisions (b) and (c) of Section 25504.

(3) Take into account the existence of local area and business plans which meet the requirements of this chapter so as to minimize the duplication of local efforts, consistent with the objectives of this chapter.

(4) Define what releases and threatened releases are required to be reported pursuant to Section 25507. The office shall consider the existing federal reporting requirements in determining a definition of reporting releases pursuant to Section 25507.

(c) An administering agency shall establish an area plan for emergency response to a release or threatened release of a hazardous material within its jurisdiction. An area plan is not a statute, ordinance, or regulation for purposes of Section 669 of the Evidence Code. The standards for area plans in the regulations adopted pursuant to subdivision (a) shall provide for all of the following:

(1) Procedures and protocols for emergency rescue personnel, including the safety and health of those personnel.

(2) Preemergency planning.

(3) Notification and coordination of onsite activities with state, local, and federal agencies, responsible parties, and special districts.

(4) Training of appropriate employees.

(5) Onsite public safety and information.

(6) Required supplies and equipment.

(7) Access to emergency response contractors and hazardous waste disposal sites.

(8) Incident critique and followup.

(9) Requirements for notification to the office of reports made pursuant to Section 25507.

(d) The administering agency shall submit a copy of its proposed area plan, within 180 days after adoption of regulations by the office establishing area plan standards, to the office for review. The office shall notify the administering agency as to whether the area plan is adequate and meets the area plan standards. The administering agency shall within 45 days of this notice submit a corrected area plan.

The administering agency shall certify to the office every three years that it has conducted a complete review of its area plan and has made any necessary revisions. Any time an administering agency makes any substantial changes to its area plan, it shall forward the changes to the office within 14 days after the changes have been made.

(e) An administering agency shall submit to the office, along with its area plan, both of the following:

(1) The basic provisions of a plan to conduct onsite inspections of businesses subject to this chapter by either the administering agency or other designated entity. These inspections shall ensure compliance with this chapter and shall identify existing safety hazards that could cause or contribute to a release and, where appropriate, enforce any applicable laws and suggest preventative measures designed to minimize the risk of the release of hazardous material into the workplace or environment. The requirements of this paragraph do not alter or affect the immunity provided a public entity pursuant to Section 818.6 of the Government Code.

(2) A plan to institute a data management system which will assist in the efficient access to and utilization of information collected under this chapter. This data management system shall be in operation within two years after the business plans are required to be submitted to the administering agency pursuant to Section 25505.

(f) The regulations adopted by the office pursuant to subdivision (a) shall include an optional model reporting form for business and area plans.

SEC. 4. Section 25503.1 is added to the Health and Safety Code, to read:

25503.1. The office and each administering agency shall adopt reporting requirements, in cooperation with the Chemical Emergency Planning and Response Commission, established by the Governor as the state emergency response commission pursuant to subsection (a) of Section 11001 of Title 42 of the United States Code, which are consistent with the intent and provisions of this chapter and with Chapter 116 (commencing with Section 11001) of Title 42 of the United States Code, for the purpose of eliminating duplicative reporting requirements, to the extent achievable and practicable.

SEC. 5. Section 25503.8 is added to the Health and Safety Code, to read:

25503.8. (a) Any business not subject to subdivision (a) of

Section 25503.5 which is required to submit chemical inventory information pursuant to Section 11022 of Title 42 of the United States Code, as that section reads on January 1, 1989, or as it may be subsequently amended, shall establish and implement a business plan in accordance with Section 25503.5 and Section 25505.

(b) Any business required to establish and implement a business plan pursuant to subdivision (a) shall not be deemed to be in violation of this chapter until the date of the next reporting period, specified in subdivision (d) of Section 25505, which occurs after the business becomes subject to subdivision (a), unless the administering agency requests the business to establish and implement the business plan at an earlier date.

SEC. 6. Section 25505.5 is added to the Health and Safety Code, to read:

25505.5. Notwithstanding any other provision of law, no public entity shall be held liable for any injury or damages resulting from an inadequate or negligent review of a business plan conducted pursuant to Section 25505.

SEC. 7. Section 25506 of the Health and Safety Code is amended to read:

25506. (a) The administering agency shall maintain records of all business plans received and shall index them by street address and company name. The business plan and revisions shall be available for public inspection during the regular working hours of the administering agency, except that those portions of the business plan specifying the precise location where hazardous materials are stored and handled onsite, including any maps of the site, as required by paragraph (5) of subdivision (a) of Section 25509, shall not be available for inspection. The administering agency shall transmit copies of the entire business plan or any information contained in the business plan to any requesting state or local agency.

(b) Any person who files an inventory form required under Section 25509 with the administering agency shall be deemed to have filed the inventory form required by subsection (a) of Section 11022 of Title 42 of the United States Code with the state emergency response commission and emergency planning committee established pursuant to Section 11001 of Title 42 of the United States Code.

(c) The administering agency shall, upon request, transmit the information collected pursuant to this chapter to the Chemical Emergency Planning and Response Commission, established by the Governor as the state emergency response commission pursuant to subsection (a) of Section 11001 of Title 42 of the United States Code, and to the local emergency planning committee established pursuant to subsection (c) of Section 11001 of Title 42 of the United States Code.

SEC. 8. Section 25507 of the Health and Safety Code is amended to read:

25507. (a) Except as provided in subdivision (b), the handler or

any employee, authorized representative, agent, or designee of a handler shall, upon discovery, immediately report any release or threatened release of a hazardous material to the administering agency, and to the office, in accordance with the regulations adopted pursuant to Section 25503. Each handler and any employee, authorized representative, agent, or designee of a handler shall provide all state, city, or county fire or public health or safety personnel and emergency rescue personnel with access to the handler's facilities.

(b) Subdivision (a) does not apply to any person engaged in the transportation of a hazardous material on a highway which is subject to, and in compliance with, the requirements of Sections 2453 and 23112.5 of the Vehicle Code.

SEC. 9. Section 25507.1 is added to the Health and Safety Code, to read:

25507.1. (a) Any business required to submit a followup emergency notice pursuant to subdivision (c) of Section 11004 of Title 42 of the United States Code, as that section reads on January 1, 1989, or as it may be subsequently amended, shall submit the notice on a form approved by the office.

(b) The office may adopt guidelines for the use of the forms required by subdivision (a).

SEC. 10. Section 25509 of the Health and Safety Code is amended to read:

25509. (a) The annual inventory form shall include, but shall not be limited to, information on all of the following which are handled in quantities equal to or greater than the quantities specified in subdivision (a) of Section 25503.5:

(1) A listing of the chemical name and common names of every hazardous substance or chemical product handled by the business.

(2) The category of waste, including the general chemical and mineral composition of the waste listed by probable maximum and minimum concentrations, of every hazardous waste handled by the business.

(3) A listing of the chemical name and common names of every other hazardous material or mixture containing a hazardous material handled by the business which is not otherwise listed pursuant to paragraph (1) or (2).

(4) The maximum amount of each hazardous material or mixture containing a hazardous material disclosed in paragraphs (1), (2), and (3) which is handled at any one time by the business over the course of the year.

(5) Sufficient information on how and where the hazardous materials disclosed in paragraphs (1), (2), and (3) are handled by the business to allow fire, safety, health, and other appropriate personnel to prepare adequate emergency responses to potential releases of the hazardous materials.

(6) The SIC Code number of the business if applicable.

(7) The name and phone number of the person representing the

business and able to assist emergency personnel in the event of an emergency involving the business during nonbusiness hours.

(b) The administering agency may permit the reporting of the amount of hazardous material under this section by ranges, rather than a specific amount, as long as those ranges provide the information necessary to meet the needs of emergency rescue personnel, to determine the potential hazard from a release of the materials, and meets the purposes of this chapter.

(c) Except as provided in subdivision (d), the annual inventory form required by this section shall also include all inventory information required by Section 11022 of Title 42 of the United States Code, as that section reads on January 1, 1989, or as it may be subsequently amended.

The office may adopt or amend existing regulations specifying the inventory information required by this subdivision.

(d) If, pursuant to federal law or regulation, as it currently exists or as it may be amended, there is a determination that the inventory information required by subdivisions (a) and (b) is substantially equivalent to the inventory information required under the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. Sec. 11001 et seq.), the requirements of subdivision (c) shall not apply.

SEC. 11. Section 25513 of the Health and Safety Code is amended to read:

25513. Each administering county or city may, upon a majority vote of the governing body, adopt a schedule of fees to be collected from each business required to submit a business plan pursuant to this chapter which is within its jurisdiction. The governing body may provide for the waiver of fees when a business, as defined in Section 25501.4, submits a business plan. The fee shall be set in an amount sufficient to pay only those costs incurred by the county or city in carrying out this chapter. In determining the fee schedule, the administering agency shall consider the volume and degree of hazard potential of the hazardous materials handled by the businesses subject to this chapter.

SEC. 12. The Office of Emergency Services shall report to the Legislature, on or before July 1, 1989, on the implementation of Chapter 6.95 (commencing with Section 25500) of Division 20 of the Health and Safety Code.

SEC. 13. No reimbursement is required by this act pursuant to Section 6 of Article XIII E of the California Constitution because either (1) 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 (2), the 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 1586

An act to add Section 3557 to the Public Utilities Code, and to amend Sections 612, 1808.1, 2807.2, 12810.5, 34506, 40000.6, and 40000.21 of, to amend, repeal, and add Section 40000.22 of, and to add Sections 1808.3, 34501.12, 34505.5, 34505.6, and 40000.26 to, the Vehicle Code, relating to vehicles.

[Approved by Governor September 30, 1988 Filed with Secretary of State September 30, 1988 ]

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

SECTION 1. This act shall be known and may be cited as the California Commercial Motor Vehicle Safety Act of 1988.

SEC. 2. The Legislature finds and declares all of the following:

(a) Unannounced roadside checks of commercial motor vehicles by the Department of the California Highway Patrol over the last several years have revealed an unacceptable number of mechanical defects, requiring the immediate withdrawal from service of a significant percentage of vehicles so inspected until necessary repairs could be made.

(b) There is an urgent need to check the safety of commercial trucks on a regular and systematic basis, similar to existing programs which help ensure proper maintenance of schoolbuses and tour buses.

(c) In addition, there is a concomitant need to ensure that drivers of heavy vehicles are properly licensed and that those who employ drivers are cognizant of the driving records of the people in their employ.

SEC. 2.3. Section 3557 is added to the Public Utilities Code, to read:

3557. (a) The commission shall establish a classification of highway carriers known as owner-operators.

(b) As used in this section, and in Sections 1808.3 and 34501.12 of the Vehicle Code, an owner-operator is a person who meets all of the following:

(1) Holds a class 1 or class 2 driver's license.

(2) Owns, leases, or otherwise operates not more than one heavy power unit and not more than three towed vehicles.

(3) Holds highway carrier operating authority from the commission under Part 1 (commencing with Section 201) of Division 1 of this chapter, or Chapter 7 (commencing with Section 5101) of this division.

(c) As used in this section, "heavy power unit" is a motor vehicle described in subdivision (a), (b), or (g) of Section 34500 of the Vehicle Code and "towed vehicle" is a nonmotorized vehicle described in subdivision (d), (e), (f), or (g) of that section.

(d) On and after January 1, 1990, the commission shall forward, at

least annually, an updated list of owner-operators, along with their driver's license numbers, to the Department of Motor Vehicles. The commission, upon notification by the Department of Motor Vehicles that an owner-operator's driving privilege is suspended or revoked, shall suspend the carrier's operating authority, unless the carrier within 15 days shows good cause as to why the operating authority should not be suspended.

SEC. 2.5. Section 612 of the Vehicle Code is amended to read:

612. "Tour bus" means a bus designed for carrying more than 10 passengers, including the driver, which is operated by or for a charter-party carrier of passengers, as defined in Section 5360 of the Public Utilities Code.

SEC. 3. Section 1808.1 of the Vehicle Code is amended to read:

1808.1. (a) The prospective employer of a driver who drives a vehicle requiring a class 1 or class 2 driver's license, or a certificate issued pursuant to Section 2512, 12517, 12519, 12519.5, 12521, 12523, 12524, 12804.1, or 12804.3, shall obtain a report showing the driver's current public record as recorded by the department.

(b) (1) The employer of a driver who drives a vehicle requiring a class 1 or class 2 driver's license, or a certificate issued pursuant to Section 2512, 12517, 12519, 12519.5, 12521, 12523, 12524, 12804.1, or 12804.3, shall make a request to the department to participate in a pull notice system, which is a process for the purpose of providing the employer with a report showing the driver's current public record as recorded by the department, and any subsequent convictions, failures to appear, accidents, driver's license suspensions, driver's license revocations, or any other actions taken against the driving privilege or certificate, added to the driver's record while the employer's notification request remains valid and uncanceled.

(2) Each transit operator, as defined in Section 99210 of the Public Utilities Code, which employs any person as a driver of a bus, shall make a request to the department to participate in a pull notice system, which is a process for the purpose of providing the employer with a report showing the driver's current public record as recorded by the department, and any subsequent convictions, failures to appear, accidents, driver's license suspensions, driver's license revocations, or any other actions taken against the driving privilege or certificate, added to the driver's record while the employer's notification request remains valid and uncanceled.

(c) The employer of a driver of a vehicle requiring a class 1 or class 2 driver's license or of a tour bus requiring a certificate issued pursuant to Section 12519.5, and each transit operator employing bus drivers shall, additionally, obtain a periodic report from the department at least every six months, except that an employer who employs more than 500 drivers shall obtain a report no less than annually. The employer shall verify that each employee's driver's license has not been suspended or revoked, the employee's traffic violation point count, and whether the employee has been convicted

of a violation of Section 23152 or 23153. The report shall be signed and dated by the employer and maintained at the employer's principal place of business. The reports shall be presented upon demand to any authorized representative of the Department of the California Highway Patrol during regular business hours.

(d) Upon the termination of a driver's employment, the employer shall notify the department to cancel any reports required by this section.

(e) An employer who, after receiving any driving record pursuant to this section, employs or continues to employ as a driver any person against whom a disqualifying action has been taken regarding his or her driving privilege or required driver's certificate, is guilty of a public offense, and upon conviction thereof, shall be punished by imprisonment in the county jail for not more than six months, by a fine of not more than one thousand dollars ($1,000), or by both that fine and imprisonment.

(f) As part of its inspection of bus maintenance facilities and terminals required at least once every 13 months pursuant to subdivision (c) of Section 34501, the Department of the California Highway Patrol shall determine whether each transit operator is then in compliance with this section, and shall certify each operator found to be in compliance. No funds shall be allocated under Chapter 4 (commencing with Section 99200) of Part 11 of Division 10 of the Public Utilities Code to a transit operator which the Department of the California Highway Patrol has not certified under this section.

(g) A request to participate in the pull notice system established by this section shall be accompanied by a fee determined by the department to be sufficient to defray the entire actual cost to the department for the notification service. For the receipt of subsequent reports, the employer shall also be charged a fee established by the department pursuant to Section 1811. Any employer who qualifies under Section 1812 shall be exempt from any fee required under this section.

SEC. 3.5. Section 1808.3 is added to the Vehicle Code, to read:

1808.3. Based on the list of owner-operators which the Public Utilities Commission is required, pursuant to Section 3557 of the Public Utilities Code, to periodically submit to the department, the department shall promptly notify the Public Utilities Commission whenever an owner-operator's driving privilege is suspended or revoked.

SEC. 4. Section 2807.2 of the Vehicle Code is amended to read:

2807.2. The Department of the California Highway Patrol shall, by regulation, provide for a preventive maintenance inspection guide for use by operators of tour buses, motor vehicles specified in Sections 2807 and 2807.1, and vehicles described in subdivisions (a), (b), (d), (e), (f), and (g) of Section 34500. The regulations shall provide that the record of inspection shall be signed by the person making the inspection, and the record of the inspections shall be retained on file by the operator for review and inspection by the

Department of the California Highway Patrol.

SEC. 5. Section 12810.5 of the Vehicle Code is amended to read:

12810.5. (a) Except as otherwise provided in subdivision (b), any person whose driving record shows a violation point count of four or more points in 12 months, six or more points in 24 months, or eight or more points in 36 months shall be prima facie presumed to be a negligent operator of a motor vehicle. In applying the provisions of this subdivision to a driver, if the driver requests a hearing and appears at a hearing conducted by the department, the department shall give due consideration to the amount of use or mileage traveled in the operation of a motor vehicle.

(b) (1) Any class 1 or class 2 driver, except persons holding certificates pursuant to Section 2512, 12517, 12519, 12519.5, 12521, 12523, 12804.1, or 12804.3, who is presumed to be a negligent operator pursuant to subdivision (a), and who requests a hearing and appears at a hearing, shall be allowed a driving record violation point count of six points in 12 months, eight points in 24 months, or 10 points in 36 months. However, the higher point count shall not apply if the department reasonably determines that more than four points in 12 months, six points in 24 months, or eight points in 36 months are attributable to the driver's operation of a vehicle requiring only a class 3 or class 4 license, and not requiring a certificate.

(2) For purposes of this subdivision, each point assigned pursuant to Section 12810 shall be valued at one and one-half times the value otherwise required by that section for each violation reasonably determined by the department to be attributable to the driver's operation of a vehicle requiring a class 1 or class 2 license, or requiring any certificate described in this subdivision.

SEC. 5.5. Section 12810.5 of the Vehicle Code is amended to read:

12810.5. (a) Except as otherwise provided in subdivision (b), any person whose driving record shows a violation point count of four or more points in 12 months, six or more points in 24 months, or eight or more points in 36 months shall be prima facie presumed to be a negligent operator of a motor vehicle. In applying the provisions of this subdivision to a driver, if the person requests a hearing and appears at a hearing conducted by the department, the department shall give due consideration to the amount of use or mileage traveled in the operation of a motor vehicle.

(b) Any class 1 or class 2 licensed driver, except persons holding certificates pursuant to Section 2512, 12517, 12519, 12519.5, 12521, 12523, 12804.1, or 12804.3, who is presumed to be a negligent operator pursuant to subdivision (a), and who requests a hearing and appears at a hearing, shall be allowed a driving record violation point count of six points in 12 months, eight points in 24 months, or 10 points in 36 months. However, the higher point count shall not apply if the department reasonably determines that more than four points in 12 months, six points in 24 months, or eight points in 36 months are attributable to the driver's operation of a vehicle requiring only a class 3 or class 4 license, and not requiring a certificate.

(2) For purposes of this subdivision, each point assigned pursuant to Section 12810 shall be valued at one and one-half times the value otherwise required by that section for each violation reasonably determined by the department to be attributable to the driver's operation of a vehicle requiring a class 1 or class 2 license, or requiring any certificate described in this subdivision.

(c) On and after July 1, 1989, the department may require a negligent operator whose driving privilege is suspended or revoked pursuant to this section to submit proof of ability to respond in damages as defined in Section 16430. The proof of ability to respond in damages shall be filed on or before the date of reinstatement following the suspension or revocation. The proof of ability to respond in damages shall be maintained with the department for three years following that date of reinstatement.

SEC. 6. Section 34501.12 is added to the Vehicle Code, to read:

34501.12. (a) The department shall inspect, at least every 25 months, every maintenance facility or terminal, as defined in Section 34515 of any person who, at any time, operates any vehicle described in subdivision (a), (b), (d), (e), (f), or (g) of Section 34500.

(b) (1) It is the responsibility of the motor carrier to schedule with the department the inspection required by subdivision (a). The motor carrier shall submit an application form supplied by the department, accompanied by the required fee. The fee shall be four hundred dollars ($400) per terminal, except in the case of an owner-operator, as defined in Section 3557 of the Public Utilities Code, or a nonregulated motor carrier who owns, leases, or otherwise operates not more than one heavy power unit and not more than three towed vehicles described in subdivision (a), (b), (d), (e), (f), or (g) of Section 34500, for which the fee shall be one hundred dollars ($100).

(2) Every motor carrier subject to the requirements of this section shall submit an application for the initial inspection required by subdivision (a) on or before July 1, 1989. The inspection term for a motor carrier shall expire 25 months from the date the department conducts the motor carrier's first terminal inspection, and every 25 months thereafter. Applications and fees for subsequent inspections shall be submitted not later than seven months before the expiration of the motor carrier's then current inspection term. If the motor carrier has submitted the inspection application and the required accompanying fees, but the department is unable to complete the inspection within the 25 month inspection period, then no additional fee shall be required for the inspection requested in the original application.

(3) All fees collected pursuant to this subdivision shall be deposited in the Motor Vehicle Account in the State Transportation Fund. An amount equal to the fees collected shall be available for appropriation by the Legislature from the Motor Vehicle Account to the department for the purpose of conducting truck terminal inspections and for the additional roadside safety inspections

required by Section 34514.

(c) On and after July 1, 1989, it shall be unlawful for any motor carrier to operate any vehicle subject to this section without having submitted an inspection application and the required fees to the department as required by paragraph (2) of subdivision (b).

(d) On and after January 1, 1992, it shall be unlawful for any motor carrier to operate any vehicle subject to this section after submitting an inspection application to the department, without the inspection described in subdivision (a) having been performed and a safety compliance report having been issued to the motor carrier within the 25-month inspection period.

(e) It is the intent of the Legislature that the department make its best efforts to inspect terminals within the resources provided. In the interest of the state, the Commissioner of the California Highway Patrol may extend for a period not to exceed six months the inspection terms beginning prior to July 1, 1990.

(f) The department shall report to the Legislature not later than September 1, 1991, on the mandates of the California Commercial Motor Vehicle Safety Act of 1988 and the mandates of Section 34514. The department shall recommend any program adjustments that may be desirable, and shall report on any fee adjustments that may be required to fully fund biennial terminal inspections of all California truck terminals. The department shall also consider the feasibility of implementing an incentive program which would benefit truck operators with excellent safety records.

SEC. 7. Section 34505.5 is added to the Vehicle Code, to read:

34505.5. (a) Every operator of any vehicle described in subdivision (a), (b), (d), (e), (f), or (g) of Section 34500 shall, in addition to the systematic inspection, maintenance, and lubrication services required of all motor carriers, require the vehicle to be inspected at least every 45 days, or more often if necessary to ensure safe operation. This inspection shall include, but not be limited to, all of the following:

(1) Brake adjustment.

(2) Brake system components and leaks.

(3) Steering and suspension systems.

(4) Tires and wheels.

(5) Vehicle connecting devices.

(b) 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 subdivision (a) have been corrected and attested to by the signature of the operator's authorized representative.

(c) Records of inspections conducted pursuant to subdivision (a) shall be kept at the operator's maintenance facility or terminal where the vehicle is regularly garaged. The records shall be retained by the operator for two years, and shall be made available for inspection upon request by any authorized employee of the department. Each record shall include, but not be limited to, all of the following:

(1) Identification of the vehicle, including make, model, license number, company vehicle number or other means of positive identification.

(2) Date and nature of each inspection and any repair performed.

(3) Signature of operator's authorized representative attesting to the inspection and to the completion of all required repairs.

(d) The department may, by regulation, provide for alternative inspection intervals for particular types of vehicles or particular trucking operations, based on mileage traveled or appropriate similar measures, as determined by the department.

SEC. 8. Section 34505.6 is added to the Vehicle Code, to read:

34505.6. (a) Upon determining that an operator of any vehicle described in subdivision (a), (b), (d), (e), (f), or (g) of Section 34500 has failed to comply with the vehicle inspection requirements in this code, has failed to comply with the pull notice system or periodic report requirements required by Section 1808.1, or that the operator's terminal is rated unsatisfactory, the department shall recommend to the Public Utilities Commission or the Interstate Commerce Commission that the carrier's operating authority be denied, suspended, or revoked, whichever is appropriate. The department shall retain a record, by operator, of every recommendation made pursuant to this section.

(b) Upon receiving the recommendation from the department, the Public Utilities Commission shall immediately deny, suspend, or revoke the carrier's permit or certificate. Applications for reissuance or reinstatement of a permit or certificate denied, suspended, or revoked pursuant to this section shall be accompanied by a filing fee of five hundred dollars ($500).

SEC. 9. Section 34506 of the Vehicle Code is amended to read:

34506. It is a misdemeanor to fail to comply with any rule or regulation adopted by the Department of the California Highway Patrol pursuant to Section 34501, 34501.5, 34508, or 34513 regarding any of the following:

(a) Hours of service of drivers.

(b) Hazardous material transportation.

(c) Schoolbus constructions, design, color, equipment, maintenance, or operation.

(d) Youth bus equipment, maintenance, or operation.

(e) Tour bus equipment, maintenance, or operation.

(f) Equipment, maintenance, or operation of any vehicle described in subdivision (a), (b), (d), (e), (f), or (g) of Section 34500.

SEC. 10. Section 40000.6 of the Vehicle Code is amended to read:

40000.6. A violation of subdivision (e) of Section 1808.1, relating to employment of disqualified drivers, is a misdemeanor and not an infraction.

SEC. 11. Section 40000.21 of the Vehicle Code is amended to read:

40000.21. A violation of any of the following provisions is a misdemeanor, and not an infraction:

(a) Subdivision (a) of Section 34506, relating to the hours of service of drivers.

(b) Subdivision (b) of Section 34506, relating to the transportation of hazardous materials.

(c) Subdivision (c) of Section 34506, relating to schoolbuses.

(d) Subdivision (d) of Section 34506, relating to youth buses.

(e) Section 34505 or subdivision (e) of Section 34506, relating to tour buses.

(f) Section 34505.5 or subdivision (f) of Section 34506, relating to vehicles described in subdivisions (a), (b), (d), (e), (f), and (g) of Section 34500.

(g) Subdivision (a) of Section 34501.3, relating to unlawful scheduling of runs by motor carriers.

SEC. 12. Section 40000.22 of the Vehicle Code is amended to read:

40000.22. A violation of subdivision (e) of Section 34501, relating to inspections, is a misdemeanor and not an infraction.

This section shall remain in effect only until July 1, 1989, and as of that date is repealed.

SEC. 13. Section 40000.22 is added to the Vehicle Code, to read:

40000.22. A violation of subdivision (e) of Section 34501 or subdivision (c) of Section 34501.12, relating to applications for inspections, is a misdemeanor and not an infraction.

This section shall become operative on July 1, 1989.

SEC. 13.5. Section 40000.26 is added to the Vehicle Code, to read:

40000.26. A violation of subdivision (d) of Section 34501.12, relating to inspections, is a misdemeanor and not an infraction. This section shall become operative on January 1, 1992.

SEC. 14. Sections 3, 4, 5, 7, and 9 of this act shall become operative on July 1, 1989.

SEC. 14.5. Sections 3.5, 8, and 10 of this act shall become operative on January 1, 1990.

SEC. 15. This bill shall become operative only if Senate Bill 2876 of the 1987–88 Regular Session becomes operative and adds Sections 34514 and 34515 to the Vehicle Code.

SEC. 16. Section 5.5 of this bill incorporates amendments to Section 12810.5 of the Vehicle Code proposed by this bill and AB 3026. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1989, (2) each bill amends Section 12810.5 of the Vehicle Code, and (3) this bill is enacted after AB 3026, in which case Section 12810.5 of the Vehicle Code, as amended by AB 3026, shall remain operative only until the operative date of this bill, at which time Section 5.5 of this bill shall become operative, and Section 5 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.

# CHAPTER 1587

An act to add Section 7008 to the Education Code, relating to health insurance coverage.

[Approved by Governor September 30, 1988 Filed with Secretary of State September 30, 1988.]

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

SECTION 1. Section 7008 is added to the Education Code, to read:

7008. (a) Notwithstanding any other provision of law, a member of the State Teachers' Retirement System who is disabled as a result of an injury that is a direct consequence of a violent act perpetrated on his or her person while performing duties in the scope of employment, and the employment is creditable under the provisions of the State Teachers' Retirement Law (Part 13 (commencing with Section 22000)), may, upon qualifying for a disability under Section 23902 and while receiving an allowance under Section 23903, continue in the district's health care plan and dental care plan, by paying all of the employer's and employee's premiums and all of the related administrative costs of the employer.

(b) Notwithstanding any other provision of law, a school member as defined in Section 20013 of the Government Code, or a local policeman as defined in Section 20020.8 of the Government Code, who is disabled as a result of an injury that is a direct consequence of a violent act perpetrated on his or her person while performing duties in the scope of employment, and the employment is creditable under the Public Employees' Retirement Law (Part 3 (commencing with Section 20000) of Division 5 of Title 2 of the Government Code), may, upon qualifying for a disability and while receiving an allowance under Chapter 8 (commencing with Section 20950) of Part 3 of Division 5 of Title 2 of the Government Code, continue in the employer's health care plan and dental care plan, by paying all of the employer's and employee's premiums and all of the related administrative costs of the employer.

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.

# CHAPTER 1588

An act to amend Section 66796.32 of the Government Code, relating to solid waste.

[Approved by Governor September 30, 1988. Filed with Secretary of State September 30, 1988.]

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

SECTION 1. Section 66796.32 of the Government Code is amended to read:

66796.32. (a) Upon receipt of an application or report required by Section 66796.30, the enforcement agency shall submit a copy of the application or report to the board within seven days.

(b) The enforcement agency shall not issue, modify, or revise a solid waste facilities permit unless it has, at least 45 days in advance, provided the board and the applicant with a copy of the proposed permit, which shall contain the terms and conditions the enforcement agency proposes to establish and unless the city or county in which the site is located has issued a land use permit authorizing the establishment or expansion of the site.

(c) Any solid waste facility permit for any new landfill, for laterally expanding or otherwise increasing the permitted capacity of an existing landfill, for any new waste-to-energy facility, or for increasing the capacity of an existing waste-to-energy facility, shall include a permit condition which precludes the solid waste facility from accepting any solid waste originating in a county which has not submitted a plan to the board meeting the requirements of subdivision (f) of Section 66780.5. This subdivision applies to a county on and after the date which occurs after January 1, 1990, that the county's solid waste management plan is required to be revised as specified in subdivision (c) of Section 66780.5.

(d) Prior to forwarding a copy of the proposed solid waste facilities permit, the enforcement agency shall certify all of the following findings:

(1) The proposed solid waste facilities permit is consistent with the county solid waste management plan prepared pursuant to Section 66780.1.

(2) The proposed solid waste facilities permit is consistent with the standards adopted by the board.

(3) The city or county has found the proposed solid waste facility, if for a new or expanded site, consistent with its general plan pursuant to Article 5 (commencing with Section 65300) of Chapter 3 of Division 1 of Title 7.

(e) A decision to issue or not issue the permit shall be made by the enforcement agency within 120 days of the time application is filed unless waived by the applicant.

(f) The board shall, in writing, concur or object to the issuance,

modification, or revision of any solid waste facilities permit within 40 days of the board's receipt of any proposed solid waste facilities permit submitted under subdivision (b). If the board determines that the permit would not be consistent with the county solid waste management plan or the state standards or if the city or county has not found, or has failed to make the finding that, the proposed solid waste facility is consistent with the applicable general plan, pursuant to Section 66796.41, the board shall object to provisions of the permit, and shall submit those objections to the enforcement agency for its consideration. If the board fails to concur or object in writing within that 40 days, it is deemed to have concurred in the issuance of the permit as submitted to it.

SEC. 2. Section 66796.32 of the Government Code is amended to read:

66796.32. (a) Upon receipt of an application or report required by Section 66796.30, the enforcement agency shall submit a copy of the application or report to the board within seven days.

(b) The enforcement agency shall not issue, modify, or revise a solid waste facilities permit unless it has, at least 45 days in advance, provided the board and the applicant with a copy of the proposed permit, which shall contain the terms and conditions the enforcement agency proposes to establish and unless the city or county in which the site is located has issued a land use permit authorizing the establishment or expansion of the site.

(c) Any solid waste facility permit for any new landfill, for laterally expanding or otherwise increasing the permitted capacity of an existing landfill, for any new waste-to-energy facility, or for increasing the capacity of an existing waste-to-energy facility, shall include a permit condition which precludes the solid waste facility from accepting any solid waste originating in a city, county, or city and county, which has not submitted a plan meeting the requirements of Chapter 9 (commencing with Section 15000) of Division 12.1 of the Public Resources Code. This subdivision applies to a city, county, or city and county on and after the date which occurs after January 1, 1990, that the county's solid waste management plan is required to be revised as specified in subdivision (c) of Section 66780.52.

(d) Prior to forwarding a copy of the proposed solid waste facilities permit, the enforcement agency shall certify all of the following findings:

(1) The proposed solid waste facilities permit is consistent with the county solid waste management plan prepared pursuant to Section 66780.1.

(2) The proposed solid waste facilities permit is consistent with the standards adopted by the board.

(3) The city or county has found the proposed solid waste facility, if for a new or expanded site, consistent with its general plan pursuant to Article 5 (commencing with Section 65300) of Chapter 3 of Division 1 of Title 7.

(e) A decision to issue or not issue the permit shall be made by the enforcement agency within 120 days of the time application is filed unless waived by the applicant.

(f) The board shall, in writing, concur or object to the issuance, modification, or revision of any solid waste facilities permit within 40 days of the board's receipt of any proposed solid waste facilities permit submitted under subdivision (b). If the board determines that the permit would not be consistent with the county solid waste management plan or the state standards or if the city or county has not found, or has failed to make the finding that, the proposed solid waste facility is consistent with the applicable general plan, pursuant to Section 66796.41, the board shall object to provisions of the permit, and shall submit those objections to the enforcement agency for its consideration. If the board fails to concur or object in writing within that 40 days, it is deemed to have concurred in the issuance of the permit as submitted to it.

SEC. 3. Section 2 of this act shall become operative only if Assembly Bill No. 3298 of the 1988–89 Regular Session enacts Chapter 9 (commencing with Section 15000) of Division 12.1 of the Public Resources Code and becomes operative on July 1, 1989, in which case Section 1 of this act shall not become operative.

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## CHAPTER 1589

An act to add Section 65850.2 to the Government Code, to amend Sections 25535 and 25540 of, and to add Sections 13872.5, 25534.1, 25534.5, 42301.6, 42301.7, 42301.8, 42301.9, and 42450.1 to, the Health and Safety Code, and to add Sections 21151.3 and 21151.4 to the Public Resources Code, relating to hazardous materials and emissions.

[Approved by Governor September 30, 1988 Filed with Secretary of State September 30, 1988 ]

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

SECTION 1. The Legislature finds and declares that there have been incidents of health threats and nuisances at schoolsites throughout the state causing children to evacuate schools, report ill, and require medical attention. These incidents have been caused in large part by the inappropriate siting of schools and certain facilities with the potential for routine and accidental releases of hazardous and acutely hazardous air emissions.

It is the intent of the Legislature to do all of the following:

(a) Correct deficiencies in existing law, and strengthen, clarify, and expand the law in order to protect the public health and safety.

(b) Provide a mechanism for local governmental agencies to determine and mitigate risks posed by routine and accidental

hazardous and acutely hazardous emissions from new and existing sources with regard to the siting of new schools and new and existing facilities.

(c) Strengthen the enforcement mechanisms and correct other deficiencies in laws effecting acutely hazardous air emissions.

(d) Provide a means to prevent the release of hazardous or acutely hazardous air emissions that could adversely affect the health and safety of persons at a schoolsite.

(e) Improve coordination among agencies regarding the siting of schools and certain facilities near schools.

(f) Clarify and augment the authority of local agencies and not to restrict or preempt existing local authority.

SEC. 2. Section 65850.2 is added to the Government Code, to read:

65850.2. (a) Not later than July 1, 1989, each city and each county shall include in its application for a building permit a place for the applicant to indicate whether the applicant or future building occupant will need to comply with the applicable requirements of Sections 25505, 25533, and 25534 of the Health and Safety Code and the requirements for a permit for construction or modification from the air pollution control district or air quality management district exercising jurisdiction in the area governed by the city or county. This subdivision does not apply to applications for residential construction.

(b) Not later than July 1, 1989, no city or county shall issue a final certificate of occupancy unless the applicant has met or is meeting the applicable requirements of Sections 25505, 25533, and 25534 of the Health and Safety Code and the requirements for a permit from the air pollution control district or air quality management district exercising jurisdiction in the area governed by the city or county or has provided proof from the appropriate district that the permit requirements do not apply to the applicant. This section shall not apply to applications for residential construction.

(c) On and after July 1, 1989, no city or county shall permit a facility to be contructed within 1,000 feet from the outer boundary of a school without meeting the requirements of Sections 25534 and 42303 of the Health and Safety Code. The risk management and prevention program and information required by Section 42303 shall not be accepted by the city or county unless approved by the administering agency. The information required by Section 42303 shall not be accepted by the city or county unless the air pollution control officer certifies that the applicant is in compliance with the required disclosures.

(d) The city or county, after considering the recommendations of the air pollution control district or air quality management district, shall decide whether, and under what conditions, to allow construction at the site.

(e) Nothing in this section limits any existing authority of a district to require compliance with its rules and regulations.

(f) Counties and cities may adopt a schedule of fees for building permit applications sufficient to recover their reasonable costs of carrying out this section.

SEC. 3. Section 13872.5 is added to the Health and Safety Code, to read:

13872.5. The fire chief of a city, city and county, or county fire department, or his or her authorized representative, has the same authority as specified in Sections 13870 to 13872, inclusive, to issue a written order to correct or eliminate a fire hazard or life hazard, hold hearings and modify, vacate, or affirm those orders, and issue citations if so authorized by ordinance of the city, city and county, or county. This section does not limit or affect any authority of a fire chief or authorized representative of a fire chief under any local ordinance.

SEC. 4. Section 25534.1 is added to the Health and Safety Code, to read:

25534.1. Every RMPP prepared pursuant to Section 25534 shall give consideration to the proximity of the facility to schools, general acute care hospitals, and long-term health care facilities. For purposes of this section, "general acute care hospital" has the meaning provided by subdivision (a) of Section 1250 and "long-term health care facility" has the meaning provided by subdivision (a) of Section 1418.

SEC. 5. Section 25534.5 is added to the Health and Safety Code, to read:

25534.5. In reviewing an RMPP pursuant to subdivision (a) of Section 25535, the administering agency may have access to and review all technical information in the handler's possession which is reasonably necessary to allow the administering agency to make a determination regarding the sufficiency of the RMPP. That information may include any study or analysis conducted pursuant to subdivision (d) of Section 25534. Information conducted pursuant to subdivision (d) of Section 25534 shall not be disclosed by the administering agency except as provided in Section 25511.

SEC. 6. Section 25535 of the Health and Safety Code is amended to read:

25535. (a) An owner or operator of a facility submitting an RMPP pursuant to Section 25534 shall submit the RMPP to the administering agency after the RMPP is certified as complete by a qualified person and the facility operator. The administering agency may authorize the air pollution control district or air quality management district in which the facility is located to conduct a technical review of the RMPP. If, after review by the administering agency or the air pollution control district or air quality management district exercising jurisdiction in the area of the facility, the administering agency determines that the handler's RMPP is deficient in any way, the administering agency shall notify the handler of these defects. The handler shall submit a corrected RMPP within 60 days of the notice.

(b) Upon implementation of a risk management and prevention program pursuant to subdivision (k) of Section 25534, the handler shall notify the administering agency that the RMPP has been implemented and shall summarize the steps taken in preparation and implementation of the RMPP.

(c) The handler shall continue to carry out the program and activities specified in the risk management and prevention program at the business after the administering agency has been notified pursuant to subdivision (b).

(d) The owner or operator shall implement all programs and activities in the RMPP before operations commence, in the case of a new facility, or before any new activities involving acutely hazardous materials are taken, in the case of a modified facility.

SEC. 7. Section 25540 of the Health and Safety Code is amended to read:

25540. (a) Any business that violates this article shall be civilly liable to the administering agency in an amount of not more than two thousand dollars ($2,000) for each day in which the violation occurs. If the violation results in, or significantly contributes to, an emergency, including a fire, the business shall also be assessed the full cost of the county or city emergency response, as well as the cost of cleaning up and disposing of the hazardous materials.

(b) Any business that knowingly violates this article after reasonable notice of the violation shall be civilly liable to the administering agency in an amount not to exceed twenty-five thousand dollars ($25,000) for each day in which the violation occurs and upon conviction, may be punished by imprisonment in the county jail for not more than one year.

SEC. 8. Section 42301.6 is added to the Health and Safety Code, to read:

42301.6. (a) Prior to approving an application for a permit to construct or modify a source that may emit air contaminants located within 1,000 feet from the outer boundary of a school, the air pollution control officer shall prepare a public notice in which the proposed project or modification for which the application for a permit is made is fully described.

(b) The air pollution control officer shall, at the permit applicant's expense, distribute the public notice to the parents of children in any school within one-quarter mile of the source and to each address within a radius of 750 feet from the outer property line of the proposed new or modified source at least 30 days prior to the date final action on the application is to be taken by the officer. The officer shall review and consider all comments received during the 30 days after the notice is distributed, and shall include written responses to the comments in the permit application file prior to taking final action on the application.

(c) Notwithstanding subdivision (b), an air pollution control officer may require the applicant to distribute the notice if the district had such a rule in effect prior to January 1, 1989.

(d) The requirements for public notice pursuant to subdivision (b) or a district rule in effect prior to January 1, 1989, are fulfilled if the air pollution control officer or applicant responsible for giving the notice makes a good faith effort to follow the procedures prescribed by law for giving the notice, and, in such circumstances, failure of any person to receive the notice shall not affect the validity of any permit subsequently issued by the officer.

(e) Nothing in this section shall be deemed to limit any existing authority of any district.

SEC. 9. Section 42301.7 is added to the Health and Safety Code, to read:

42301.7. (a) If the air pollution control officer determines there is a reasonably foreseeable threat of a release of an air contaminant from a source within 1,000 feet of the boundary of a school that would result in a violation of Section 41700 and impact persons at the school, the officer shall, within 24 hours, notify the administering agency and the fire department having jurisdiction over the school.

(b) The administering agency may, in responding to a reasonably foreseeable threat of a release, do any of the following:

(1) Review the facility's risk management and prevention plan prepared pursuant to Section 25534 to determine whether the program should be modified, and, if so, require submission of appropriate modifications. Notwithstanding any other provision of law, the administering agency may order modification and implementation of a revised risk management and prevention plan at the earliest feasible date.

(2) If the facility has not filed a risk management and prevention plan with the administering agency, require the preparation and submission of a plan to the administering agency pursuant to Section 25534. Notwithstanding any other provision of law, the administering agency may require the filing of a risk management and prevention plan and its implementation at the earliest feasible date.

(c) The air pollution control officer may, in responding to a reasonably foreseeable threat of a release, do any of the following:

(1) If necessary, issue an immediate order to prevent the release or mitigate the reasonably foreseeable threat of a release in violation of Section 41700 pending a hearing pursuant to Section 42450 when there is a substantial probability of an injury to persons at a school resulting from a release that makes it reasonably necessary to take immediate action to prevent, reduce, or mitigate that injury. The officer may not issue such an order unless there is written concurrence to issue the order by a representative of the administering agency.

(2) Apply to the district board for issuance of an order for abatement pursuant to Section 42450.

(d) Nothing in this section limits any existing authority of any district.

SEC. 10. Section 42301.8 is added to the Health and Safety Code, to read:

42301.8. Upon receiving a request, for good cause, from the principal or an authorized representative of the principal of a school, the district shall, within 24 hours, respond to the request and notify the administering agency and the fire department having jurisdiction over the school. The administering agency, upon receiving such a request, shall notify the district within 24 hours.

SEC. 11. Section 42301.9 is added to the Health and Safety Code, to read:

42301.9. For the purposes of Sections 42301.4 to 42301.8, inclusive:

(a) "School" means any school used for purposes of the education of children in kindergarten or any of grades 1 to 12, inclusive.

(b) "Air contaminant" has the same meaning as provided in Section 39013.

(c) "Administering agency" means an administering agency as defined in subdivision (c) of Section 25532.

SEC. 12. Section 42450.1 is added to the Health and Safety Code, to read:

42450.1. This article applies to any order for abatement issued pursuant to a determination made under Section 42301.7.

SEC. 13. Section 21151.3 is added to the Public Resources Code, to read:

21151.3. No environmental impact report or negative declaration shall be approved for any project involving the purchase of a schoolsite or the construction of a new elementary or secondary school by a school district unless both of the following occur:

(a) The lead agency preparing the environmental impact report or negative declaration has consulted with the city in which the proposed schoolsite is located, or with the county in which the proposed schoolsite is located if the proposed site is in an unincorporated area, and with any air pollution control district or air quality management district having jurisdiction in the area, to identify facilities within one-fourth of a mile of the proposed school site which might reasonably be anticipated to emit hazardous or acutely hazardous air emissions.

(b) The governing board of the school district makes either of the following written findings:

(1) Consultation identified no such facilities.

(2) Those facilities exist, but the health risks from the facilities do not and will not constitute an actual or potential endangerment of public health to persons who would attend or be employed at the school.

(c) As used in this section:

(1) "Hazardous air emissions" means any substance released into the ambient air which is on the list required to be prepared pursuant to subdivision (a) of Section 25532 and Section 44321 of the Health and Safety Code.

(2) "Acutely hazardous air emissions" means any substance released into the ambient air which is an acutely hazardous material as defined in subdivision (a) of Section 25532 of the Health and Safety

Code.

SEC. 14. Section 21151.4 is added to the Public Resources Code, to read:

21151.4. No environmental impact report or negative declaration shall be approved for any project involving the construction or alteration of a facility within one-fourth of a mile of a school which might reasonably be anticipated to emit hazardous or acutely hazardous air emissions as defined in Section 21151.3 unless both of the following occur:

(a) The lead agency preparing the environmental impact report or negative declaration has consulted with the school district having jurisdiction regarding the potential impact of the project on the school.

(b) The school district has been given written notification of the project not less than 30 days prior to the proposed approval of the environmental impact report or negative declaration.

SEC. 15. 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, 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.

SEC. 16. If any provision of this act or its application 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.

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## CHAPTER 1590

An act to amend Sections 84500.1 and 84706 of, and to add and repeal Article 11 (commencing with Section 76170) of Chapter 1 of Part 46 of, the Education Code, relating to education.

[Approved by Governor September 30, 1988 Filed with Secretary of State September 30, 1988 ]

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

SECTION 1. It is the intent of the Legislature in enacting this provision that any community college district participating in the pilot program established by this act shall·

(a) Retain the option to report average daily attendance for

receipt of an apportionment for students who are participants in the Greater Avenues for Independence (GAIN) Program as specified in this section.

(b) Be held harmless with respect to any revenue loss by receiving the same rate for students under this section that they would receive for other state resident students.

(c) Be prohibited from receiving revenue for average daily attendance generated by these students in excess of the amount of state apportionment.

SEC. 2. Article 11 (commencing with Section 76170) is added to Chapter 1 of Part 46 of the Education Code, to read:

Article 11. Greater Avenue for Independent and Residency for Community Colleges

76170. (a) There is hereby established a two-year pilot program in Fresno County.

(b) No fee otherwise authorized by Article 9 (commencing with Section 76140) of Chapter 1 of Part 47 may be charged to any participant in the Fresno County Greater Avenues for Independent (GAIN) Program, described in Article 3.2 (commencing with Section 11320) of Part 3 of Division 9 of the Welfare and Institutions Code if both of the following requirements are satisfied:

(1) Prior to the waiver of the nonresident tuition for a GAIN participant, the student shall have exhausted all efforts to obtain federal financial assistance.

(2) Each course into which a nonresident GAIN participant enrolls shall be related to the educational plan of the participant.

76171. Notwithstanding Section 84500.1, a community college district may report for attendance and average daily attendance for apportionment to the board of governors the attendance of any student who is a nonresident and who is a participant in the Fresno County Greater Avenues for Independent (GAIN) Program described in Article 3.2 (commencing with Section 11320) of Part 3 of Division 9 of the Welfare and Institutions Code. The authority conferred by this section shall only be implemented or utilized if the local community college district reaches agreement with the local GAIN county committee in Fresno County to provide an exemption pursuant to Section 76170.

76172. Notwithstanding subdivision (a) of Section 84706, a nonresident student who is a participant of the Greater Avenues for Independence (GAIN) Program described in Article 3.2 (commencing with Section 11320) of Part 3 of Division 9 of the Welfare and Institutions Code, shall be deemed a state resident if the requirements of Section 76170 are satisfied and the local community college district reaches agreement with the local GAIN county committee in Fresno to provide an exemption pursuant to Section 76170.

76173. This article shall remain in effect only until June 30, 1991,

and as of January 1, 1992, is repealed unless a later enacted statute, which is enacted before January 1, 1992, deletes or extends that date.

SEC. 3. Section 84500.1 of the Education Code is amended to read:

84500.1. Except as otherwise provided in Article 11 (commencing with Section 76170) of Chapter 1 of Part 46, no community college district shall report for attendance or average daily attendance to the board of governors for apportionment any classes: (1) if the district receives full compensation for direct education costs for the class from any public or private agency, individual or group of individuals, or (2) if such classes are not located in facilities clearly identified in such a manner, and established by appropriate procedures, to ensure that attendance in such classes is open to the general public, except those authorized pursuant to Section 78440 and those in state hospitals.

The Board of Governors of the California Community Colleges may adopt such regulations as may be necessary to enforce this section.

SEC. 4. Section 84706 of the Education Code is amended to read:

84706. (a) For the purpose of this article, average daily attendance shall include only the attendance of state residents, except as provided in Sections 76172 and 78462, attending within the district. All attendance of all students shall be reported in accordance with instructions provided by the chancellor.

(b) Community college districts shall be allowed to increase their funded average daily attendance over the prior year as determined by the chancellor in accordance with the following procedures:

(1) For the 1983–84 fiscal year, districts may be allowed to increase their funded average daily attendance to the level funded in the 1981–82 fiscal year less the adjustments made pursuant to Provision 11 of Item 6870-101-001 of the Budget Act of 1982. Increases for each district provided by this paragraph shall be in addition to the increases provided by paragraphs (2) and (4) and shall be allowed only to the extent that increases in statewide average daily attendance provided by this section, exclusive of paragraph (4), does not exceed the rate of change of the adult population of the state as determined by the Department of Finance, or funds remain available statewide pursuant to paragraph (3).

(2) Increases in statewide average daily attendance shall be based on the rate of change of the adult population of the state as determined by the Department of Finance. The allocation of changes on a district-by-district basis shall be determined by the chancellor, based on such factors as the rate of change in the adult population, as determined by the Department of Finance, unemployment, refugee population, new or underutilized physical capacity for student enrollment, and adult participation in instructional programs of the district. The chancellor shall allocate at least 0.01 times the base average daily attendance of the district or 100 units of average daily attendance, whichever is greater, unless

adjusted pursuant to paragraph (5) of this subdivision.

The statewide adult population percentage change reported by the Department of Finance shall be based on the resident adult population 18 years of age and older and shall be consistent with actual and projected adult population data reported for like purposes. The percentage change of the adult population of the community college districts shall be compatible with the changes reported for the statewide adult population and shall be determined within the geographic boundaries of the district which shall be consistent with the geographic boundaries used to determine the assessed valuation of property within the district.

The allocation of allowable increases in average daily attendance on a district-by-district basis shall not exceed a reasonable anticipated normal growth for any district, based on information that the chancellor may receive from the district.

(3) The level of funding available for increases in average daily attendance for each district, based on increases specified in paragraph (2), shall be the sum of the following:

(A) The percentage of allowable increase in average daily attendance specified in paragraph (2) times the level of base noncredit average daily attendance of the current fiscal year times the incremental cost rate specified in subdivision (a) of Section 84702.5.

(B) The percentage of allowable increase in average daily attendance specified in paragraph (2) times the level of base credit average daily attendance of the current fiscal year times the incremental cost rate specified in subdivision (b) of Section 84702.5.

(4) The chancellor shall allocate additional increases in average daily attendance for program growth in areas of statewide concern that are funded in the annual Budget Act or any other act of the Legislature, based on criteria adopted for those allocations.

(5) In the event of a deficit in funding for workload increases, all allowable increases in average daily attendance provided by this section shall be reduced proportionally.

(c) All increases in funded credited average daily attendance shall be accounted for in the following categories of the course classification system of the community colleges, as determined by the chancellor:

(1) Units of average daily attendance in courses that provide transfer credit to a baccalaureate-awarding institution.

(2) Units of average daily attendance in occupational education and vocational and technical programs and courses.

(3) Units of average daily attendance which prepare students for courses identified in paragraphs (1) and (2).

SEC. 5. Due to the unique circumstances concerning Fresno County and its Greater Avenues for Independence Program, 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 1591

An act to amend Section 214 of the Revenue and Taxation Code, relating to taxation.

[Approved by Governor September 30, 1988 Filed with Secretary of State September 30, 1988.]

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

SECTION 1. Section 214 of the Revenue and Taxation Code, as amended by Chapter 77 of the Statutes of 1988, is amended to read:

214. (a) Property used exclusively for religious, hospital, scientific, or charitable purposes owned and operated by community chests, funds, foundations or corporations organized and operated for religious, hospital, scientific, or charitable purposes is exempt from taxation if:

(1) The owner is not organized or operated for profit; provided, that in the case of hospitals, the organization shall not be deemed to be organized or operated for profit, if during the immediate preceding fiscal year the excess of operating revenues, exclusive of gifts, endowments and grants-in-aid, over operating expenses has not exceeded a sum equivalent to 10 percent of those operating expenses. As used herein, operating expenses shall include depreciation based on cost of replacement and amortization of, and interest on, indebtedness.

(2) No part of the net earnings of the owner inures to the benefit of any private shareholder or individual.

(3) The property is used for the actual operation of the exempt activity, and does not exceed an amount of property reasonably necessary to the accomplishment of the exempt purpose.

(A) For the purposes of determining whether the property is used for the actual operation of the exempt activity, consideration shall not be given to use of the property for either or both of the following described activities if that use is occasional:

(i) The owner conducts fundraising activities on the property and the proceeds derived from those activities are not unrelated business taxable income, as defined in Section 512 of the Internal Revenue Code of 1986, of the owner and are used to further the exempt activity of the owner.

(ii) The owner permits any other organization which meets all of the requirements of this subdivision, other than ownership of the property, to conduct fundraising activities on the property and the proceeds derived from those activities are not unrelated business taxable income, as defined in Section 512 of the Internal Revenue Code of 1986, of the organization, are not subject to the tax on unrelated business taxable income which is imposed by Section 511 of the Internal Revenue Code of 1986, and are used to further the exempt activity of the organization.

(B) For purposes of subparagraph (A):

(i) "Occasional use" means use of the property on an irregular or intermittent basis by the qualifying owner or any other qualifying organization described in clause (ii) of subparagraph (A) which is incidental to the primary activities of the owner or the other organization.

(ii) "Fundraising activities" means both activities involving the direct solicitation of money or other property and the anticipated exchange of goods or services for money between the soliciting organization and the organization or person solicited.

(C) Subparagraph (A) shall have no application in determining whether paragraph (3) has been satisfied unless the owner of the property and any other organization using the property as provided in subparagraph (A) have filed with the assessor duplicate copies of valid unrevoked letters or rulings from the Internal Revenue Service which state that the owner and the other organization qualify as exempt organizations under Section 501(c)(3) of the Internal Revenue Code. The owner of the property and any other organization using the property as provided in subparagraph (A) shall also file duplicate copies of their most recently filed federal income tax returns.

Nothing in subparagraph (A), (B), or (C) shall be construed to either enlarge or restrict the exemption provided for in subdivision (b) of Section 4 and Section 5 of Article XIII of the Constitution of the State of California and this section.

(4) The property is not used or operated by the owner or by any other person so as to benefit any officer, trustee, director, shareholder, member, employee, contributor, or bondholder of the owner or operator, or any other person, through the distribution of profits, payment of excessive charges or compensations or the more advantageous pursuit of their business or profession.

(5) The property is not used by the owner or members thereof for fraternal or lodge purposes, or for social club purposes except where such use is clearly incidental to a primary religious, hospital, scientific, or charitable purpose.

(6) The property is irrevocably dedicated to religious, charitable, scientific, or hospital purposes and upon the liquidation, dissolution or abandonment of the owner will not inure to the benefit of any private person except a fund, foundation or corporation organized and operated for religious, hospital, scientific, or charitable purposes.

(7) The property, if used exclusively for scientific purposes, is used by a foundation or institution which, in addition to complying with the foregoing requirements for the exemption of charitable organization in general, has been chartered by the Congress of the United States (except that this requirement shall not apply when the scientific purposes are medical research), and whose objects are the encouragement or conduct of scientific investigation, research and discovery for the benefit of the community at large.

The exemption provided for herein shall be known as the "welfare

exemption." This exemption shall be in addition to any other exemption now provided by law and the existence of the exemption provision in paragraph (2) of subdivision (a) of Section 202 shall not preclude the exemption under this section for museum or library property. Except as provided in subdivision (e), this section shall not be construed to enlarge the college exemption.

(b) Property used exclusively for school purposes of less than collegiate grade and owned and operated by religious, hospital, or charitable funds, foundations, or corporations, which property and funds, foundations, or corporations meet all of the requirements of subdivision (a), shall be deemed to be within the exemption provided for in subdivision (b) of Section 4 and Section 5 of Article XIII of the Constitution of the State of California and this section.

(c) Property used exclusively for nursery school purposes and owned and operated by religious, hospital, or charitable funds, foundations, or corporations, which property and funds, foundations, or corporations meet all the requirements of subdivision (a), shall be deemed to be within the exemption provided for in subdivision (b) of Section 4 and Section 5 of Article XIII of the Constitution of the State of California and this section.

(d) Property used exclusively for a noncommercial educational FM broadcast station or an educational television station and owned and operated by religious, hospital, scientific, or charitable funds, foundations, or corporations meeting all of the requirements of subdivision (a), shall be deemed to be within the exemption provided for in subdivision (b) of Section 4 and Section 5 of Article XIII of the Constitution of the State of California and this section.

(e) Property used exclusively for religious, charitable, scientific, or hospital purposes and owned and operated by religious, hospital, scientific, or charitable funds, foundations, or corporations or educational institutions of collegiate grade, as defined in Section 203, which property and funds, foundations, corporations, or educational institutions meet all of the requirements of subdivision (a), shall be deemed to be within the exemption provided for in subdivision (b) of Section 4 and Section 5 of Article XIII of the Constitution of the State of California and this section. As to educational institutions of collegiate grade, as defined in Section 203, the requirements of paragraph (6) of subdivision (a) shall be deemed to be met if both of the following are met:

(1) The property of the educational institution is irrevocably dedicated in its articles of incorporation to charitable and educational purposes, to religious and educational purposes, or to educational purposes.

(2) The articles of incorporation of the educational institution provide for distribution of its property upon its liquidation, dissolution, or abandonment to a fund, foundation, or corporation organized and operated for religious, hospital, scientific, charitable, or educational purposes meeting the requirements for exemption provided by Section 203 or this section.

(f) Property used exclusively for housing and related facilities for elderly or handicapped families and financed by, including, but not limited to, the federal government pursuant to Section 202 of Public Law 86-372 (12 U.S.C. Sec. 1701q), as amended, Section 231 of Public Law 73-479 (12 U.S.C. Sec. 1715v), or Section 236 of Public Law 90-448 (12 U.S.C. Sec. 1715z), and owned and operated by religious, hospital, scientific, or charitable funds, foundations, or corporations meeting all of the requirements of this section shall be deemed to be within the exemption provided for in subdivision (b) of Section 4 and Section 5 of Article XIII of the Constitution of the State of California and this section. The amendment of this paragraph made at the 1983–84 Regular Session of the Legislature does not constitute a change in, but is declaratory of, the existing law. However, no refund of property taxes shall be required as a result of this amendment for any fiscal year prior to the fiscal year in which the amendment takes effect.

Property used exclusively for housing and related facilities for elderly or handicapped families at which supplemental care or services designed to meet the special needs of elderly or handicapped residents are not provided, or which is not financed by the federal government pursuant to Section 202 of Public Law 86-372 (12 U.S.C. Sec. 1701q), as amended, Section 231 of Public Law 73-479 (12 U.S.C. Sec. 1715v), or Section 236 of Public Law 90-448 (12 U.S.C. Sec. 1715), shall not be entitled to exemption pursuant to this subdivision unless the property is used for housing and related facilities for low- and moderate-income elderly or handicapped families. Property which would otherwise be exempt pursuant to this subdivision, except that it includes some housing and related facilities for other than low- or moderate-income elderly or handicapped families, shall be entitled to a partial exemption. The partial exemption shall be equal to that percentage of the value of the property which is equal to the percentage which the number of low- and moderate-income elderly and handicapped families occupying the property is of the total number of families occupying the property.

As used in this subdivision, "low and moderate income" has the same meaning as the term "persons and families of low or moderate income" as defined by Section 50093 of the Health and Safety Code.

(g) Property used exclusively for rental housing and related facilities and owned and operated by religious, hospital, scientific, or charitable funds, foundations, or corporations, including limited partnerships in which the managing general partner is an eligible nonprofit corporation, meeting all of the requirements of this section shall be deemed to be within the exemption provided for in subdivision (b) of Section 4 and Section 5 of Article XIII of the Constitution of the State of California and this section and shall be entitled to a partial exemption equal to that percentage of the value of the property which the portion of the property serving lower income households is of the total property in any year in which any

of the following criteria are applicable:

(1) Twenty percent or more of the occupants of the property are lower income households whose rent does not exceed that prescribed by Section 50053 of the Health and Safety Code.

(2) The acquisition, rehabilitation, development, or operation of the property, or any combination of these factors, is financed with tax-exempt mortgage revenue bonds or general obligation bonds, or is financed by local, state, or federal loans or grants and the rents of the occupants who are lower income households do not exceed those prescribed by deed restrictions or regulatory agreements pursuant to the terms of the financing or financial assistance.

(3) The owner of the property is eligible for and receives low-income housing tax credits pursuant to Section 42 of the Internal Revenue Code of 1986, as added by Public Law 99-514.

In order to be eligible for the exemption provided by this subdivision, the owner of the property shall do both of the following:

(A) Certify and ensure that there is a deed restriction, agreement, or other legal document which restricts the project's usage and which provides that the units designated for use by lower income households are continuously available to or occupied by lower income households at rents that do not exceed those prescribed by Section 50053 of the Health and Safety Code, or, to the extent that the terms of federal, state, or local financing or financial assistance conflicts with Section 50053, rents do not exceed those prescribed by the terms of the financing or financial assistance.

(B) Certify that the funds which would have been necessary to pay property taxes are used to maintain the affordability of, or reduce rents otherwise necessary for, the units occupied by lower income households.

As used in this subdivision, "lower income households" has the same meaning as the term "lower income households" as defined by Section 50079.5 of the Health and Safety Code.

(h) Property used exclusively for an emergency or temporary shelter and related facilities for homeless persons and families and owned and operated by religious, hospital, scientific, or charitable funds, foundations, or corporations meeting all of the requirements of this section shall be deemed to be within the exemption provided for in subdivision (b) of Section 4 and Section 5 of Article XIII of the California Constitution and this section. Property which would otherwise be exempt pursuant to this subdivision, except that it includes housing and related facilities for other than an emergency or temporary shelter, shall be entitled to a partial exemption.

As used in this subdivision, "emergency or temporary shelter" means a facility which would be eligible for funding pursuant to Chapter 11 (commencing with Section 50800) of Part 2 of Division 31 of the Health and Safety Code.

(i) Property used exclusively for housing and related facilities for employees of religious, charitable, scientific, or hospital organizations which meet all the requirements of subdivision (a) and

owned and operated by funds, foundations, or corporations which meet all the requirements of subdivision (a) shall be deemed to be within the exemption provided for in subdivision (b) of Sections 4 and 5 of Article XIII of the California Constitution and this section to the extent the residential use of the property is institutionally necessary for the operation of the organization.

SEC. 2. The amendments to Section 214 of the Revenue and Taxation Code made by this act do not constitute a change in, but are declaratory of, the existing law.

SEC. 3. The Legislature finds and declares that these amendments are codifications of the State Board of Equalization practice. Therefore, no escape assessments shall be levied and no refunds shall be made as a result of the enactment of this act.

SEC. 4. Notwithstanding Section 2229 of the Revenue and Taxation Code, the requirements of that section relating to any exemption of property for more than five years or for more than 75 percent of the value thereof shall not apply to any exemptions made by this act. In addition, no appropriation is made by this act and the state shall not reimburse any local agency for any property tax revenues lost by it pursuant to this act.

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## CHAPTER 1592

An act to add Section 798.84 to the Civil Code, relating to mobilehomes.

[Approved by Governor September 30, 1988. Filed with Secretary of State September 30, 1988.]

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

SECTION 1. Section 798.84 is added to the Civil Code, to read:

798.84. (a) No action based upon the management's alleged failure to maintain the physical improvements in the common facilities in good working order or condition or alleged reduction of service may be commenced by a homeowner unless the management has been given at least 30 days' prior notice of the intention to commence the action.

(b) The notice shall be in writing, signed by the homeowner or homeowners making the allegations, and shall notify the management of the basis of the claim, the specific allegations, and the remedies requested. A notice by one homeowner shall be deemed to be sufficient notice of the specific allegation to the management of the park by all of the homeowners in the park.

(c) The notice may be served in the manner prescribed in Chapter 5 (commencing with Section 1010) of Title 14 of Part 2 of the Code of Civil Procedure.

(d) For purposes of this section, management shall be deemed to

be notified of an alleged failure to maintain the physical improvements in the common facilities in good working order or condition or of an alleged reduction of services upon substantial compliance by the homeowner or homeowners with the provisions of subdivisions (b) and (c), or when management has been notified of the alleged failure to maintain or the alleged reduction of services by a state or local agency.

(e) If the notice is served within 30 days of the expiration of the applicable statute of limitations, the time for the commencement of the action shall be extended 30 days from the service of the notice.

(f) This section does not apply to actions for personal injury or wrongful death.

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## CHAPTER 1593

An act to amend Sections 41401 and 41403 of the Education Code, relating to education.

[Approved by Governor September 30, 1988. Filed with Secretary of State September 30, 1988.]

*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 physically handicapped minors, 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 41403 of the Education Code is amended to read:

41403. The Superintendent of Public Instruction shall, for each current fiscal year, determine for each school district in the state, to two decimal points, the following:

(a) The total number of administrative employees, except those serving in positions that are supported by categorical grants from any source and are in programs that require specific teacher/administrator ratios, or that are supported by federal funds. As to those serving in positions that are not supported completely by such categorical grants from any source or completely by federal funds, the number of employees reported shall include the full-time equivalent of all fractional time attributable to that time not supported by categorical grants or federal funds.

(b) The total number of teachers except those serving in positions that are supported by federal funds or by categorical grants from any source and are in programs that require specific teacher/administrator ratios. As to those serving in positions that are not supported completely by such categorical grants from any source or completely by federal funds, the number of employees reported shall include the full-time equivalent of all fractional time attributable to that time not supported by categorical grants or federal funds. Substitute teachers may be counted as teachers only if the employee for whom they are substituting is not counted. In no event shall the number of full-time equivalent teachers reported be greater than the number of full-time equivalent teaching positions in the district.

(c) The total maximum number of administrative employees that should be employed by the district based upon the application of the appropriate ratio prescribed by Section 41402 to the number of teachers determined pursuant to subdivision (b).

(d) The number of administrative employees in excess of the number allowable without penalty as determined by subtracting the number determined pursuant to subdivision (c) from the number determined pursuant to subdivision (a).

The number of employees reported pursuant to subdivisions (a), (b), (c), and (d) shall include the full-time equivalent of all fractional time of those employees.

For purposes of determining the allowable ratio of administrative employees to teachers for the San Diego City School District, the Superintendent of Public Instruction shall exclude from the numbers reported pursuant to subdivisions (a), (b), (c), and (d), the number of employees and the full-time equivalent of all of the fractional time of employees serving the district in positions mandated as the result

of the district's court-ordered integration plan.

No individual may be counted as more than one full-time equivalent employee unless the individual is employed on a part-time basis in adult education, driver education, or vocational education, or any part-time or additional teaching assignment, in addition to his or her regular full-time assignment.

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## CHAPTER 1594

An act to amend and repeal Section 10605.3 of the Health and Safety Code, relating to records.

[Approved by Governor September 30, 1988. Filed with Secretary of State September 30, 1988.]

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

SECTION 1. Section 10605.3 of the Health and Safety Code is amended to read:

10605.3. (a) Commencing January 1, 1989, in addition to the fees prescribed by subdivisions (a) to (d), inclusive, of Section 10605, all applicants for certified copies of the records described in those subdivisions shall pay an additional fee of two dollars ($2), which shall be collected by the State Registrar, the local registrar, county recorder, or county clerk, as the case may be.

(b) Except as provided in paragraph (3), the local public official charged with the collection of the fee established pursuant to subdivision (a) may create a Vital and Health Statistics Trust Fund. The fees collected by local public officials pursuant to subdivision (a) shall be distributed as follows:

(1) One dollar ($1) of each two dollars ($2) collected shall be deposited with the State Registrar in the State Vital Record Improvement Project Fund established pursuant to Section 10040.

(2) The remainder of each two dollar ($2) fee collected shall be deposited into the collecting agency's Vital and Health Statistics Trust Fund.

(3) Any local public official that does not establish a local Vital and Health Statistics Trust Fund shall forward the entire two dollar ($2) fee to the State Registrar, who shall deposit the fees into the Vital Record Improvement Project Fund established pursuant to Section 10040.

(c) Moneys in each Vital and Health Statistics Trust Fund shall be available to the public official charged with the collection of fees pursuant to this section to defray the administrative costs of collecting those fees and for the other costs, as follows:

(1) Administrative and personnel costs.

(2) Modernization of vital record operations, including improvement and automation of vital record systems.

(3) Improvement in the collection and analysis of health-related death certificate information, and other vital record analysis, as appropriate.

(d) This section shall remain in effect until January 1, 1991, and as of that date is repealed unless a later enacted statute chaptered prior to January 1, 1991, deletes or extends that date.

SEC. 2. No reimbursement is required by this act to Section 6 of Article XIII B of the California Constitution for other costs mandated by the state pursuant to this act, 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.

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## CHAPTER 1595

An act to add Section 7218 to the Business and Professions Code, and to amend Sections 54.1, 54.2, and 54.7 of the Civil Code, relating to handicapped persons.

[Approved by Governor September 30, 1988 Filed with Secretary of State September 30, 1988 ]

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

SECTION 1. Section 7218 is added to the Business and Professions Code, to read:

7218. (a) The Legislature finds that there is a significant use of assistance dogs for the disabled, including guide dogs for the blind and visually impaired, and signal dogs for the deaf and hearing impaired, and service dogs for the physically disabled. Each dog provides valuable assistance to the disabled user and increases independence.

(b) The existing State Board of Guide Dogs for the Blind shall conduct a study to recommend possible implementation of the expansion of jurisdiction of the board to include signal dogs for the deaf and hearing impaired, service dogs for the physically disabled, and other appropriately trainable animals, and to be further renamed as the State Board of Assistance Dogs for the Disabled.

The study shall include, but not be limited to, all the following:

(1) A needs assessment.

(2) Framework for implementation.

(3) Complete definitions of assistance dogs and other appropriately trainable animals.

(4) Actual or estimated cost of a dog or other appropriately trainable animal or a school for the training of assistance dogs or other appropriately trainable animals to the potential user.

(5) Complete definitions of physically disabled.

(6) Licensing and certification of schools that train assistance dogs

or other appropriately trainable animals.

(7) Licensing of assistance dogs and other appropriately trainable animals.

(8) Provisions for out-of-state visitors with assistance dogs or other appropriately trained animals.

(9) The training of dogs individually, rather than by a school.

(10) Accessibility for assistance dogs and other appropriately trainable animals.

(11) Increased public awareness of assistance dogs and other appropriately trainable animals.

(12) Membership of the board to reflect each sector of assistance dogs and other appropriately trainable animals.

The board shall complete this study and report to the Legislature on or before June 30, 1990.

SEC. 2. Section 54.1 of the Civil Code is amended to read:

54.1. (a) Blind persons, visually handicapped persons, deaf persons, and other physically disabled persons shall be entitled to full and equal access, as other members of the general public, to accommodations, advantages, facilities, and privileges of all common carriers, airplanes, motor vehicles, railroad trains, motorbuses, streetcars, boats, or any other public conveyances or modes of transportation, telephone facilities, 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.

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 physically disabled persons in a manner feasible and compatible with the existing telephone network provided by the telephone companies.

(b) (1) Blind persons, visually handicapped persons, deaf persons, and other physically disabled persons 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) 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 a blind person, visually handicapped person, deaf person, or other physically disabled person than for a person who is not disabled.

(4) Except as provided in paragraph (5) of this subdivision, nothing in this part shall require any person renting, leasing, or providing for compensation real property, if such person refuses to accept tenants who have dogs, to accept as a tenant a disabled person who has a dog.

(5) 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 a blind person or visually handicapped person on the basis that such person uses the services of a guide dog, to a deaf person on the basis that such person uses the services of a signal dog, or to a physically handicapped person on the basis that such person uses the services of a service dog, or to refuse to permit such a blind person or visually handicapped person to keep a guide dog, a deaf person to keep a signal dog, or a physically handicapped person to keep a service dog on the premises.

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 such terms in a lease or rental agreement which reasonably regulates 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.

As used in this subdivision, "guide dog" means any guide dog or seeing-eye 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.

As used in this subdivision, "signal dog" means any dog trained to alert a deaf person, or person whose hearing is impaired, to intruders or sounds.

As used in this subdivision, "service dog" means any dog individually trained to the physically disabled participant's requirements including, but not limited to, minimal protection work, rescue work, pulling a wheelchair, or fetching dropped items.

(6) 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 a blind person, visually handicapped person, deaf person, or other physically disabled person on the basis that the disabled person 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 a disabled person and his or her spouse.

(c) Persons licensed to train guide dogs for the blind pursuant to Chapter 9.5 (commencing with Section 7200) of Division 3 of the Business and Professions Code and persons authorized to train signal

dogs for the deaf and hearing impaired, and service dogs for the physically disabled 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 carry and display identification if issued as an authorization, upon request.

SEC. 2.5. Section 54.1 of the Civil Code is amended to read:

54.1. (a) Blind persons, visually handicapped persons, deaf persons, and other physically disabled persons shall be entitled to full and equal access, as other members of the general public, to accommodations, advantages, facilities, and privileges of all common carriers, airplanes, motor vehicles, railroad trains, motorbuses, streetcars, boats, or any other public conveyances or modes of transportation, telephone facilities, 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.

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 physically disabled persons in a manner feasible and compatible with the existing telephone network provided by the telephone companies.

(b) (1) Blind persons, visually handicapped persons, deaf persons, and other physically disabled persons 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) 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 a blind person, visually handicapped person, deaf person, or other physically disabled person than for a person who is not disabled.

(4) Except as provided in paragraph (5) of this subdivision, nothing in this part shall require any person renting, leasing, or providing for compensation real property, if such person refuses to accept tenants who have dogs, to accept as a tenant a disabled person who has a dog.

(5) 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 a blind person or visually handicapped person on

the basis that such person uses the services of a guide dog, to a deaf person on the basis that such person uses the services of a signal dog, or to a physically handicapped person on the basis that such person uses the services of a service dog, or to refuse to permit such a blind person or visually handicapped person to keep a guide dog, a deaf person to keep a signal dog, or a physically handicapped person to keep a service dog on the premises.

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 such terms in a lease or rental agreement which reasonably regulates 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.

As used in this subdivision, "guide dog" means any guide dog or seeing-eye 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.

As used in this subdivision, "signal dog" means any dog trained to alert a deaf person, or person whose hearing is impaired, to intruders or sounds.

As used in this subdivision, "service dog" means any dog individually trained to the physically disabled participant's requirements including, but not limited to, minimal protection work, rescue work, pulling a wheelchair, or fetching dropped items.

(6) 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 a blind person, visually handicapped person, deaf person, or other physically disabled person on the basis that the disabled person 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 a disabled person and his or her spouse.

(c) Persons licensed to train guide dogs for the blind pursuant to Chapter 9.5 (commencing with Section 7200) of Division 3 of the Business and Professions Code and persons authorized to train signal dogs for the deaf and hearing impaired, and service dogs for the physically disabled 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 carry and display identification in such form as shall be prescribed by the State Board of Guide Dogs for the Blind if issued as an authorization, upon request.

(d) Persons who have not been diagnosed with acquired immune deficiency syndrome (AIDS) or AIDS-related complex (ARC), but

who have tested positive on a test for the presence of the etiologic agent of acquired immune deficiency syndrome or antibodies to that agent shall be entitled to the same protection as is provided to physically disabled persons by this section.

SEC. 3. Section 54.2 of the Civil Code is amended to read:

54.2. (a) Every totally or partially blind person, or deaf person, or person whose hearing is impaired, or physically handicapped person 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 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.

(b) Persons licensed to train guide dogs for the blind pursuant to Chapter 9.5 (commencing with Section 7200) of Division 3 of the Business and Professions Code and persons authorized to train signal dogs for the deaf and hearing impaired, and service dogs for the physically disabled 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 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 carry and display identification if issued as an authorization, upon request.

(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.

SEC. 4. 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 blind persons, visually handicapped persons, deaf persons, or physically disabled persons 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 blind persons, visually handicapped persons, deaf persons, or physically disabled persons therein shall maintain, free of charge, adequate kennel facilities for the use of guide dogs, signal dogs, or service dogs belonging to blind persons, visually handicapped persons, deaf persons, or physically disabled persons. These facilities shall be of a character commensurate with the anticipated daily attendance of blind persons, visually handicapped persons, deaf persons, or physically disabled persons, 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 persons therein shall provide free transportation to blind persons on any mode of transportation provided for members of the public.

(d) Any zoo or wild animal park that does not permit guide dogs to accompany blind persons therein shall provide sighted escorts for such blind 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. 5. Section 2.5 of this bill incorporates amendments to Section 54.1 of the Civil Code proposed by both this bill and AB 3795. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1988, (2) each bill amends Section 54.1 of the Civil Code, and (3) this bill is enacted after AB 3795, in which case Section 2 of this bill shall not become operative.

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## CHAPTER 1596

An act to add Sections 34514 and 34515 to the Vehicle Code, relating to vehicle safety.

[Approved by Governor September 30, 1988 Filed with Secretary of State September 30, 1988 ]

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

SECTION 1. Section 34514 is added to the Vehicle Code, to read:

34514. (a) Beginning with the 1990–91 fiscal year, the department shall, upon appropriation of the requisite funds by the Legislature, annually conduct additional roadside vehicle safety inspections of vehicles described in subdivision (a) of Section 34501.12. These roadside inspections shall be in addition to the maintenance facility and terminal inspections required by that section, and over and above the number of roadside vehicle safety inspections conducted during the 1987–88 fiscal year.

(b) It is the intent of the Legislature that, beginning with the 1990–91 fiscal year, funds are to be appropriated to the department annually, for the purposes of subdivision (a), from the Motor Vehicle Account in the State Transportation Fund, to the extent that sufficient funds are collected pursuant to subdivision (b) of Section 34501.12.

SEC. 2. Section 34515 is added to the Vehicle Code, to read:

34515. As used in this division and in regulations adopted

pursuant thereto, "maintenance facility or terminal" means any place or places where a vehicle of a type listed in Section 34500 is regularly garaged, maintained, or is operated or dispatched from. "Maintenance facility or terminal" may include a private business or residence.

SEC. 3. This act shall become operative only if Assembly Bill No. 2706 of the 1987–88 Regular Session becomes operative and imposes a fee for terminal safety inspections.

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## CHAPTER 1597

An act to add Sections 647f, 1202.1, 1202.6, and 12022.85 to the Penal Code, relating to crimes, and making an appropriation therefor.

[Approved by Governor September 30, 1988 Filed with Secretary of State September 30, 1988 ]

I am reducing the $2 million dollar General Fund appropriation contained in Section 7 of Senate Bill No 1007 to $500,000.

This bill would make it a felony for a person to commit specified sex-related crimes if the person has tested positive for acquired immune deficiency (AIDS), as specified; require persons convicted of certain sex offenses to submit to an AIDS blood test; require the results of such blood tests to be reported by the courts to the Department of Justice; and require counties to provide or contract out for education programs for victims and offenders of sex offenses. The bill appropriates $2,000,000 from the General Fund to implement this act, with the contingency that the bill will not be operative without this funding, until January 1, 1990, and then only if specific funding is provided in the 1989 Budget Act.

I am reducing this appropriation to a level which I believe is sufficient to fund the AIDS education program specified in this bill I expect the counties to develop programs that are consistent with the level of appropriation.

With this reduction, I approve Senate Bill No. 1007.

GEORGE DEUKMEJIAN, Governor

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

SECTION 1. Section 647f is added to the Penal Code, to read:

647f. In any accusatory pleading charging a violation of subdivision (b) of Section 647, if the defendant has been previously convicted one or more times of a violation of that subdivision or of any other offense listed in subdivision (d) of Section 1202.1, and in connection with one or more of those convictions a blood test was administered pursuant to Section 1202.1 with positive test results, of which the defendant was informed, the previous conviction and positive blood test results, of which the defendant was informed, shall be charged in the accusatory pleading. If the previous conviction and informed test results are found to be true by the trier of fact or are admitted by the defendant, the defendant is guilty of a felony.

SEC. 2. Section 1202.1 is added to the Penal Code, to read:

1202.1. (a) Notwithstanding Sections 199.20 and 199.22 of the Health and Safety Code, the court shall order every person convicted of a violation of a sexual offense listed in subdivision (d), whether or

not a sentence or fine is imposed or probation is granted, to submit to a blood test for evidence of antibodies to the probable causative agent of acquired immune deficiency syndrome (AIDS). Each person tested under this section shall be informed of the results of the blood test.

(b) Notwithstanding Section 199.21 of the Health and Safety Code, the results of the blood test to detect antibodies to the probable causative agent of AIDS shall be transmitted by the clerk of the court to the Department of Justice.

(c) Notwithstanding Section 199.21 of the Health and Safety Code, the Department of Justice shall provide the results of a test or tests as to persons under investigation or being prosecuted under Section 647f or 12022.85, if the results are on file with the department, to the defense attorney upon request; and the results also shall be available to the prosecuting attorney upon request for the sole purpose of preparing counts for a subsequent offense under Section 647f or sentence enhancement under Section 12022.85.

(d) For purposes of this section, sexual offenses include any of the following:

(1) Rape in violation of Section 261.

(2) Unlawful intercourse with a female under age 18 in violation of Section 261.5.

(3) Rape of a spouse in violation of Section 262.

(4) Sodomy in violation of Section 286.

(5) Oral copulation in violation of Section 288a.

SEC. 3. Section 1202.6 is added to the Penal Code, to read:

1202.6. (a) Notwithstanding Sections 199.20, 199.21, and 199.22 of the Health and Safety Code, upon the first conviction of any person for a violation of subdivision (b) of Section 647, the court shall, before sentencing or as a condition of probation, order the defendant to complete instruction in the causes and consequences of acquired immune deficiency syndrome (AIDS) pursuant to subdivision (d) and shall order the defendant to submit to testing for AIDS in accordance with subdivision (e). In addition, the court shall refer a defendant, where appropriate, to a program under Article 3.2 (commencing with Section 11320) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code or to any drug diversion program, or both.

(b) Upon a second or subsequent conviction of a violation of subdivision (b) of Section 647, the court shall, before sentencing, order the defendant to submit to testing for AIDS in accordance with subdivision (e).

(c) At the sentencing hearing of a defendant ordered to submit to testing for AIDS pursuant to subdivision (a) or (b), the court shall furnish the defendant with a copy of the report submitted pursuant to subdivision (e) and shall direct the clerk to note the receipt of the report by the defendant in the records of the case.

If the results of the test described in the report are positive, the court shall make certain that the defendant understands the nature

and meaning of the contents of the report and shall further advise the defendant of the penalty established in Section 647f for a subsequent violation of subdivision (b) of Section 647.

(d) The county health officer in each county shall select an agency, or agencies, in the county that shall provide AIDS prevention education. The county health officer shall endeavor to select an agency, or agencies, that currently provide AIDS prevention education programs to substance abusers or prostitutes. If no agency is currently providing this education, the county agency responsible for substance abuse shall develop an AIDS prevention education program either within the agency or under contract with a community-based, nonprofit organization in the county. The county health officer shall forward to the courts a list of agencies selected for purposes of referral.

An AIDS prevention education program providing services, at a minimum, shall include details about the transmission of human immunodeficiency virus (HIV), the etiologic agent for AIDS, symptoms of AIDS or AIDS-related conditions, prevention through avoidance or cleaning of needles, sexual practices which constitute high risk, low risk, and no risk (including abstinence), and resources for assistance if the person decides to take a test for the etiologic agent for AIDS and receives a positive test result. The program also shall include other relevant medical and prevention information as it becomes available.

(e) The county probation officer, in consultation with the county health officer, shall establish procedures for the testing of every defendant as ordered pursuant to subdivision (a) or (b) for evidence of antibodies to the probable causative agent of acquired immune deficiency syndrome. Notwithstanding Section 199.21 of the Health and Safety Code, the county probation officer shall furnish written copies of the report on the test to all of the following:

(1) The court in which the defendant is to be sentenced.

(2) The county health officer.

(3) The State Department of Health Services.

(f) Except as provided in subdivisions (c) and (g), the reports required by subdivision (e) shall be confidential.

(g) The State Department of Health Services shall maintain the confidentiality of the reports received pursuant to subdivision (e), except that the department shall furnish copies of any such report to a district attorney upon request.

SEC. 4. Section 12022.85 is added to the Penal Code, to read:

12022.85. (a) Any person who violates one or more of the offenses listed in subdivision (b) with knowledge that he or she has acquired immune deficiency syndrome (AIDS) or with the knowledge that he or she carries antibodies of the human immunodeficiency virus at the time of the commission of those offenses, shall receive a three-year enhancement for each such violation in addition to the sentence provided under those sections.

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

(1) Rape in violation of Section 261.

(2) Unlawful intercourse with a female under age 18 in violation of Section 261.5.

(3) Rape of a spouse in violation of Section 262.

(4) Sodomy in violation of Section 286.

(5) Oral copulation in violation of Section 288a.

(c) For purposes of proving the knowledge requirement of this section, the prosecuting attorney may use test results received under subdivision (c) of Section 1202.1 or subdivision (g) of Section 1202.6.

SEC. 5. The county health officer shall establish and administer a counseling program for victims and persons convicted of offenses listed in subdivision (d) of Section 1202.1 of the Penal Code with respect to both pretest and posttest counseling of such persons being tested to detect antibodies to the probable causative agent of acquired immune deficiency syndrome (AIDS).

SEC. 6. Sections 1 to 5, inclusive, of this act shall become operative only if Section 7 of this act becomes effective, at which time this act shall become operative on January 1, 1989.

If Section 7 of this act does not become effective, then this act shall not become operative until January 1, 1990, and unless specific funding is provided in the Budget Act of 1989 for the purposes of this act.

SEC. 7. The sum of two million dollars ($2,000,000) is hereby appropriated from the General Fund to the State Mandates Claims Fund to reimburse local agencies and school districts pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code for costs mandated by the state and incurred by them pursuant to this act.

It is the intent of the Legislature, in implementing this act, that existing AIDS testing and AIDS education programs and federal funds be used, to the maximum extent feasible, to administer this act.

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## CHAPTER 1598

An act to amend Section 1367.65 of the Health and Safety Code, to amend Section 10123.81 of, and to amend and renumber Section 11512.10 of, the Insurance Code, relating to insurance.

[Approved by Governor September 30, 1988. Filed with Secretary of State September 30, 1988.]

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

SECTION 1. Section 1367.65 of the Health and Safety Code is amended to read:

1367.65. On or after January 1, 1989, every individual or group health care service plan contract which is issued, amended, or renewed, and which includes coverage for mastectomy and

prosthetic devices and reconstructive surgery incident to mastectomy described in Section 1367.6 shall also be deemed to provide coverage for mammography for screening or diagnostic purposes upon the referral of the patient's physician.

Nothing in this section shall be construed to establish a new mandated benefit or to prevent application of deductible or copayment provisions in a policy or plan, nor shall this section be construed to require that a policy or plan be extended to cover any other procedures under an individual or a group health care service plan contract. The Legislature intends in this section to provide that mammography services are deemed to be covered if the policy or plan includes coverage for mastectomy and reconstructive surgery.

SEC. 2. Section 10123.81 of the Insurance Code is amended to read:

10123.81. On or after January 1, 1989, every individual or group policy of disability insurance or self-insured employee welfare benefit plan which is issued, amended, or renewed, and which includes coverage for mastectomy and prosthetic devices and reconstructive surgery incident to the mastectomy described in Section 10123.8 shall also be deemed to provide coverage for at least the following, upon the referral of a patient's physician for breast cancer screening or diagnostic purposes:

(a) A baseline mammogram for women age 35 to 39, inclusive.

(b) A mammogram for women age 40 to 49, inclusive, every two years or more frequently based on the women's physician's recommendation.

(c) A mammogram every year for women age 50 and over.

Nothing in this section shall be construed to require an individual or group policy to cover the surgical procedure known as mastectomy or to prevent application of deductible or copayment provisions contained in the policy or plan, nor shall this section be construed to require that coverage under an individual or group policy be extended to any other procedures.

SEC. 3. Section 11512.10 of the Insurance Code, as added by Section 3 of Chapter 550 of the Statutes of 1987, is amended and renumbered to read:

11512.15. On or after January 1, 1989, every individual or group nonprofit hospital service plan contract which is issued, amended, or renewed, and which includes coverage for mastectomy and prosthetic devices and reconstructive surgery incident to the mastectomy described in Section 11512.10 shall also be deemed to provide coverage for mammography for screening or diagnostic purposes upon the referral of the patient's physician.

Nothing in this section shall be construed to require an individual or group policy to cover the surgical procedure known as mastectomy or to prevent application of deductible or copayment provisions contained in the policy or plan, nor shall this section be construed to require that coverge under an individual or group policy be extended to any other procedures.

# CHAPTER 1599

An act to amend Section 33391 of the Health and Safety Code, relating to redevelopment, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 30, 1988. Filed with Secretary of State September 30, 1988.]

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

SECTION 1. The Legislature finds and declares that actions to resolve pending litigation and claims for damages in the Monterey Hills Project Area against the community redevelopment agency of the City of Los Angeles have exceeded a reasonable length of time and that full restoration of the property remains several years away. This act shall not be construed to relieve insurance companies of their duties and responsibilities to their insureds.

SEC. 2. Section 33391 of the Health and Safety Code is amended to read:

33391. Within the survey area or for purposes of redevelopment an agency may:

(a) Purchase, lease, obtain option upon, acquire by gift, grant, bequest, devise, or otherwise, any real or personal property, any interest in property, and any improvements on it, including repurchase of developed property previously owned by the agency.

(b) Acquire real property by eminent domain.

SEC. 3. The redevelopment agency of the City of Los Angeles shall report to the Legislature on or before January 1, 1989, on potentially feasible sources of local funding for (1) effecting necessary measures to halt structural damage occurring in its Monterey Hills Project due to geologic instability and (2) purchasing and repairing improved property in that project area in settlement of owners' claims against the redevelopment agency arising out of that geologic instability. The report shall consider all redevelopment agency funds which could lawfully be made available without impairing the obligation of agency contracts (hereinafter in this act referred to as "legally available funds"). The report shall specify in detail all legally available funds of the agency on hand as of June 30, 1988, and insurance proceeds received or to be received by the redevelopment agency on account of claims arising out of its Monterey Hills Redevelopment Project Area, as well as distribution of those proceeds. The report shall include projections of the amount of tax-increment revenues to be received by the agency from the Monterey Hills Redevelopment Project Area during the 1988–89 and 1989–90 tax years. The report shall itemize the amount of bonds and other indebtedness secured by tax-increment revenues of the Monterey Hills Redevelopment Project. The report shall include an estimate of the aggregate cost to repair damage to structures in the

Monterey Hills Redevelopment Project occurring as a result of geologic instability. The report shall include a plan with fiscal elements to effectuate settlement of claims of property owners in the Monterey Hills Redevelopment Project Area in accordance with this act.

If, on January 1, 1989, the redevelopment agency of the City of Los Angeles has not complied with the reporting requirement of this section by submitting a full and complete report, as determined by the Chairman of the Assembly Committee on Housing and Community Development, the Auditor General shall promptly audit the redevelopment agency's funds to determine what moneys can be made available for the purposes of this act.

SEC. 4. (a) On or before January 1, 1989, the redevelopment agency of the City of Los Angeles may, without limitation upon authority the agency may have under other provisions of law establish a program consistent with this section for settlement of claims against the redevelopment agency arising out of damage to residential structures occurring as a result of geologic instability in its Monterey Hills Redevelopment Project Area.

(b) To fund the program, the redevelopment agency may, consistent with the report prepared pursuant to this act, allocate not more than ten million dollars ($10,000,000) in the 1988–89 fiscal year and not more than ten million dollars ($10,000,000) in the 1989–90 fiscal year, if necessary. For this purpose, the redevelopment agency may utilize any legally available funds.

(c) The redevelopment agency may include in the program established pursuant to this section the following buyout and repair components:

(1) Notification of each owner of property whose unit is located on fill in the Monterey Hills Redevelopment Project Area of the proposed buyout program, and furnishing each owner with a claim form for a buyout. The agency may grant an extension not exceeding 30 days for making claims in cases where hardship would otherwise result.

(2) In determining the amount of the claim, the redevelopment agency may cause the value of the unit to be determined by an independent appraiser who has been certified by the Master of Appraisal Institute. The appraiser may take into account a reasonable appreciation of the unit, which in no event shall be less than 4 percent annually.

(3) The redevelopment agency may establish other guidelines that it deems necessary and desirable to expedite completion of the buyout and repair program.

(d) Any unencumbered moneys remaining in the program after January 1, 1990, shall be used for settlement and release of claims arising from that geologic instability, first to effect, or reimburse the cost of, repairs of owner-occupied residential structures in the Monterey Hills Redevelopment Project Area, with any remaining moneys to be used for repairs to structures that are not owner

occupied.

(e) No person who has previously settled his or her claim with the agency arising out of geologic instability in the Monterey Hills Redevelopment Project Area, and no insurer, no developer, and no previous owner, shall be eligible to participate in the program established pursuant to this section. Only existing homeowners shall be eligible to file any claim authorized under this section.

(f) No person who has executed a settlement and release pursuant to this section shall have any cause of action against the redevelopment agency of the City of Los Angeles on account of any claim arising out of injury or potential injury to any property with respect to which the agreement was executed.

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 five hundred thousand dollars ($500,000), reimbursement shall be made from the State Mandates Claims Fund.

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 immeidate effect. The facts constituting the necessity are:

In order to provide for settlement of claims against the redevelopment agency of the City of Los Angeles arising out of geologic instability in its Monterey Hills Redevelopment Project Area without delay, and to thereby prevent potential disruption of that agency's ability to repay its bonds and consequent negative implications for other public bonds in this state, it is necessary that this act go into effect immediately.

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## CHAPTER 1600

An act to amend Section 4051 of, and to add Sections 2191.1, 4051.1, 4051.2, 4051.3, 4051.4, 4051.7, 4051.8, and 4051.9 to, the Business and Professions Code, relating to pharmacy.

[Approved by Governor September 30, 1988. Filed with Secretary of State September 30, 1988.]

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

SECTION 1. The Legislature finds and declares that the licensed pharmacist plays a critical role as the advocate of the patient-consumer and that when, in whatever manner, the oversight of the pharmacist is not available, the patient-consumer may be

deprived of essential consultation. The Legislature further finds and declares that the prescriber's role of patient advocate may be diminished when the prescriber has a financial interest in medications ordered for the patient. Therefore, to protect the patient-consumer and to enforce the legislative intent, the Legislature hereby amends Sections 2191 and 4051 of the Business and Professions Code.

SEC. 2. Section 2191.1 is added to the Business and Professions Code, to read:

2191.1. The Division of Licensing shall encourage every physician and surgeon to take a course in pharmacology and pharmaceuticals as part of his or her continuing education.

SEC. 3. Section 4051 of the Business and Professions Code is amended to read:

4051. (a) No prescriber shall dispense drugs or dangerous devices to patients in his or her office or place of practice unless all of the following conditions are met:

(1) The drugs or dangerous devices are dispensed to the prescriber's own patient and the drugs or dangerous devices are not furnished by a nurse or attendant.

(2) The drugs or dangerous devices are necessary in the treatment of the condition for which the prescriber is attending the patient.

(3) The prescriber does not keep a pharmacy, open shop, drugstore, advertised or otherwise, for the retailing of drugs or dangerous devices or poisons.

(4) The prescriber fulfills all of the labeling requirements imposed upon pharmacists by Section 4047.5, all of the recordkeeping requirements of this chapter, and all of the packaging requirements of good pharmaceutical practice, including the use of child-proof containers.

(5) The prescriber does not use a dispensing device unless he or she personally owns the device and the contents of it and personally dispenses the drugs or dangerous devices to the patient packaged, labeled, and recorded in accordance with paragraph (4).

(b) The Board of Medical Quality Assurance and the Board of Osteopathic Examiners shall have authority with the Board of Pharmacy to assure compliance with this section, and those boards are specifically charged with the enforcement of this chapter with respect to their respective licensees.

(c) "Prescriber," as used in this section, means a person, who holds a physician's and surgeon's certificate or a certificate to practice podiatry, and who is duly registered as such by the Board of Medical Quality Assurance or the Board of Osteopathic Examiners of this state.

(d) This section does not prohibit the furnishing of a limited quantity of samples by a prescriber, if the prescriber dispenses the samples to the patient in the package provided by the manufacturer, no charge is made to the patient therefor, and an appropriate record

is entered in the patient's chart.

(e) This section does not apply to clinics, as defined in subdivision (a) of Section 1204 or subdivision (b) or (c) of Section 1206 of the Health and Safety Code, to veterinarians furnishing drugs for the treatment of animals, to programs licensed pursuant to Sections 11876, 11877, and 11877.5 of the Health and Safety Code, or to a prescriber dispensing parenteral chemotherapeutic agents, biologicals, or delivery systems used in the treatment of cancer.

SEC. 4. Section 4051.1 is added to the Business and Professions Code, to read:

4051.1. A prescriber who dispenses drugs pursuant to Section 4051 shall, prior to dispensing a prescription to a patient, offer to give a written prescription to the patient which the patient may elect to have filled by the prescriber or by any pharmacy.

SEC. 5. Section 4051.2 is added to the Business and Professions Code, to read:

4051.2. A prescriber who dispenses drugs pursuant to Section 4051 shall provide the patient with written disclosure that the patient has a choice between obtaining the prescription from the dispensing prescriber or obtaining the prescription at a pharmacy of the patient's choice.

SEC. 6. Section 4051.3 is added to the Business and Professions Code, to read:

4051.3. A prescriber who dispenses drugs pursuant to Section 4051 shall store all drugs to be dispensed in an area which is secure. The Board of Medical Quality Assurance shall, by regulation, define the term "secure" for purposes of this section.

SEC. 7. Section 4051.4 is added to the Business and Professions Code, to read:

4051.4. The Board of Pharmacy shall promptly forward to the Board of Medical Quality Assurance all complaints received related to drugs or dangerous devices dispensed by a prescriber pursuant to Section 4051.

SEC. 8. Section 4051.7 is added to the Business and Professions Code, to read:

4051.7. All complaints involving serious bodily injury due to drugs or dangerous devices dispensed by prescribers pursuant to Section 4051 shall be handled by the Board of Medical Quality Assurance as a case of greatest potential harm to a patient.

SEC. 9. Section 4051.8 is added to the Business and Professions Code, to read:

4051.8. On or before January 1, 1990, the Board of Medical Quality Assurance shall report to the Legislature on all complaints filed on or after August 1, 1988, involving serious bodily harm due to drugs or dangerous devices dispensed by a prescriber pursuant to Section 4051. The report shall include the nature of the complaint and its status.

SEC. 10. Section 4051.9 is added to the Business and Professions Code, to read:

4051.9. The Board of Medical Quality Assurance and the Board of Pharmacy shall jointly make a report to the Legislature on or before January 1, 1991. The report shall include the following information regarding the complaints received by these respective boards on or after August 1, 1988, relating to drugs or dangerous devices dispensed by a prescriber pursuant to Section 4051:

(a) The number of complaints received.

(b) A brief description of the nature of the complaint and the severity category assigned.

(c) The disposition of the complaint.

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.

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## CHAPTER 1601

An act to add Sections 54060.4, 54060.5, 54060.6, and 54060.7 to, to repeal Article 5 (commencing with Section 54050) of Chapter 1 of, and Chapter 1.5 (commencing with Section 54060) of, Part 29 of, and to repeal and add Section 42240 of, the Education Code, and to repeal Section 85 of Chapter 323 of the Statutes of 1976, relating to education, and making an appropriation therefor.

[Approved by Governor September 30, 1988. Filed with Secretary of State September 30, 1988.]

I am deleting the $5 million dollar General Fund appropriation contained in Section 14 of Assembly Bill No. 3753.

This bill would appropriate $5 million to provide a loan to the San Francisco Unified School District for asbestos abatement projects. I am deleting this appropriation because I believe that the district should apply for assistance through the normal process under the State's Asbestos Abatement Program. This legislation would provide inappropriate preferential treatment of one district.

With this deletion, I approve Assembly Bill No. 3753.

GEORGE DEUKMEJIAN, Governor

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

SECTION 1. Section 42240 of the Education Code is repealed.

SEC. 2. Section 42240 is added to the Education Code, to read:

42240. For the 1988–89 fiscal year, the Superintendent of Public Instruction shall do the following:

(a) Using the latest available data as of July 1, 1987, identify each school district that meets all of the following criteria:

(1) Has a second principal apportionment average daily attendance of fewer than 2,501 for the prior fiscal year.

(2) Has approved home-to-school transportation costs in excess of

3 percent of its general fund total expense of education in the prior fiscal year.

(b) For each school district identified pursuant to subdivision (a), or that receives funding pursuant to Section 42240 or 42240.1 in the prior fiscal year, the superintendent shall make the following calculations:

(1) Subtract from the approved home-to-school transportation costs an amount equal to 3 percent of the general fund total expense of education exclusive of lottery revenues.

(2) Compare the amount determined in paragraph (1) to the amount the district received in the 1987–88 fiscal year pursuant to Sections 42240 and 42240.1.

(c) If the comparison results in an amount less than the amount received in the 1987–88 fiscal year, the superintendent shall use that amount, but in no case shall the superintendent use an amount less than 95 percent of the amount received in the 1987–88 fiscal year.

(d) The superintendent shall calculate the net savings from the comparison in subdivision (c).

(e) If the comparison results in an amount greater than the amount received in the 1987–88 fiscal year, the superintendent shall use the amount calculated as the sum of the following:

(1) The amount received in the 1987–88 fiscal year.

(2) The amount determined by allocating the net savings calculated in subdivision (d) on a pro rata basis to each district in proportion to the amount by which comparison results in an amount greater than the amount received in the 1987–88 fiscal year.

(f) The superintendent shall divide the amount determined pursuant to subdivision (c) or (e), whichever is appropriate, by the 1987–88 second principal apportionment average daily attendance.

(g) The amount determined by subdivision (f) may be added to the amount determined pursuant to subdivision (b) of Section 42238.

(h) The amount determined pursuant to subdivision (c) or (e), whichever is appropriate, may be added to the district's transportation allowance under Section 41850.

(i) Each school district eligible for funds may elect to have the funds allocated pursuant to either subdivision (g) or (h).

(j) The amounts added to subdivision (b) of Section 42238 pursuant to subdivision (g) and the amount added to Section 41850 by subdivision (h) shall be considered to be permanent adjustments to the base revenue limit or transportation allowance as appropriate.

SEC. 3. Article 5 (commencing with Section 54050) of Chapter 1 of Part 29 of the Education Code is repealed.

SEC. 4. Chapter 1.5 (commencing with Section 54060) of Part 29 of the Education Code is repealed.

SEC. 5. It is the intent of the Legislature to maintain those allocations of general aid to school districts that have become known as urban impact aid and Meade aid by allocating funds during the 1988–89 fiscal year in the same amounts, and to the same districts that received urban impact aid and Meade aid during the 1987–88 fiscal

year. It is further the intent of the Legislature that these allocations, after adjustment as provided in this act, shall become a regular part of district base revenue limit funding in the fiscal years following the 1988–89 fiscal year.

SEC. 6. Section 54060.4 is added to the Education Code, to read:

54060.4. For the 1988–89 fiscal year, from funds appropriated for that purpose, the Superintendent of Public Instruction shall make apportionments to eligible school districts as follows:

(a) Urban impact aid in the same amounts and to the same unified school districts that qualified for general aid in the 1987–88 fiscal year pursuant to Section 54060.1.

(b) Urban impact aid in the same amounts and to the same high school and elementary school districts that qualified for general aid in the 1987–88 fiscal year pursuant to Section 54060.3.

(c) Meade aid in the same amounts and to the same school districts that qualified for general aid in the 1987–88 fiscal year pursuant to Section 54061.

SEC. 7. Section 54060.5 is added to the Education Code, to read:

54060.5. For the 1989–90 fiscal year, the Superintendent of Public Instruction shall do all of the following for each school district that received urban impact aid pursuant to subdivision (a) of Section 54060.4 in the 1988–89 fiscal year:

(a) Determine the following:

(1) The amount of general aid, if any, received by the district in the 1986–87 fiscal year pursuant to Section 54060 as that section was in effect during the 1986–87 fiscal year.

(2) The "1987–88 maximum allocation for urban impact aid" that was calculated for each district pursuant to paragraph (5) of subdivision (b) of Section 54060.

(3) The difference that results from subtracting the amount determined pursuant to paragraph (1) from the amount determined pursuant to paragraph (2) for each district, provided that any difference that is less than zero shall be deemed to be zero.

(4) The amount, if any, that is 90 percent of the difference determined pursuant to paragraph (3).

(b) Multiply the percentage determined for the 1989–90 fiscal year pursuant to subdivision (b) of Section 42238.1 by the sum of allocations made pursuant to subdivision (a) of Section 54060.4 and, from that product, subtract the sum of amounts determined pursuant to paragraph (4) of subdivision (a). The residual amount, if greater than zero, shall be used to make the cost-of-living adjustment specified in subdivision (c).

(c) Determine for each district an amount computed as follows:

(1) Determine the amount of general aid received by the district in the 1987–88 fiscal year pursuant to Section 54060.1.

(2) Increase the amount determined under paragraph (1) by any amount computed for that district in paragraph (4) of subdivision (a).

(3) Further increase, for cost-of-living purposes, the sum of

paragraphs (1) and (2) by the residual amount, if any, calculated under subdivision (b).

(d) Determine, for each district, the sum of the following:

(1) The number of units of average daily attendance computed for the 1988–89 fiscal year pursuant to Section 42238.5

(2) The number of units of average daily attendance that would have been generated in the 1988–89 fiscal year by pupils attending necessary small schools funded pursuant to Article 4 (commencing with Section 42280) of Chapter 7 of Part 24.

(e) Divide each district's amount determined pursuant to subdivision (c) by the respective district's sum of average daily attendance determined pursuant to subdivision (d) and add each district's quotient to that district's 1988–89 base revenue limit per pupil in average daily attendance, calculated pursuant to Section 42238. The adjustment of per pupil revenue limits required by this subdivision shall be made prior to multiplication of per pupil revenue limits by the 1989–90 average daily attendance of the affected districts.

Except for the amount determined under paragraph (3) of subdivision (c), amounts added to 1988–89 district base revenue limits by this section shall not be used when calculating 1989–90 cost-of-living adjustments for the base revenue limits of affected districts.

SEC. 8. Section 54060.6 is added to the Education Code, to read:

54060.6. For the 1989–90 fiscal year, the Superintendent of Public Instruction shall do all of the following for each school district that received urban impact aid pursuant to subdivision (b) of Section 54060.4 in the 1988–89 fiscal year:

(a) Determine the following:

(1) The amount of general aid, if any, received by the district in the 1986–87 fiscal year pursuant to Section 54060 as that section was in effect during the 1986–87 fiscal year.

(2) The "1987–88 maximum allocation for urban impact aid" that was calculated for each district pursuant to paragraph (5) of subdivision (b) of Section 54060.2.

(3) The difference that results from subtracting the amount determined pursuant to paragraph (1) from the amount determined pursuant to paragraph (2) for each district, provided that any difference that is less than zero shall be deemed to be zero.

(4) The amount, if any, that is 90 percent of the difference determined pursuant to paragraph (3).

(b) Multiply the percentage determined for the 1989–90 fiscal year pursuant to subdivision (b) of Section 42238.1 by the sum of allocations made pursuant to subdivision (b) of Section 54060.4 and, from that product, subtract the sum of amounts determined pursuant to paragraph (4) of subdivision (a). The residual amount, if greater than zero, shall be used to make the cost-of-living adjustment specified in subdivision (c).

(c) Determine for each district an amount computed as follows:

(1) Determine the amount of general aid received by the district in the 1987–88 fiscal year pursuant to Section 54060.1.

(2) Increase the amount determined under paragraph (1) by any amount computed for that district in paragraph (4) of subdivision (a).

(3) Further increase, for cost-of-living purposes, the sum of paragraphs (1) and (2) by the residual amount, if any, calculated under subdivision (b).

(d) Determine, for each district, the sum of the following:

(1) The number of units of average daily attendance computed for the 1988–89 fiscal year pursuant to Section 42238.5.

(2) The number of units of average daily attendance that would have been generated in the 1988–89 fiscal year by pupils attending necessary small schools funded pursuant to Article 4 (commencing with Section 42280) of Chapter 7 of Part 24.

(e) Divide each district's amount determined pursuant to subdivision (c) by the respective district's sum of average daily attendance determined pursuant to subdivision (d) and add each district's quotient to that district's 1988–89 base revenue limit per pupil in average daily attendance, calculated pursuant to Section 42238. The adjustment of per pupil revenue limits required by this subdivision shall be made prior to multiplication of per pupil revenue limits by the 1989–90 average daily attendance of the affected districts.

Except for the amount determined under paragraph (3) of subdivision (c), amounts added to 1988–89 district base revenue limits by this section shall not be used when calculating 1989–90 cost-of-living adjustments for the base revenue limits of affected districts.

SEC. 9. Section 54060.7 is added to the Education Code, to read:

54060.7. For the 1989–90 fiscal year, the Superintendent of Public Instruction shall do all of the following for each school district that received Meade aid pursuant to Section 54061 in the 1987–88 fiscal year:

(a) Determine, for each district, the sum of the following:

(1) The number of units of average daily attendance computed for the 1988–89 fiscal year pursuant to Section 42238.5.

(2) The number of units of average daily attendance that would have been generated in 1988–89 by pupils attending necessary small schools funded pursuant to Article 4 (commencing with Section 42280) of Chapter 7 of Part 24.

(b) Divide the apportionment received by each district pursuant to Section 54061 in the 1987–88 fiscal year by the respective district's sum of average daily attendance determined pursuant to subdivision (a) and add each district's quotient to that district's 1988–89 base revenue limit per pupil in average daily attendance, calculated pursuant to Section 42238. The adjustment of per pupil revenue limits required by this subdivision shall be made prior to multiplication of per pupil revenue limits by the 1989–90 average

daily attendance and prior to calculating base revenue limit cost-of-living adjustments for the 1989–90 fiscal year.

SEC. 10. Section 85 of Chapter 323 of the Statutes of 1976 is repealed.

SEC. 11. Regardless of the time this act becomes effective, it is the intent of the Legislature to make changes in state apportionments to school districts for the entire 1988–89 fiscal year. For the purpose of implementing the changes required by Sections 1, 2, and 3, and Sections 5 to 11, inclusive, of this act, the Superintendent of Public Instruction and other public officers shall take all necessary steps to effect the required adjustments, including the authority to adjust allowance computations, apportionments, and disbursements ordered from the State School Fund and other public funds.

SEC. 12. All provisions of the federal model contractors accreditation plan (40 C.F.R. Appendix C, Subpart E, Part 763), as it became effective June 1, 1987, are hereby adopted as the contractor accreditation plan of this state, and are hereby incorporated in Chapter 9 (commencing with Section 49400) of Part 27 of the Education Code as though set forth in full therein. Any person who seeks accreditation, in addition to complying with that state plan, shall register with the Office of Local Assistance.

SEC. 13. Section 4 of this act shall become operative June 30, 1991.

SEC. 14. The sum of five million dollars ($5,000,000) is hereby appropriated from the General Fund to the State Allocation Board for apportionment to the San Francisco Unified School District for the purposes of a loan to assist the district with asbestos abatement projects in its schools.

The school district shall receive the loan in the amount of one million dollars ($1,000,000) per fiscal year for five years commencing with the 1988–89 fiscal year. The district shall repay the state over a period of 10 years, commencing with the 1993–94 fiscal year, in 10 equal installments on the principal with interest calculated at the rate of the state's return on investments in the Pooled Money Investment Account.

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## CHAPTER 1602

An act to amend Sections 7850 and 7852.3 of, and to add Section 7861.1 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 30, 1988. Filed with Secretary of State September 30, 1988.]

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

SECTION 1. The Legislature finds that commercial fishing vessels, during times of fishing activities or in preparation for fishing activities or in the process of discharging fish, may have persons on board, including family members, observers, technicians, mechanics, wardens, or agency representatives, who do not engage in the fishing activities or assist in the fishing activities while on board the vessel and who are not paid a share of the proceedings from the catch of the vessel. The Legislature declares that it is proper and lawful for those individuals, who are not engaged in or assisting fishing activities on board that vessel or paid shares from the vessel's catch proceeds for any activity while aboard a fishing vessel, to be aboard the vessel without possessing or having purchased a commercial fishing license.

SEC. 2. Section 7850 of the Fish and Game Code is amended to read:

7850. (a) Excepting persons expressly exempted under this code, no person shall use or operate, or assist in using or operating, any boat, net, trap, line, or other appliance to take fish or amphibia for commercial purposes, and no person shall cause to be brought ashore, any fish or amphibia at any point in the state for the purpose of selling them in a fresh state or shall contribute materially to the activities on board the commercial fishing vessel, unless the person holds a commercial fishing license issued by the department.

(b) Any person not required under subdivision (a) to hold a commercial fishing license shall register his or her presence on board the commercial fishing vessel in a log maintained by the owner or operator of the vessel according to the requirements of the department.

(c) As used in this section, "person" does not include persons who are less than 16 years of age, a partnership, corporation, or association. Any person, partnership, corporation, or association may pay the fees for a license issued to any person.

(d) This article does not apply to the taking, transporting, or selling of live freshwater fish for bait by the holder of a live freshwater bait fish license issued pursuant to Section 8460.

SEC. 3. Section 7852.3 of the Fish and Game Code is amended to read:

7852.3. (a) The department shall issue a commercial fishing license to a person who is 16 years of age or more but less than 18 years of age who is actively assisting in fishing activities for a fee of one-half of the fee prescribed in subdivision (b) of Section 7852.

(b) The department shall issue a commercial fishing salmon stamp to a person who is 16 years of age or more but less than 18 years of age for one-half of the fee prescribed in subdivision (c) of Section

7860.

(c) Nothing in this section affects other provisions of law relating to employment of minors.

SEC. 4. Section 7861.1 is added to the Fish and Game Code, to read:

7861.1. The Commercial Salmon Stamp Account in the Fish and Game Preservation Fund shall not be charged administrative overhead costs exceeding 3.3 percent of the annual expenditures from the account. Interest derived from the account shall be deposited in the Fish and Game Preservation Fund to help defray ongoing operational costs of the department.

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.

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 provide correction to allocations of the Department of Fish and Game overhead expenses and to provide for lawful observer presence on commercial fishing vessels, it is necessary that this act take effect immediately.

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## CHAPTER 1603

An act to add and repeal Section 1203.016 of the Penal Code, relating to sentencing.

[Approved by Governor September 30, 1988. Filed with Secretary of State September 30, 1988.]

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

SECTION 1. This act shall be known and may be cited as the Mojonnier-Ayala Electronic Home Detention Act of 1988.

SEC. 2. The Legislature hereby finds and declares that jail overcrowding continues to pose critical fiscal, operational, and safety issues for counties in the state. The Legislature further finds that there are few short-term solutions to this chronic overcrowding, and that assistance through major construction projects is a long-term process. In recognition of this problem, there is a need to provide for safe, alternative, confinement options for low-risk inmates. Electronic home detention programs can offer one safe and effective alternative. Under Section 1203.015 of the Penal Code, several jurisdictions have adopted home detention programs. The

Legislature hereby recognizes that changes in current law are required to ensure the uniformly consistent, safe, and responsible operation of these programs.

It is the intent of the Legislature in enacting this act to establish new provisions of law which will authorize, guide, and encourage the establishment of electronic home detention programs to be administered and operated by counties which will provide necessary protections to local communities, maintain judicial confidence, and result in successful and cost-effective participation by offenders.

SEC. 3. Section 1203.016 is added to the Penal Code, to read:

1203.016. (a) Notwithstanding any other provision of the law, the board of supervisors of any county may authorize the correctional administrator, as defined in subdivision (h), to offer a program under which minimum security inmates and low-risk offenders committed to a county jail or other county correctional facility or inmates participating in a work furlough program may voluntarily participate in a home detention program during their sentence in lieu of confinement in the county jail or other county correctional facility.

(b) The board of supervisors may prescribe reasonable rules and regulations under which a home detention program may operate. As a condition of participation in the home detention program, the inmate shall give his or her consent in writing to participate in the home detention program and shall in writing agree to comply with the rules and regulations of the program, including, but not limited to, the following rules:

(1) The participant shall remain within the interior premises of his or her residence during the hours designated by the correctional administrator.

(2) The participant shall admit any person or agent designated by the correctional administrator into his or her residence at any time for purposes of verifying the participant's compliance with the conditions of his or her detention.

(3) The participant shall agree to the use of electronic monitoring or supervising devices for the purpose of helping to verify his or her compliance with the rules and regulations of the home detention program. The devices shall not be used to eavesdrop or record any conversation, except a conversation between the participant and the person supervising the participant which is to be used solely for the purposes of voice identification.

(4) The participant shall agree that the correctional administrator in charge of the county correctional facility from which the participant was released may, without further order of the court, immediately retake the person into custody to serve the balance of his or her sentence if the electronic monitoring or supervising devices are unable for any reason to properly perform their function at the designated place of home detention or if the person fails to remain within the place of home detention as stipulated in the agreement or for any other reason no longer meets the established

criteria for release under this section. A copy of the agreement shall be delivered to the participant and a copy retained by the correctional administrator.

(c) Whenever the peace officer supervising a participant has reasonable cause to believe that the participant is not complying with the rules or conditions of the program, or that the electronic monitoring devices are unable to function properly in the designated place of confinement, the peace officer may, under general or specific authorization of the correctional administrator, and without a warrant of arrest, retake the person into custody to complete the remainder of the original sentence.

(d) Nothing in this section shall be construed to require the correctional administrator to allow a person to participate in this program if it appears from the record that the person has not satisfactorily complied with reasonable rules and regulations while in custody. A person shall be eligible for participation in a home detention program only if the correctional administrator concludes that the person meets the criteria for release established under this section.

(e) The correctional administrator may permit home detention program participants to seek and retain employment in the community, attend psychological counseling sessions or educational or vocational training classes, or seek medical and dental assistance.

(f) At the time of sentencing or at any time that the court deems it necessary, the court may restrict or deny the defendant's participation in a home detention program.

(g) The board of supervisors may prescribe a program administrative fee, not to exceed the pro rata cost of the electronic monitoring or supervising device and the cost of administration of the program, to be paid by each home detention participant according to his or her ability to pay. Inability to pay shall not preclude participation in the program.

(h) As used in this section, the following words used in this section have the following meanings:

(1) "Correctional administrator" means the sheriff, probation officer, or other official in charge of a county correctional facility or work furlough program.

(2) "Minimum security inmate" means an inmate who, by established local classification criteria, would be eligible for placement in a Type IV local detention facility, as described in Title 15 of the California Code of Regulations, or for placement into the community for work or school activities, or who is determined to be a minimum security risk under a classification plan developed pursuant to Section 1050 of Title 15 of the California Code of Regulations.

(3) "Low-risk offender" means a probationer, as defined by the National Institute of Corrections model probation system.

(i) The Board of Corrections shall monitor home detention programs operated pursuant to this section and shall report to the

Legislature on or before January 1, 1992, regarding their effectiveness. The report shall include an evaluation of the costs of the programs, the impact upon jail overcrowding, and the effect upon the safety of the public.

(j) This section shall remain operative only until January 1, 1993, and as of that date is repealed.

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## CHAPTER 1604

An act to amend Sections 25539.4 and 37364 of the Government Code, and to amend Sections 33080.4, 33080.6, 33333.4, 33334.3, 33334.6, and 33413 of, and to add Sections 33418 and 33501.5 to, the Health and Safety Code, relating to housing.

[Approved by Governor September 30, 1988. Filed with Secretary of State September 30, 1988.]

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

SECTION 1. Section 25539.4 of the Government Code is amended to read:

25539.4. (a) The Legislature recognizes that real property of counties can be utilized, in accordance with a county's best interests, to provide housing affordable to persons or families of low or moderate income. Therefore, notwithstanding any other provision of law, whenever the board of supervisors determines that any real property or interest therein owned, or to be purchased, by the county can be used to provide housing affordable to persons and families of low or moderate income, as defined by Section 50093 of the Health and Safety Code or as defined by the United States Department of Housing and Urban Development or its successors, and that this use is in the county's best interests, the county may sell, lease, exchange, quitclaim, convey, or otherwise dispose of the real property or interest therein at less than fair market value, or purchase an interest in the real property, to provide that affordable housing without complying with other provisions of this article.

(b) Not less than 80 percent of the area of any parcel of property disposed of pursuant to the provisions of this section shall be used for the development of housing.

(c) Not less than 40 percent of the total number of those housing units developed on any parcel pursuant to this section shall be affordable to households whose incomes are equal to or less than 75 percent of the maximum income of lower income households, and at least half of which shall be affordable to very low income households.

(d) Dwelling units produced for persons and families of low or moderate income under this section shall be restricted by regulatory agreement to remain continually affordable to those persons and families for the longest feasible time, but not less than 30 years,

pursuant to a method prescribed by the county.

(e) The regulatory agreement shall contain a provision making the covenants and conditions of the agreement binding upon successors in interest of the housing sponsor. The regulatory agreement shall be recorded in the office of the county recorder of the county in which the housing development is located. The regulatory agreement shall be recorded in the grantor-grantee index to the name of the property owner as grantor and to the name of the county as grantee.

(f) The definitions of "persons and families of low and moderate income," "lower income households," and "very low income households" set forth in Sections 50079.5, 50093, and 50105 of the Health and Safety Code shall apply to this section.

SEC. 2. Section 37364 of the Government Code is amended to read:

37364. (a) The Legislature reaffirms its finding that the provision of housing for all Californians is a concern of vital statewide importance. The Legislature recognizes that real property of cities can be utilized, in accordance with a city's best interests, to provide housing affordable to persons and families of low or moderate income. Therefore, notwithstanding any provision of a city's charter, or any other provision of law, whenever the legislative body of a city determines that any real property or interest therein owned or to be purchased by the city can be used to provide housing affordable to persons and families of low or moderate income, as defined by Section 50093 of the Health and Safety Code or as defined by the United States Department of Housing and Urban Development or its successors, and that this use is in the city's best interests, the city may sell, lease, exchange, quitclaim, convey, or otherwise dispose of the real property or interest therein at less than fair market value, or purchase an interest in the real property, to provide that affordable housing under whatever terms and conditions the city deems best suited to the provision of such housing.

(b) Not less than 80 percent of the area of any parcel of property disposed of pursuant to this section shall be used for development of housing.

(c) Not less than 40 percent of the total number of those housing units developed on any parcel pursuant to this section shall be affordable to households whose incomes are equal to, or less than, 75 percent of the maximum income of lower income households, and at least half of which shall be affordable to very low income households.

(d) Dwelling units produced for persons and families of low or moderate income under this section shall be restricted by regulatory agreement to remain continually affordable to those persons and families for the longest feasible time, but not less than 30 years, pursuant to a method prescribed by the city. The regulatory agreement shall contain a provision making the covenants and conditions of the agreement binding upon successors in interest of the housing sponsor. The regulatory agreement shall be recorded in

the office of the county recorder of the county in which the housing development is located. The regulatory agreement shall be recorded in the grantor-grantee index to the name of the property owner as grantor and to the name of the city as grantee.

(e) The provisions of this section shall apply to all cities, including charter cities.

(f) The definitions of "persons and families of low and moderate income," "lower income households," and "very low income households" set forth in Sections 50079, 50093, and 50105 of the Health and Safety Code shall apply to this section.

SEC. 2.5. Section 33080.6 of the Health and Safety Code is amended to read:

33080.6. On or before April 1 of each year, the department shall compile and publish reports of the activities of redevelopment agencies for the previous fiscal year, based on the information reported pursuant to subdivision (c) of Section 33080.1 and reporting the types of findings made by agencies pursuant to paragraph (1), (2), or (3) of subdivision (a) of Section 33334.2, including the date of the findings. The department's compilation shall also report on the project area mergers reported pursuant to Section 33488. The department shall publish this information for each project area of each redevelopment agency. These reports may also contain the biennial review of relocation assistance required by Section 50460. The first report published pursuant to this section shall be for the 1984–85 fiscal year. For fiscal year 1987–88 and succeeding fiscal years, the report shall contain a list of those project areas which are not subject to the requirements of Section 33413.

The department shall send a copy of its report to each redevelopment agency for which information was reported pursuant to Section 33080.1 for the fiscal year covered by the report.

This section shall remain in effect only until January 1, 1991, and as of that date is repealed unless a later enacted statute, which is enacted before January 1, 1991, deletes or extends that date.

SEC. 3. Section 33080.4 of the Health and Safety Code, as amended by Section 3 of Chapter 1111 of the Statutes of 1987, is amended to read:

33080.4. For the purposes of compliance with subdivision (c) of Section 33080.1, the description of the agency's activities shall contain the following information regardless of whether each activity is funded exclusively by the state or federal government, for each project area and for the agency overall:

(a) Pursuant to Section 33413, the total number of family and elderly households, including separate subtotals of the numbers of households for persons and families of low or moderate income and very low income households, that were displaced or moved from their dwelling units as part of a redevelopment project of the agency during the previous fiscal year.

(b) Pursuant to Section 33413.5, the total number of family and elderly households, including separate subtotals of the numbers of

households for persons and families of low or moderate income and very low income households, that the agency estimates will be displaced or will move from their dwellings as part of a redevelopment project of the agency during the present fiscal year and the date of adoption of a replacement housing plan for each project area subject to Section 33413.5.

(c) The total number of dwelling units housing persons and families of low and moderate income and very low income households, respectively, which have been destroyed or removed from the low- or moderate-income housing market during the previous fiscal year as part of a redevelopment project of the agency, specifying the number of those units which are not subject to Section 33413.

(d) The total numbers of agency-assisted dwelling units which were constructed, rehabilitated, acquired, or subsidized during the previous fiscal year for occupancy at an affordable housing cost by elderly persons and families, but only if the units are restricted by agreement or ordinance for occupancy by the elderly, and by persons and families of low or moderate income and very low income households, respectively, specifying those units which are not currently so occupied, those units which have replaced units destroyed or removed pursuant to subdivision (a) of Section 33413, and the length of time any agency-assisted units are required to remain available at affordable costs.

(e) The total numbers of new or rehabilitated units subject to paragraph (2) of subdivision (b) of Section 33413, including separate subtotals of the number originally affordable to and currently occupied by, elderly persons and families, but only if the units are restricted by agreement or ordinance for occupancy by the elderly, and by persons and families of low or moderate income and very low income households, respectively, and the length of time these units are required to remain available at affordable costs.

(f) The status and use of the Low and Moderate Income Housing Fund created pursuant to Section 33334.3, including information on the use of this fund for very low income households, lower income households, and persons and families of low or moderate income, respectively. If the Low and Moderate Income Housing Fund is used to subsidize the cost of onsite or offsite improvements, then the description of the agency's activities shall include the number of housing units affordable to persons and families of low or moderate income which have been directly benefited by the onsite or offsite improvements.

(g) A compilation of the annual reports obtained by the agency under Section 33418 including identification of the number of units occupied by persons and families of low or moderate income, lower income households, and very low income households, respectively, as those terms are defined in Division 31 (commencing with Section 50000), and identification of projects in violation of law or any agreements in relation to affordable units.

(h) Any other information which the agency believes useful to explain its housing programs, including, but not limited to, housing for persons and families of other than low and moderate income.

"Elderly," as used in this section, has the same meaning as specified in Section 50067.

This section shall remain in effect only until January 1, 1991, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1991, deletes or extends that date.

SEC. 4. Section 33333.4 of the Health and Safety Code is amended to read:

33333.4. (a) Every legislative body which adopted a final redevelopment plan prior to October 1, 1976, that contains the provisions set forth in Section 33670 but which does not contain all of the limitations required by Section 33333.2, shall adopt an ordinance on or before December 31, 1986, which contains all of the following:

(1) A limitation on the number of dollars of taxes which may be divided and allocated to the redevelopment agency pursuant to the plan. Taxes shall not be divided and shall not be allocated to the redevelopment agency beyond that limitation.

(2) A time limit on the establishing of loans, advances, and indebtedness to finance in whole, or in part, the redevelopment project. No loans, advances, or indebtedness to be repaid from the allocation of taxes shall be established or incurred by the agency beyond the time limitation.

(3) A time limit, not to exceed 12 years, for commencement of eminent domain proceedings to acquire property within the project area.

(b) The limitations established in the ordinance adopted pursuant to this section shall apply to the redevelopment plan as if the redevelopment plan had been amended to include those limitations. However, in adopting the ordinance, neither the legislative body nor the agency is required to comply with Article 12 (commencing with Section 33450) or any other provision of this part relating to the amendment of redevelopment plans.

(c) The limitations established in the ordinance adopted pursuant to this section shall not be applied to limit allocation of taxes to an agency to the extent required to eliminate project deficits created under subdivision (g) of Section 33334.6 in accordance with the plan adopted pursuant thereto for the purpose of eliminating the deficit. In the event of a conflict between these limitations and the obligations under Section 33334.6, the agency shall amend the ordinance adopted pursuant to this section to modify the limitations to the extent necessary to permit compliance with the plan adopted pursuant to subdivision (g) of Section 33334.6 and to allow full expenditure of moneys in the agency's Low and Moderate Income Housing Fund in accordance with Section 33334.3. The procedure for amending the ordinance pursuant to this subdivision shall be the same as for adopting the ordinance under subdivision (b).

(d) This section shall not be construed to allow the impairment of any obligation or indebtedness incurred by the legislative body or the agency pursuant to this part.

(e) In any litigation to challenge or attack any ordinance adopted pursuant to this section, the court shall sustain the actions of the legislative body and the agency unless the court finds those actions were arbitrary or capricious. The Legislature finds and declares that this is necessary because redevelopment agencies with project areas established prior to October 1, 1976, have incurred existing obligations and indebtedness and have adopted projects, programs, and activities with the authority to receive and pledge the entire allocation of taxes authorized by Section 33670 and that it is necessary to protect against the possible impairment of existing obligations and indebtedness and to allow the completion of adopted projects and programs.

(f) The ordinance adopted by the legislative body in compliance with this section does not relieve any agency of its obligations under Section 33334.2, 33334.3, Article 9 (commencing with Section 33410), or any other requirement contained in this part.

SEC. 4.2. Section 33334.3 of the Health and Safety Code is amended to read:

33334.3. (a) The funds which are required by Section 33334.2 or 33334.6 to be used for the purposes of increasing and improving the community's supply of low- and moderate-income housing shall be held in a separate Low and Moderate Income Housing Fund until used.

(b) Any interest earned by the Low and Moderate Income Housing Fund shall accrue to the fund and may only be used in the manner prescribed in Section 33334.2.

(c) The moneys in the Low and Moderate Income Housing Fund shall be used to increase and improve the supply of low- and moderate-income housing within the territorial jurisdiction of the agency.

(d) It is the intent of the Legislature that the Low and Moderate Income Housing Fund be used to the maximum extent possible to defray the costs of production and improvement of low- and moderate-income housing and that the amount of money spent for planning and general administrative activities associated with the development or improvement of that housing not be disproportionate to the amount actually spent for the costs of production and improvement of that housing.

(e) The requirements of this subdivision apply to all new or substantially rehabilitated housing units developed or otherwise assisted, with moneys from the Low and Moderate Income Housing Fund, pursuant to an agreement approved by an agency on or after January 1, 1988. Except to the extent a longer period of time may be required by other provisions of law, the agency shall require that housing units subject to this subdivision shall remain available at affordable housing costs to persons and families of low or moderate

income and very low income households for the longest feasible time, but for not less than the following periods of time, except as provided in paragraph (3) of subdivision (j) of Section 33334.2:

(1) Fifteen years for rental units. However, the agency may replace rental units with equally affordable and comparable rental units in another location within the community if (A) the replacement units are available for occupancy prior to the displacement of any persons and families of low or moderate income residing in the units to be replaced and (B) the comparable replacement units are not developed with moneys from the Low and Moderate Income Housing Fund.

(2) Ten years for owner-occupied units. However, the agency may permit sales of owner-occupied units prior to the expiration of the 10-year period for a price in excess of that otherwise permitted under this subdivision pursuant to an adopted program which protects the agency's investment of moneys from the Low and Moderate Income Housing Fund, including, but not limited to, an equity sharing program which establishes a schedule of equity sharing that permits retention by the seller of a portion of those excess proceeds based on the length of occupancy. The remainder of the excess proceeds of the sale shall be allocated to the agency and deposited in the Low and Moderate Income Housing Fund.

The agency shall require the recording in the office of the county recorder of covenants or restrictions implementing this subdivision for each parcel or unit of real property subject to this subdivision. Notwithstanding any other provision of law, the covenants or restrictions shall run with the land and shall be enforceable, against the original owner and successors in interest, by the agency or the community.

(f) "Housing," as used in this section, includes residential hotels, as defined in subdivision (k) of Section 37912. The definitions of "lower income households" and "very low income households" in Sections 50079.5 and 50105 shall apply to this section. "Longest feasible time," as used in this section, includes, but is not limited to, unlimited duration.

SEC. 4.3. Section 33334.3 of the Health and Safety Code is amended to read:

33334.3. (a) The funds which are required by Section 33334.2 or 33334.6 to be used for the purposes of increasing and improving the community's supply of low- and moderate-income housing or for provision of child-care facilities shall be held in a separate Low and Moderate Income Housing Fund until used.

(b) Any interest earned by the Low and Moderate Income Housing Fund shall accrue to the fund and may only be used in the manner prescribed in Section 33334.2.

(c) The moneys in the Low and Moderate Income Housing Fund shall be used to increase and improve the supply of low- and moderate-income housing, and for provision of child-care facilities, within the territorial jurisdiction of the agency.

(d) It is the intent of the Legislature that the Low and Moderate Income Housing Fund be used to the maximum extent possible to defray the costs of production and improvement of low- and moderate-income housing and for provision of child care facilities and that the amount of money spent for planning and general administrative activities associated with the development or improvement of that housing not be disproportionate to the amount actually spent for the costs of production and improvement of that housing.

(e) The requirements of this subdivision apply to all new or substantially rehabilitated housing units developed or otherwise assisted, with moneys from the Low and Moderate Income Housing Fund, pursuant to an agreement approved by an agency on or after January 1, 1988. Except to the extent a longer period of time may be required by other provisions of law, the agency shall require that housing units subject to this subdivision shall remain available at affordable housing costs to persons and families of low or moderate income and very low income households for the longest feasible time, but for not less than the following periods of time, except as provided in paragraph (3) of subdivision (j) of Section 33334.2:

(1) Fifteen years for rental units. However, the agency may replace rental units with equally affordable and comparable rental units in another location within the community if (A) the replacement units are available for occupancy prior to the displacement of any persons and families of low or moderate income residing in the units to be replaced and (B) the comparable replacement units are not developed with moneys from the Low and Moderate Income Housing Fund.

(2) Ten years for owner-occupied units. However, the agency may permit sales of owner-occupied units prior to the expiration of the 10-year period for a price in excess of that otherwise permitted under this subdivision pursuant to an adopted program which protects the agency's investment of moneys from the Low and Moderate Income Housing Fund, including, but not limited to, an equity sharing program which establishes a schedule of equity sharing that permits retention by the seller of a portion of those excess proceeds based on the length of occupancy. The remainder of the excess proceeds of the sale shall be allocated to the agency and deposited in the Low and Moderate Income Housing Fund.

The agency shall require the recording in the office of the county recorder of covenants or restrictions implementing this subdivision for each parcel or unit of real property subject to this subdivision. Notwithstanding any other provision of law, the covenants or restrictions shall run with the land and shall be enforceable, against the original owner and successors in interest, by the agency or the community.

(f) "Housing," as used in this section, includes residential hotels, as defined in subdivision (k) of Section 37912. The definitions of "lower income households" and "very low income households" in

Sections 50079.5 and 50105 shall apply to this section. "Longest feasible time," as used in this section, includes, but is not limited to, unlimited duration.

SEC. 4.5. Section 33334.6 of the Health and Safety Code is amended to read:

33334.6. (a) The Legislature finds and declares that the provision of housing is itself a fundamental purpose of the Community Redevelopment Law and that a generally inadequate statewide supply of decent, safe, and sanitary housing affordable to persons and families of low or moderate income, as defined by Section 50093, threatens the accomplishment of the primary purposes of the Community Redevelopment Law, including job creation, attracting new private investments, and creating physical, economic, social, and environmental conditions to remove and prevent the recurrence of blight. The Legislature further finds and declares that the provision and improvement of affordable housing, as provided by Section 33334.2, outside of redevelopment project areas can be of direct benefit to those projects in assisting the accomplishment of project objectives whether or not those redevelopment projects provide for housing within the project area. The Legislature finds and determines that the provision of affordable housing by redevelopment agencies and the use of taxes allocated to the agency pursuant to subdivision (b) of Section 33670 is of statewide benefit and of particular benefit and assistance to all local governmental agencies in the areas where the housing is provided.

(b) This section is applicable to all project areas, or portions of project areas, which are not subject to Section 33334.2, except that a project area, or portion of a project area, for which a resolution was adopted pursuant to subdivision (i) of Section 33334.2 is subject to this section. Project areas subject to this section which are merged prior to, or on or after, January 1, 1986, are subject to the requirements of both this section and Section 33487. The deposit of taxes into the Low and Moderate Income Housing Fund in compliance with either this section or Section 33487 shall satisfy the requirements of both sections in the year those taxes are deposited.

(c) Except as otherwise permitted by subdivisions (d) and (e), not less than 20 percent of the taxes allocated to the agency pursuant to Section 33670 from project areas specified in subdivision (b) for the 1985–86 fiscal year and each succeeding fiscal year shall be deposited into the Low and Moderate Income Housing Fund established pursuant to Section 33334.3 and used for the purposes set forth in Section 33334.2, unless the agency, by resolution, makes one of the findings described in paragraphs (1) to (3), inclusive, of subdivision (a) of Section 33334.2. Subdivisions (b) and (c) of Section 33334.2 apply if an agency makes any of those findings.

(d) In any fiscal year, the agency may deposit less than the amount required by subdivision (c) into the Low and Moderate Income Housing Fund if the agency finds that the difference between the amount deposited and the amount required by

subdivision (c) is necessary to make payments under existing obligations of amounts due or required to be committed, set aside, or reserved by the agency during that fiscal year and which are used by the agency for that purpose. For purposes of this section, "existing obligations" means the principal of, and interest on, loans, moneys advanced to, or indebtedness (whether funded, refunded, assumed, or otherwise) incurred by the agency to finance or refinance, in whole or in part, any redevelopment project existing on, and created prior to January 1, 1986, and contained on the statement of existing obligations adopted pursuant to subdivision (f). Obligations incurred on or after January 1, 1986, shall be deemed existing obligations for purposes of this section if the net proceeds are used to refinance existing obligations contained on the statement.

(e) In each fiscal year prior to July 1, 1996, the agency may deposit less than the amount required by subdivisions (c) and (d) into the Low and Moderate Income Housing Fund if the agency finds that the deposit of less than the amount required by those subdivisions is necessary in order to provide for the orderly and timely completion of public and private projects, programs, or activities approved by the agency prior to January 1, 1986, which are contained on the statement of existing programs adopted pursuant to subdivision (f). Approval of these projects, programs, and activities means approval by the agency of written documents which demonstrate an intent to implement a specific project, program, or activity and is not limited to final approval of a specific project, program, or activity.

(f) Any agency which deposits less than the amount required by subdivision (c) into the Low and Moderate Income Housing Fund pursuant to subdivision (d) or (e) shall adopt prior to September 1, 1986, by resolution, after a noticed public hearing, a statement of existing obligations or a statement of existing programs, or both.

(1) The agency shall prepare and submit the proposed statement to the legislative body and to the Department of Housing and Community Development prior to giving notice of the public hearing. Notice of the time and place of the public hearing shall be transmitted to the Department of Housing and Community Development at least 15 days prior to the public hearing and notice of the time and place of the public hearing shall be published in a newspaper of general circulation in the community once a week for at least two successive weeks prior to the public hearing. The legislative body shall maintain a record of the public hearing.

(2) A copy of the resolution adopted by the agency, together with any amendments to the statement of the agency, shall be transmitted to the Department of Housing and Community Development within 10 days following adoption of the resolution by the agency.

(3) A statement of existing obligations shall describe each existing obligation and, based upon the best available information, as determined by the agency, list the total amount of the existing obligation, the annual payments required to be made by the agency pursuant to the existing obligation, and the date the existing

obligation will be discharged in full.

(4) A statement of existing programs shall list the specific public and private projects, programs, or activities approved prior to January 1, 1986, which are necessary for the orderly completion of the redevelopment plan as it existed on January 1, 1986. No project, program, or activity shall be included on the statement of existing programs unless written evidence of the existence and approval of the project, program, or activity prior to January 1, 1986, is attached to the statement of existing programs.

(g) If, pursuant to subdivision (d) or (e), the agency deposits less than 20 percent of the taxes allocated to the agency pursuant to Section 33670 in any fiscal year in the Low and Moderate Income Housing Fund, the amount equal to the difference between 20 percent of the taxes allocated to the agency pursuant to Section 33670 for each affected project and the amount deposited that year shall constitute a deficit of the project. The agency shall adopt a plan to eliminate the deficit in subsequent years as determined by the agency.

(h) The obligations imposed by this section, including deficits, if any, created under this section, are hereby declared to be an indebtedness of the redevelopment project to which they relate, payable from taxes allocated to the agency pursuant to Section 33670, and shall constitute an indebtedness of the agency with respect to the redevelopment project until paid in full.

(i) In any litigation to challenge or attack a statement of existing obligations, the decision by the agency after the public hearing to include an existing obligation on the statement of existing obligations, or the decision by the agency after the public hearing to include a project, program, or activity on the statement of existing programs, the court shall uphold the action of the agency unless the court finds that the agency has abused its discretion. The Legislature finds and declares that this standard of review is necessary in order to protect against the possible impairment of existing obligations, programs, and activities because agencies with project areas adopted prior to January 1, 1977, have incurred existing obligations and have adopted projects, programs, and activities with the authority to receive and pledge the entire allocation of funds authorized by Section 33670.

SEC. 5. Section 33413 of the Health and Safety Code is amended to read:

33413. (a) Whenever dwelling units housing persons and families of low or moderate income are destroyed or removed from the low- and moderate-income housing market as part of a redevelopment project, the agency shall, within four years of the destruction or removal, rehabilitate, develop, or construct, or cause to be rehabilitated, developed, or constructed, for rental or sale to persons and families of low or moderate income, an equal number of replacement dwelling units at affordable housing cost within the territorial jurisdiction of the agency.

(b) (1) At least 30 percent of all new or rehabilitated dwelling units developed by an agency shall be available at affordable housing cost to persons and families of low or moderate income. Not less than 50 percent of the dwelling units required to be available at affordable housing cost to persons and families of low or moderate income shall be available at affordable housing cost to, and occupied by, very low income households.

(2) At least 15 percent of all new or rehabilitated dwelling units developed within the project area by public or private entities or persons other than the agency shall be available at affordable housing cost to persons and families of low or moderate income. Not less than 40 percent of the dwelling units required to be available at affordable housing cost to persons and families of low or moderate income shall be available at affordable housing cost to very low income households.

(3) The requirements of this subdivision shall apply independently of the requirements of subdivision (a) and in the aggregate to housing made available pursuant to paragraphs (1) and (2), respectively, and not to each individual case of rehabilitation, development, or construction of dwelling units.

(c) The agency shall require that the aggregate number of replacement dwelling units and other dwelling units rehabilitated, developed, or constructed pursuant to subdivision (a) or (b) remain available at affordable housing cost to persons and families of low income, moderate income, and very low income households, respectively, for the longest feasible time, as determined by the agency, but for not less than the period of the land use controls established in the redevelopment plan, except to the extent a longer period of time may be required by other provisions of law. If land on which those dwelling units are located is deleted from the project area, the agency shall continue to require that those units remain affordable as specified in the previous sentence. These requirements shall be made enforceable in the same manner as provided in subdivision (e) of Section 33334.3.

(d) (1) This section applies only to redevelopment projects for which a final redevelopment plan is adopted pursuant to Article 5 (commencing with Section 33360) on or after January 1, 1976, and to areas which are added to a project area by amendment to a final redevelopment plan adopted on or after January 1, 1976. In addition, subdivision (a) shall apply to any other redevelopment project with respect to dwelling units destroyed or removed from the low- and moderate-income housing market on or after January 1, 1996, irrespective of the date of adoption of a final redevelopment plan or an amendment to a final redevelopment plan adding areas to a project area. Additionally, any agency may, by resolution, elect to make all or part of the requirements of this section applicable to any redevelopment project of the agency for which the final redevelopment plan was adopted prior to January 1, 1976.

(2) An agency may, by resolution, elect to require that whenever

dwelling units housing persons or families of low or moderate income are destroyed or removed from the low- and moderate-income housing market as part of a redevelopment project, the agency shall replace each dwelling unit with up to two replacement dwelling units pursuant to subdivision (a).

(e) Except as otherwise authorized by law, this section does not authorize an agency to operate a rental housing development beyond the period reasonably necessary to sell or lease the housing development.

(f) Notwithstanding subdivision (a), the agency may replace destroyed or removed dwelling units with a fewer number of replacement dwelling units if the replacement dwelling units meet both of the following criteria:

(1) The total number of bedrooms in the replacement dwelling units equal or exceed the number of bedrooms in the destroyed or removed units. Destroyed or removed units having one or no bedroom are deemed for this purpose to have one bedroom.

(2) The replacement units are affordable to the same income level of households as the destroyed or removed units.

SEC. 6. Section 33418 is added to the Health and Safety Code, to read:

33418. (a) An agency shall monitor, on an ongoing basis, any housing affordable to persons and families of low or moderate income developed or otherwise made available pursuant to any provisions of this part. As part of this monitoring, an agency shall require owners or managers of the housing to submit an annual report to the agency. The annual reports shall include for each rental unit the rental rate and the income and family size of the occupants, and for each owner-occupied unit whether there was a change in ownership from the prior year and, if so, the income and family size of the new owners. The income information required by this section shall be supplied by the tenant in a certified statement on a form provided by the agency.

(b) The data specified in subdivision (a) shall be obtained by the agency from owners and managers of the housing specified therein and current data shall be included in any reports required by law to be submitted to the Department of Housing and Community Development or the Controller. The information on income and family size that is required to be reported by the owner or manager shall be supplied by the tenant and shall be the only information on income or family size that the owner or manager shall be required to submit on his or her annual report to the agency.

(c) The agency shall adequately fund its monitoring activities as needed to insure compliance of applicable laws and agreements in relation to affordable units. For purposes of defraying the cost of complying with the requirements of this section and the changes in reporting requirements of Section 33080.4 enacted by the act enacting this section, an agency may establish and impose fees upon owners of properties monitored pursuant to this section.

SEC. 7. Section 33501.5 is added to the Health and Safety Code, to read:

33501.5. In any judicial action specified in Section 33501 in which the validity of actions of the agency under Section 33334.2, 33334.3, or 33334.6 are in issue, the party initiating the judicial action or otherwise challenging the validity of those actions of the agency shall serve a copy of the complaint or answer alleging that invalidity upon the Director of Housing and Community Development within 10 days after filing that complaint or answer with the court. The court may render no judgment in the matter or provide other permanent or provisional relief to any party until proof of service of the Director of Housing and Community Development pursuant to this section has been submitted to the court. Nothing in this section shall be deemed to expand the scope of Section 33501.

SEC. 8. The amendments made by Sections 1 and 2 of this act in subdivision (a) of Section 25539.4 and subdivision (a) of Section 37364 of the Government Code do not constitute a change in, but are declaratory of, the existing law and reflect the intent of the Legislature that these sections apply to all cases where cities or counties subsidize the development of housing through a direct financial contribution which involves a write-down of land costs.

SEC. 9. Section 4.3 of this bill incorporates amendments to Section 33334.3 of the Health and Safety code proposed by both this bill and AB 3358. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1989, (2) each bill amends Section 33334.3 of the Health and Safety Code, and (3) this bill is enacted after AB 3358, in which case Section 4.2 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.

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## CHAPTER 1605

An act to add Section 53071.5 to the Government Code, and amend Sections 417, 417.2, and 12251 of, to add Section 12001.1 to, and to repeal Section 12550 of, the Penal Code, relating to crime.

[Approved by Governor September 30, 1988. Filed with Secretary of State September 30, 1988.]

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

SECTION 1. Section 53071.5 is added to the Government Code, to read:

53071.5. By the enforcement of this section, the Legislature

occupies the whole field of regulation of the manufacture, sale, or possession of imitation firearms, as defined in Section 417.2 of the Penal Code, and that section shall preempt and be exclusive of all regulations relating to the manufacture, sale or possession of imitation firearms, including regulations governing the manufacture, sale or possession of BB guns and air rifles described in Section 12001.1 of the Penal Code.

SEC. 1.5. Section 417 of the Penal Code is amended to read:

417. (a) (1) Every person who, except in self-defense, in the presence of any other person, draws or exhibits any deadly weapon whatsoever, other than a firearm, in a rude, angry or threatening manner, or who in any manner, unlawfully uses the same in any fight or quarrel is guilty of a misdemeanor punishable by imprisonment in the county jail for a term of not less than 30 days.

(2) Every person who, except in self-defense, in the presence of any other person, draws or exhibits any firearm, whether loaded or unloaded, in a rude, angry, or threatening manner, or who in any manner, unlawfully uses the same in any fight or quarrel is guilty of a misdemeanor punishable by imprisonment in the county jail for a term of not less than three months.

(b) Every person who, in the immediate presence of a peace officer, draws or exhibits any firearm, whether loaded or unloaded, in a rude, angry or threatening manner, and who knows or reasonably should know that the victim is a peace officer engaged in the performance of his or her duties, and that peace officer is engaged in the performance of his or her duties is guilty of a felony punishable by imprisonment in the county jail for a term of not less than nine months and not to exceed one year, or in the state prison.

As used in this section, "peace officers" refers to any person designated as a peace officer by Section 830.1, Section 830.2, subdivision (a) of Section 830.3, or Section 830.5.

SEC. 2. Section 417.2 of the Penal Code is amended to read:

417.2. (a) Every person who, except in self-defense, draws or exhibits a replica of a firearm in a threatening manner against another in such a way as to cause a reasonable person apprehension or fear of bodily harm is guilty of a misdemeanor punishable by imprisonment in the county jail for a term of not less than 30 days. As used in this subdivision, "a replica of a firearm" means any device with the apparent capability of expelling a projectile by the force of air or an explosion and which is reasonably perceived by the person against whom the device is drawn or exhibited to be an actual firearm, including starter pistols and air guns.

(b) Commencing January 1, 1989, any person who sells, manufactures, or distributes an imitation firearm in violation of this section shall be liable for a civil fine in an action brought by the city attorney of the city or the district attorney of the county of not more than ten thousand dollars ($10,000) for each violation.

As used in this section, "imitation firearm" means a replica of a firearm which is so substantially similar in physical properties to an

existing firearm as to lead a reasonable person to conclude that the replica is a firearm.

The manufacture, sale, or distribution of imitation firearms is permitted if the device is manufactured, sold, or distributed (1) solely for export in interstate or foreign commerce, (2) solely for lawful use in theatrical productions, including motion picture, television, and stage productions, (3) for use in a certified or regulated athletic event or competition, (4) for use in military or civil defense activities, or (5) for public displays authorized by public or private schools.

(c) As used in this section, "imitation firearm" does not include (1) a nonfiring collector's replica of an antique firearm which was designed prior to 1898, is historically significant, and is offered for sale in conjunction with a wall plaque or presentation case; or (2) a nonfiring collector's replica of a firearm which was designed after 1898, is historically significant, was issued as a commemorative by a nonprofit organization, and is offered for sale in conjunction with a wall plaque or presentation case.

SEC. 3. Section 12001.1 is added to the Penal Code, to read:

12001.1. Except for the purposes of Sections 12021, 12025, 12031, 12072, and 12073, as used in this title the term "firearm" shall also include any instrument which expels a metallic projectile, such as a BB or a pellet, through the force of air pressure, $CO_2$ pressure, or spring action or any spot marker gun, provided, that no instrument described in this section shall be considered a "pistol," "revolver," or "firearm capable of being concealed upon the person" for any purpose.

SEC. 4. Section 12550 of the Penal Code is repealed.

SEC. 5. Section 12551 of the Penal Code is amended to read:

12551. Every person who sells to a minor any firearm is guilty of a misdemeanor.

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.

# CHAPTER 1606

An act to amend Sections 202 and 203 of, and to add Section 214.05 to, the Revenue and Taxation Code, relating to taxation.

[Approved by Governor September 30, 1988. Filed with Secretary of State September 30, 1988.]

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

SECTION 1. Section 202 of the Revenue and Taxation Code is amended to read:

202. (a) The exemption of the following property is as specified in subdivisions (a), (b), (d), and (h) of Section 3 of Article XIII of the Constitution, except as otherwise provided in subdivision (a) of Section 11 thereof:

(1) Growing crops.

(2) Property used for free public libraries and free museums.

(3) Property used exclusively for public schools, community colleges, state colleges, and state universities, including the University of California.

(4) Property belonging to this state, a county, or a city. Property belonging to the State Compensation Insurance Fund is not property belonging to this state.

(b) The exemption described in paragraph (3) of subdivision (a) shall apply to off-campus facilities owned or leased by an apprenticeship program sponsor, if such facilities are used exclusively by the public schools for classes of related and supplemental instruction for apprentices or trainees which are conducted by the public schools under Chapter 4 (commencing with Section 3070) of Division 3 of the Labor Code.

(c) Without prejudice to the right to assert an exemption otherwise available under subdivision (a), (d), or (e) of Section 3 of Article XIII of the Constitution, a property tax under this division shall be imposed upon that portion of the bookstore property determined to be generating the unrelated business taxable income, as defined in Section 512 of the Internal Revenue Code, to the extent property is:

(1) Owned by an educational institution of collegiate grade or used by a nonprofit corporation operating a student bookstore affiliated with such an educational institution, and

(2) Is primarily devoted to bookstore use that produces income that is taxable as unrelated business taxable income.

This tax shall be determined by establishing a ratio of the unrelated business taxable income to the bookstore's gross income as defined by the Internal Revenue Code. That percent shall be the maximum percentage of such bookstore property on which a property tax can be levied.

At the end of a fiscal year when unrelated business income has

been generated, the nonprofit organization shall file with the assessor copies of the organization's most recent tax return filed with the Internal Revenue Service.

SEC. 2. Section 203 of the Revenue and Taxation Code is amended to read:

203. (a) The college exemption is as specified in subdivision (e) of Section 3 and Section 5 of Article XIII of the California Constitution.

(b) An educational institution of collegiate grade is an institution incorporated as a college or seminary of learning, which requires for regular admission the completion of a four-year high school course or its equivalent, and confers upon its graduates at least one academic or professional degree, based on a course of at least two years in liberal arts and sciences, or on a course of at least three years in professional studies, such as law, theology, education, medicine, dentistry, engineering, veterinary medicine, pharmacy, architecture, fine arts, commerce, or journalism.

(c) An educational institution of collegiate grade is not conducted for profit when it is conducted exclusively for scientific or educational purposes and no part of its net income inures to the benefit of any private person.

(d) Without prejudice to the right to assert an exemption otherwise available under subdivision (a), (d), or (e) of Section 3 of Article XIII of the Constitution, a property tax under this division shall be imposed upon that portion of the bookstore property determined to be generating the unrelated business taxable income, as defined in Section 512 of the Internal Revenue Code, to the extent property is:

(1) Owned by an educational institution of collegiate grade or used by a nonprofit corporation operating a student bookstore affiliated with such an educational institution, and

(2) Is primarily devoted to bookstore use that produces income that is taxable as unrelated business taxable income.

This tax shall be determined by establishing a ratio of the unrelated business taxable income to the bookstore's gross income as defined by the Internal Revenue Code. That percent shall be the maximum percentage of such bookstore property on which a property tax can be levied.

At the end of a fiscal year when unrelated business income has been generated, the nonprofit organization shall file with the assessor copies of the organization's most recent tax return filed with the Internal Revenue Service.

SEC. 3. Section 214.05 is added to the Revenue and Taxation Code, to read:

214.05. For purposes of Section 214:

(a) If the property of an organization is granted an exemption pursuant to Section 214, that property is deemed to be used exclusively for the organization's exempt purposes. However, to the extent that income derived from the organization's use of the

property is unrelated business taxable income, as defined in Section 512 of the Internal Revenue Code, and the regulations implementing that section, and is subject to the tax on unrelated business taxable income which is imposed by Section 511 of the Internal Revenue Code, the property shall be exempt from taxation under Section 214 only to the extent provided in subdivision (b) or (c).

(b) (1) If the use of property which has qualified for the welfare exemption under Section 214 involves activities of the organization, some of which produce income that is exempt from income or franchise taxation and some of which produce income that is taxable as unrelated business taxable income, and those activities are attributable to a reasonably ascertainable portion of the entire property, that portion of the property shall be entitled only to a partial exemption from property taxation equal to that proportion of the total value of the portion of the property which the amount of income of the organization that is exempt from income or franchise taxation and that is attributable to that portion bears to the total amount of income of the organization that is attributable to that portion. The remaining proportion of the total value of that portion of the property shall be subject to taxation pursuant to this division.

(2) If the use of property which has qualified for the welfare exemption under Section 214 involves activities of the organization, some of which are exempt for property tax purposes and produce no income and some of which produce income that is taxable as unrelated business taxable income, or produce both income that is taxable as unrelated business taxable income and income that is exempt from income or franchise taxation and those activities are attributable to a reasonably ascertainable portion of the entire property, that portion of the property shall be entitled only to a partial exemption equal to that proportion of the total value of the portion of the property which the amount of time actually devoted to those exempt nonincome-producing activities of the organization attributable to that portion bears to the total amount of time actually devoted to all of the activities of the organization attributable to that portion. The remaining proportion of the total value of that portion of the property shall be subject to taxation pursuant to this division.

(3) If the activities described in paragraphs (1) and (2) cannot be attributed to a reasonably ascertainable portion of the entire property, the entire property shall be entitled only to a partial exemption. In the case of activities of the organization described in paragraph (1), the partial exemption shall be equal to that proportion of the value of the entire property which the amount of income of the organization that is exempt from income or franchise taxation and that is attributable to the entire property bears to the total amount of income of the organization that is attributable to the entire property. In the case of activities of the organization described in paragraph (2), the partial exemption shall be equal to that proportion of the value of the entire property which the amount of time actually devoted to exempt nonincome-producing activities of

the organization attributable to the entire property bears to the total amount of time actually devoted to all of the activities of the organization attributable to the entire property. In either case, the remaining proportion of the total value of the entire property shall be subject to taxation pursuant to this division.

(c) Notwithstanding subdivision (b), if more than 75 percent of the income of an organization is attributable to property which has qualified for the welfare exemption under Section 214, but is not specifically related to the organization's use of particular property, the property shall be entitled only to a partial exemption equal to that proportion of the total value of the property which the amount of the income of the organization attributable to activities in this state and exempt from income or franchise taxation bears to the amount of total income of the organization that is attributable to activities in this state.

(d) Whenever property is claimed exempt under Section 214 and activities of the organization on the property produce unrelated business taxable income, as defined in Section 512 of the Internal Revenue Code, the organization, as a part of its claim for exemption, shall file with the assessor each of the following:

(1) The organization's information and tax returns filed with the Internal Revenue Service for its immediately preceding fiscal year.

(2) Information indicating the amount of time devoted to its income-producing and its nonincome-producing activities and, where applicable, a description of that portion of the property in which those activities are conducted.

(3) A statement listing the specific activities which produce the unrelated business taxable income.

(4) Whenever subdivision (c) is applicable, the amount of income of the organization that is attributable to activities in this state and is exempt from income or franchise taxation and the amount of total income of the organization that is attributable to activities in this state.

(5) Any other information as prescribed by the board.

(e) Nothing in this section shall be construed to enlarge the welfare exemption provided in Section 214.

SEC. 4. 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.

SEC. 5. 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.

SEC. 6. Notwithstanding Section 2229 of the Revenue and Taxation Code, the requirements of that section shall not apply to the exemption of property for purposes of ad valorem property taxation

made by this act. In addition, no appropriation is made by this act and the state shall not reimburse any local agency for any property tax revenues lost by it pursuant to this act.

SEC. 7. This act shall apply to property taxes levied for the 1989–90 fiscal year and fiscal years thereafter.

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## CHAPTER 1607

An act to amend Section 8610.5 of the Government Code, to amend Section 25400 of, to add Chapter 6.99 (commencing with Section 25572) to Division 20 of, and to repeal Article 4 (commencing with Section 25577) of Chapter 6.99 of Division 20 of, the Health and Safety Code, relating to radiation, and making an appropriation therefor.

[Approved by Governor September 30, 1988. Filed with Secretary of State September 30, 1988.]

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

SECTION 1. Section 8610.5 of the Government Code is amended to read:

8610.5. The Office of Emergency Services, in consultation with the State Department of Health Services and affected counties, shall investigate the consequences of a serious nuclear powerplant accident for each of the four nuclear powerplants in California with a generating capacity of 50 megawatts or more. This study, to be completed within six months of the effective date of this section, shall include the preparation of specific site maps showing the areas likely to be affected by such an accident. These maps shall delineate Emergency Planning Zones, which shall reflect inhalation, ingestion, and other radiation pathways.

A similar study shall be made by the office for any subsequent nuclear powerplant with a generating capacity of 50 megawatts or more proposed for certification in California.

The Office of Emergency Services shall revise its Nuclear Power Plant Emergency Response Plan to reflect the information provided in the study. The Office of Emergency Services shall assist local authorities in preparing or upgrading their emergency response plans to reflect its new planning guidelines. The state plan shall be updated within six months after the study has been made. Local plans shall be updated and approved by the Office of Emergency Services in accordance with the following: (1) an initial draft plan shall be submitted to the office within six months after the study has been made, and (2) a final plan shall be completed, reviewed, and approved within 18 months after the effective date of this section. Neither the state plan nor any local plan shall become effective or be implemented until approved by the Office of Emergency

Services of this state or the Federal Emergency Management Agency.

The current State Nuclear Power Plant Emergency Response Plan shall continue in full force and effect unless and until revised pursuant to this section. Local plans shall remain in full force and effect unless and until revised pursuant to this section.

It is the intent of the Legislature that state and local costs related to carrying out the provisions of this section which are not reimbursed by federal funds shall be borne by the utility with existing nuclear powerplants having a generating capacity of 50 megawatts or more. The Public Utilities Commission shall develop and transmit to the Office of Emergency Services an equitable method of assessing the utilities operating the powerplants for their reasonable pro rata share of state agency costs. Each local agency involved shall submit a statement of its costs in such manner as the Office of Emergency Services shall require. Upon each utility's notification by the Office of Emergency Services, from time to time, of the amount of its share of the actual or anticipated state and local agency costs, the utility shall pay such amount to the Controller for deposit in the Nuclear Planning Assessment Special Account, which is hereby created in the General Fund for use by the Controller, upon appropriation by the Legislature, to carry out this section, and, upon appropriation by the Legislature, to carry out the purposes of Chapter 6.99 (commencing with Section 25572) of Division 20 of the Health and Safety Code. The Controller shall pay from this account the state and local costs relative to carrying out the provisions of this section and Chapter 6.99 (commencing with Section 25572) of Division 20 of the Health and Safety Code, upon certification thereof by the Office of Emergency Services. Each utility operating a nuclear powerplant shall, within one month of the effective date of this section, pay to the Controller for deposit into the Nuclear Planning Assessment Special Account the sum of twenty-five thousand dollars ($25,000) for each nuclear powerplant for the purpose of funding initial planning costs. Upon repeal of this section, any amounts remaining in the special account shall be refunded pro rata to the utilities contributing thereto. Commencing on the effective date of the amendment of this section during the 1988 portion of the 1987–88 Regular Session of the Legislature, the total annual reimbursement of state costs from the utilities operating the nuclear powerplants within the state pursuant to this section shall not exceed the lesser of the actual costs or nine hundred thirty-seven thousand dollars ($937,000) annually to be shared equally among the utilities. Commencing on January 1, 1989, the total annual reimbursement of local costs from privately owned utilities shall not exceed the lesser of the actual costs or two hundred fifty thousand dollars ($250,000) per reactor unit annually and from publicly owned utilities shall not exceed the lesser of the actual costs or four hundred fifty thousand dollars ($450,000) per reactor unit annually. Of the nine hundred thirty-seven thousand dollars ($937,000) for state costs,

three hundred seventy-five thousand dollars ($375,000) are in support of an annual interagency agreement between the Office of Emergency Services and the State Department of Health Services for activities of the department pursuant to this section and Chapter 6.99 (commencing with Section 25572) of Division 20 of the Health and Safety Code, three hundred thousand dollars ($300,000) are in support of the Office of Emergency Services for activities pursuant to this section, and two hundred sixty-two thousand dollars ($262,000) are in support of the Office of Emergency Services for activities pursuant to Chapter 6.99 (commencing with Section 25572) of Division 20 of the Health and Safety Code. Of the two hundred fifty thousand dollars ($250,000) per reactor unit annually for local costs, paid by privately owned utilities, up to one hundred fifty thousand dollars ($150,000) per reactor unit are in support of activities pursuant to this section and up to one hundred thousand dollars ($100,000) per reactor unit are in support of local activities pursuant to Chapter 6.99 (commencing with Section 25572) of Division 20 of the Health and Safety Code. The amounts paid by privately owned utilities under this section shall be allowed for ratemaking purposes by the Public Utilities Commission. Publicly owned public utilities may include amounts paid under this section in their rates.

The amounts specified in this section shall be adjusted each fiscal year by the percentage increase in the California Consumer Price Index for the previous calendar year.

This section shall remain in effect only until January 1, 1994, and as of that date is repealed, unless a later enacted statute which is chaptered on or before January 1, 1994, deletes or extends that date.

SEC. 2. Section 25400 of the Health and Safety Code is amended to read:

25400. (a) The Legislature finds and declares that a threat to the public health and safety exists wherever there is a discharge, spill, or presence of hazardous substances on public or private property; and that public entities, county public health directors, public safety employees, members of radiation emergency screening teams formed pursuant to Section 25574, persons authorized by a public entity, or registered sanitarian employees should be encouraged to abate those hazards, and to that end a qualified immunity from liability should be provided for public entities, county public health directors, public safety employees, members of radiation emergency screening teams formed pursuant to Section 25574, persons authorized by a public entity, or registered sanitarian employees.

(b) Except as provided in Article 1 (commencing with Section 17000) of Chapter 1 of Division 9 of the Vehicle Code, a public entity, county public health director, a public safety employee, a member of a radiation emergency screening team formed pursuant to Section 25574, a person authorized by a public entity, or a registered sanitarian employee shall not be liable for any injury caused by an action taken by a county public health director, a public safety

employee, a member of a radiation emergency screening team formed pursuant to Section 25574, a person authorized by a public entity, or a registered sanitarian employee acting within the scope of employment to abate or attempt to abate hazards reasonably believed to be an imminent peril to public health and safety caused by the discharge, spill, or presence of a hazardous substance, unless the action taken was performed in bad faith or in a grossly negligent manner.

(c) For the purposes of this section, it shall be presumed that the action was performed in good faith and without gross negligence. This presumption shall be one affecting the burden of proof.

(d) For the purposes of this section, "hazardous substance" means a substance that presents a threat to the public because of its toxicity, radioactivity, flammability, or other characteristic dangerous to the public health or the environment.

(e) For the purposes of this section, a "registered sanitarian employee" means a person who is registered pursuant to Section 520 and who is a paid employee of a state or local public entity.

(f) It is not the intent of this section to impair any cause of action against the person, firm, or entity creating the spill, discharge, or presence of the hazardous material giving rise to the response of the public entity, county public health director, public safety employee, member of a radiation screening team formed pursuant to Section 25574, person authorized by a public entity, or registered sanitarian employee.

(g) The immunity for county public health directors or registered sanitarian employees provided by this section shall apply only where the person, at the request of a public entity or public safety employee in charge of scene management, provides emergency assistance or advice at the scene of the peril in mitigating or attempting to mitigate the effects of an actual or threatened discharge, spill, or presence of a hazardous substance on private or public property. The request issued by the scene manager shall be confirmed by that person in a written report of the incident.

SEC. 2.5. Section 25400 of the Health and Safety Code is amended to read:

25400. (a) The Legislature finds and declares that a threat to the public health and safety exists wherever there is a discharge, spill, or presence of hazardous substances on public or private property; and that public entities, county public health directors, public safety employees, members of radiation emergency screening teams formed pursuant to Section 25574, persons authorized by a public entity, or registered sanitarian employees should be encouraged to abate those hazards, and to that end a qualified immunity from liability should be provided for public entities, county public health directors, public safety employees, members of radiation emergency screening teams formed pursuant to Section 25574, persons authorized by a public entity, or registered sanitarian employees.

(b) Except as provided in Article 1 (commencing with Section

17000) of Chapter 1 of Division 9 of the Vehicle Code, a public entity, county public health director, a public safety employee, a member of a radiation emergency screening team formed pursuant to Section 25574, a person authorized by a public entity, or a registered sanitarian employee shall not be liable for any injury caused by an action taken by a county public health director, a public safety employee, a member of a radiation emergency screening team formed pursuant to Section 25574, a person authorized by a public entity, or a registered sanitarian employee acting within the scope of employment to abate or attempt to abate hazards reasonably believed to be an imminent peril to public health and safety caused by the discharge, spill, or presence of a hazardous substance, unless the action taken was performed in bad faith or in a grossly negligent manner.

(c) For the purposes of this section, it shall be presumed that the action was performed in good faith and without gross negligence. This presumption shall be one affecting the burden of proof.

(d) For the purposes of this section, "hazardous substance" means a substance that presents a threat to the public because of its toxicity, radioactivity, flammability, or other characteristic dangerous to the public health or the environment.

(e) For purposes of this section, "public safety employee" means any person who is a public entity employee and whose principal duties include law enforcement, fire protection, fire prevention, or the enforcement of regulations relating to facilities or sites where hazardous substances are stored or handled.

(f) For the purposes of this section, a "registered sanitarian employee" means a person who is registered pursuant to Section 520 and who is a paid employee of a state or local public entity.

(g) It is not the intent of this section to impair any cause of action against the person, firm, or entity creating the spill, discharge, or presence of the hazardous material giving rise to the response of the public entity, county public health director, public safety employee, member of a radiation screening team formed pursuant to Section 25574, person authorized by a public entity, or registered sanitarian employee.

(h) The immunity for county public health directors or registered sanitarian employees provided by this section shall apply only where the person, at the request of a public entity or public safety employee in charge of scene management, provides emergency assistance or advice at the scene of the peril in mitigating or attempting to mitigate the effects of an actual or threatened discharge, spill, or presence of a hazardous substance on private or public property. The request issued by the scene manager shall be confirmed by that person in a written report of the incident.

SEC. 3. The Task Force on California Nuclear Emergency Response was established by Senate Resolution 48 of 1986, to "formulate a report on the State of California's present medical and emergency response capacity in the event a major nuclear facility

accident, including recommendations as to how the state might improve this capacity and limit damage from, or minimize exposure to, radiation in the event of such an accident."

In 1987, the task force reviewed emergency response plans for the state's nuclear power facilities, heard testimony at public hearings held near each of the state's three nuclear power facilities, and reviewed data emerging from the Chernobyl nuclear accident.

The task force recommendations are followed in the Radiation Protection Act of 1988, Chapter 6.99 (commencing with Section 25572) of Division 20 of the Health and Safety Code, as enacted by Section 2 of this act.

SEC. 4. Chapter 6.99 (commencing with Section 25572) is added to Division 20 of the Health and Safety Code, to read:

## CHAPTER 6.99. THE RADIATION PROTECTION ACT OF 1988

### Article 1. General Provisions

25572. This chapter shall be known and may be cited as the Radiation Protection Act of 1988.

25573. As used in this chapter:

(a) "Department" means the State Department of Health Services.

(b) "Office" means the Governor's Office of Emergency Services.

### Article 2. Responsibilities of the Department

25574. The department shall do all of the following:

(a) Develop plans to implement additional communication systems, in addition to those in operation on January 1, 1989, which would allow the department to quickly disseminate public health information to local governments, physicians, the media, relevant state agencies, and any other entity likely to need this information in the recovery/reentry phase of a nuclear powerplant emergency.

(b) Develop executive order guidelines for, and establish, by June 30, 1989, a radiation emergency screening team. The guidelines for the team shall meet, but not be limited to, the following requirements:

(1) The team shall be available on immediate notice to travel to the scene of a major radiation accident.

(2) The team shall have the responsibility of assisting other emergency response agencies or persons, or both, in making decisions regarding initial patient management and casualty evacuation.

(3) The team shall be comprised of three persons.

(4) The team shall include individuals with expertise in medicine, radiation biology, radiation casualty management, emergency preparedness and disaster response, public health, and government organization and responsibilities.

(5) There shall be a designation of individuals who will serve as backup for members of the team who are unable to immediately respond to a radiation emergency.

(c) Develop, on or before June 30, 1989, guidelines for the designation of one or more medical facilities which would be capable of managing and caring for casualties caused by a nuclear powerplant accident. The facilities shall have the capability:

(1) To provide radiologic and microbiologic isolation, as prescribed by regulations adopted by the department for 10 to 25 casualties.

(2) For radioactivity measurements.

(3) To quickly mobilize and augment the treatment staff to care for a sudden influx of casualties.

(d) In developing the guidelines, incorporate input from other relevant groups or organizations, such as the California Conference of Local Health Officers, the California Medical Association, the California Association of Hospitals, and the University of California medical facilities.

(e) Consider in the guidelines geographic locations, and provide for expertise in hematology, burns, radiation biology, and critical and supportive care.

(f) Designate facilities, in accordance with the guidelines developed pursuant to subdivision (d), on or before December 31, 1989.

(g) The department shall establish an information catalogue of food, water, and animal resources for the 50-mile Ingestion Pathway Zone around the San Onofre, Diablo Canyon, and Rancho Seco nuclear generating stations. The department shall update the catalogue annually.

(h) The department shall establish Protective Action Guidelines for the Ingestion Pathway Zone, consistent with the recommendations of the International Commission on Radiation Protection and the National Council on Radiation Protection.

(i) The department shall establish measurement standards and procedures to assess radioactivity in food, water, and animals which are compatible with the Environmental Protection Agency's standards and procedures.

(j) The department shall be responsible for ensuring that ingestion pathway and recovery/reentry systems plans are developed and ready to be implemented, including necessary training, in coordination with affected counties and the Office of Emergency Services. The department shall update the plans when necessary.

25575. It is the intent of the Legislature to provide necessary funding for medical facilities designated by the department, in order to commence the planning necessary to enable each facility to be an effective receiving center for casualties from a nuclear powerplant accident.

Article 3. Responsibilities of Entities Providing Utilities

25576. Any public or private utility providing public utilities, which operates nuclear generating facilities, in respect to the emergency information booklets that the utilities distribute to residents within an Emergency Planning Zone (EPZ) established pursuant to Section 8610.5 of the Government Code, shall make the following additions to the materials, when these materials are revised, no later than December 31, 1989, and in each revision thereafter:

(a) A discussion of the reasons why a person should not do any of the following:

(1) Evacuate immediately upon hearing the nuclear emergency alert sirens.

(2) Call local police, fire, or sheriff offices during a nuclear emergency.

(3) Attempt to pickup children at school during a nuclear emergency.

(b) A tear-out/send-back form in the Emergency Planning Zone materials for physicians who wish to become better acquainted with the protective actions they should recommend to their patients during a nuclear powerplant emergency. Those physicians who send in the form shall be provided, by the utility, with more detailed information than provided to the general public, in the form of any existing pamphlets, booklets, or other relevant existing materials, or given the opportunity to participate in seminars on the subject, or both.

(c) A notice in the Public Education Zone materials which allows physicians to request similar information or given the opportunity to participate in seminars on the subject.

(d) A notice which advises the public that they may send comments on the emergency plan to the office, for consideration by the Citizens Advisory Committee on Nuclear Emergency Planning.

Article 4. Citizens Advisory Committee on Emergency Planning

25577. The Citizens Advisory Committee on Nuclear Emergency Planning is hereby established. The committee shall do all of the following:

(a) Assess whether emergency information materials convey information and recommendations that the public will be inclined to follow in an emergency.

(b) Solicit and receive, on a regular basis, public comment regarding the adequacy of nuclear powerplant emergency response plans.

(c) Assess the validity of assumptions in nuclear emergency response plans that are related to citizen response. For example, the committee shall assess whether it is a valid assumption that parents will not pick up their children from school during an emergency.

(d) Examine the feasibility of allowing citizen observation in nuclear emergency response exercises.

(e) Assess whether efforts should be made to provide nuclear powerplant emergency information materials to non-English-speaking populations within the zone.

(f) Assess the need for additional information for special response personnel, such as bus drivers and teachers.

(g) Commencing January 1, 1990, provide an annual report to the director of the office and any joint committee and Senate and Assembly policy committee with jurisdiction over emergency and disaster services with site-specific recommendations, consistent with this section, on how the emergency plans may be improved.

25578. (a) The committee shall have nine members, including the following:

(1) The Governor shall appoint one member who is an employee of a utility which operates a nuclear power facility, one member who is a certified health physicist with experience in radiation risk and communications, and one public member who resides in the San Onofre Emergency Planning Zone.

(2) The Senate Rules Committee shall appoint one member who is a physician and surgeon familiar with nuclear emergency procedures, one member who is an employee of a local government jurisdiction which participates in the development and implementation of nuclear emergency response plans, and one public member who resides in the Diablo Canyon Emergency Planning Zone.

(3) The Speaker of the Assembly shall appoint one member from a known environmental organization familiar with nuclear issues, one public member who resides in the Rancho Seco Emergency Planning Zone, and one member who is a licensed psychologist or psychiatrist in human behavior with at least a graduate degree in psychology.

(b) The committee shall not have the authority to prevent emergency planning materials from being distributed.

(c) The committee shall receive reimbursement from the state for expenses authorized in advance by the office.

(d) The office shall provide support staff to the committee.

25579. This article shall remain in effect only until December 31, 1991, and as of that date is repealed, unless a later enacted statute, which is enacted before December 31, 1991, deletes or extends that date.

## Article 5. Local Jurisdictions

25581. The Interjurisdictional Planning Committee for the San Onofre nuclear emergency response plan, shall appoint a chairperson who will be a discussion leader and decisionmaking facilitator during a nuclear powerplant accident.

25581.5. Any local jurisdiction within an Emergency Planning

Zone, with responsibility to conduct nuclear response planning, shall annually provide nuclear emergency training to individuals within that zone who may be responsible for an evacuation or sheltering action, including, but not limited to, public school teachers, bus drivers, peace officers, public works officials, and fire officials.

Article 6. Responsibilities of the Office of Emergency Services

25582. The office shall do all of the following:

(a) When the Emergency Broadcast System is activated within an Emergency Planning Zone during a nuclear powerplant emergency, notify counties adjacent to the Emergency Planning Zone and provide these counties with details of the emergency.

(b) Exercise explicit, ultimate authority for allocating funds from the Nuclear Planning Assessment Special Account to local jurisdictions. Purposes for which the office may approve reimbursement include expenditures related to equipment which is used by local jurisdictions primarily for nuclear powerplant emergency planning and response activities, prorated according to the percentage of use for these activities.

(c) Ensure that counties within the Public Education Zones have a primary and backup communications capability with the county emergency operations centers located within the Emergency Planning Zones.

(d) Consider, along with the local jurisdictions and the utilities, that emergency response personnel, as well as the public, may respond differently to a nuclear powerplant emergency than to a naturally occurring emergency, and to take this difference into account when developing training and education programs for nuclear powerplant emergencies.

(e) Participate in exercises of the state's nuclear emergency response plan at least once a year to ensure that state personnel are adequately trained to respond in the event of an actual emergency. The exercises shall include the department and other relevant state agencies and the office shall activate the State Operations Center of the office for each exercise.

(f) In cooperation with local emergency response authorities and utilities operating nuclear power facilities, evaluate the primary and backup communications systems mandated by federal requirements for nuclear emergency response plans. If the office determines that a primary or backup communications system does not meet those requirements, the office shall report this determination to the utility and to the Federal Emergency Management Agency.

(g) Investigate the feasibility, costs, and possible funding mechanisms for providing programmable transceivers for emergency response vehicles that may have to respond to a nuclear powerplant emergency. The office shall report to the director of the office and any joint committee and Senate and Assembly policy committee with jurisdiction over emergency and disaster services its

findings and recommendations by December 31, 1989.

(h) Commencing January 1, 1990, annually prepare and submit a report to any joint committee and Senate and Assembly policy committee with jurisdiction over emergency and disaster services which includes all of the following:

(1) A description of the purpose of all nuclear emergency response exercises in the state involving local and state authorities.

(2) A description of the office's role in each exercise.

(3) An accounting of revenues spent from the Nuclear Planning Assessment Special Account from each utility, a description of expenditures of special account funds by each jurisdiction and the state, and explanations for any denied funding requests.

(4) A description of all nuclear emergency response training and education efforts undertaken by the office, and identification of any additional training and education needs of state and local agencies, including specific reference to any agency that has not demonstrated adequate training of management and line personnel.

(5) Recommendations consistent with this section.

Article 7. Responsibilities of Other Agencies

25583. The Department of Transportation shall include within its criteria for funding repair and construction projects the need for adequate emergency evacuation routes.

25584. State and local law enforcement agencies shall ensure that traffic flow plans for areas outside the Emergency Planning Zones adequately reflect the possible evacuation of residents outside the Emergency Planning Zones. State and local law enforcement agencies shall ensure that traffic flow plans take into consideration that some evacuation routes may be impassable under certain weather conditions and that these agencies should have plans for designating alternative routes.

25585. State law enforcement agencies shall ensure that officers who may be needed to respond during a nuclear powerplant emergency receive the necessary training, as well as refresher courses at least once per year.

SEC. 4.5. Section 2.5 of this bill incorporates amendments to Section 25400 of the Health and Safety Code proposed by both this bill and AB 4123. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1989, (2) each bill amends Section 25400 of the Health and Safety Code, and (3) this bill is enacted after AB 4123, in which case Section 2 of this bill shall not become operative.

SEC. 5. The sum of one million, five hundred thirty-seven thousand dollars ($1,537,000) is hereby appropriated to the Governor's Office of Emergency Services from the Nuclear Planning Assessment Special Account in the General Fund, for allocation pursuant to Section 8610.5 of the Government Code and Chapter 6.99 (commencing with Section 25572) of Division 20 of the Health and

Safety Code.

SEC. 6. 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.

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## CHAPTER 1608

An act to amend Sections 1250 and 1250.1 of, and to add Section 1250.4 to, the Health and Safety Code, to amend Sections 3057 and 6261 of the Penal Code, to amend Section 1753.3 of the Welfare and Institutions Code, and to amend Section 1.5 of Chapter 1435 of the Statutes of 1987, relating to correctional institutions.

[Approved by Governor September 30, 1988. Filed with Secretary of State September 30, 1988.]

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

SECTION 1. Section 1250 of the Health and Safety Code is amended to read:

1250. As used in this chapter, "health facility" means any facility, place, or building which is organized, maintained, and operated for the diagnosis, care, prevention, and treatment of human illness, physical or mental, including convalescence and rehabilitation and including care during and after pregnancy, or for any one or more of these purposes, for one or more persons, to which the persons are admitted for a 24-hour stay or longer, and includes the following types:

(a) "General acute care hospital" means a health facility having a duly constituted governing body with overall administrative and professional responsibility and an organized medical staff which provides 24-hour inpatient care, including the following basic services: medical, nursing, surgical, anesthesia, laboratory, radiology, pharmacy, and dietary services. A general acute care hospital may include more than one physical plant maintained and operated on separate premises as provided in Section 1250.8. A general acute care hospital which exclusively provides acute medical rehabilitation center services, including at least physical therapy, occupational therapy, and speech therapy, may provide for the required surgical and anesthesia services through a contract with another acute care hospital. In addition, a general acute care hospital which, on July 1, 1983, provided required surgical and anesthesia services through a contract or agreement with another acute care hospital may continue to provide these surgical and anesthesia services through a

contract or agreement with an acute care hospital.

(b) "Acute psychiatric hospital" means a health facility having a duly constituted governing body with overall administrative and professional responsibility and an organized medical staff which provides 24-hour inpatient care for mentally disordered, incompetent, or other patients referred to in Division 5 (commencing with Section 5000) or Division 6 (commencing with Section 6000) of the Welfare and Institutions Code, including the following basic services: medical, nursing, rehabilitative, pharmacy, and dietary services.

(c) "Skilled nursing facility" means a health facility which provides skilled nursing care and supportive care to patients whose primary need is for availability of skilled nursing care on an extended basis.

(d) "Intermediate care facility" means a health facility which provides inpatient care to ambulatory or nonambulatory patients who have recurring need for skilled nursing supervision and need supportive care, but who do not require availability of continuous skilled nursing care.

(e) "Intermediate care facility/developmentally disabled habilitative" means a facility with a capacity of four to 15 beds which provides 24-hour personal care, habilitation, developmental, and supportive health services to 15 or fewer developmentally disabled persons who have intermittent recurring needs for nursing services, but have been certified by a physician as not requiring availability of continuous skilled nursing care.

(f) "Special hospital" means a health facility having a duly constituted governing body with overall administrative and professional responsibility and an organized medical or dental staff which provides inpatient or outpatient care in dentistry or maternity.

(g) "Intermediate care facility/developmentally disabled" means a facility which provides 24-hour personal care, habilitation, developmental, and supportive health services to developmentally disabled clients whose primary need is for developmental services and who have a recurring but intermittent need for skilled nursing services.

(h) "Intermediate care facility/developmentally disabled—nursing" means a facility with a capacity of four to 15 beds which provides 24-hour personal care, developmental services, and nursing supervision for developmentally disabled persons who have intermittent recurring needs for skilled nursing care but have been certified by a physician as not requiring continuous skilled nursing care. The facility shall serve medically fragile persons who have developmental disabilities or demonstrate significant developmental delay that may lead to a developmental disability if not treated.

(i) "Congregate living health facility" means a residential home with a capacity of no more than six beds, which provides inpatient care to mentally alert, physically disabled residents, who may be

ventilator dependent, and which provides the following basic services: medical supervision, 24-hour skilled nursing and supportive care to residents, including ventilator assisted or dependent residents, all of whom would otherwise require long-term institutional care without this licensure classification and who no longer require care in an acute care facility, as determined by their physicians.

(j) (1) "Correctional treatment center" means a health facility operated by the Department of Corrections, the Department of the Youth Authority, or a county, city, or city and county law enforcement agency which, as determined by the state department, provides outpatient health services, in addition to inpatient health services, to that portion of the inmate population who do not require a general acute care level of basic services. This definition shall not apply to those areas of a city, county, or city and county law enforcement facility which houses inmates or wards that may be receiving outpatient services and are housed separately for reasons of security and protection. The health services provided by a correctional treatment center shall include, but are not limited to, all of the following basic services: physician, psychiatrist, psychologist, nursing, pharmacy, dental, and dietary. A correctional treatment center may provide the following services: laboratory, radiology, perinatal, and any other services approved by the state department.

(2) Outpatient surgical care with anesthesia may be provided, if the correctional treatment center meets the same requirements as a surgical clinic licensed pursuant to Section 1204, with the exception of the requirement that patients remain less than 24 hours.

(3) Correctional treatment centers shall maintain written service agreements with general acute care hospitals to provide for those inmate physical health needs that cannot be met by the correctional treatment center.

(4) Physician and surgeon services shall be readily available in a correctional treatment center on a 24-hour basis.

(5) It is not the intent of the Legislature to have a correctional treatment center supplant the facilities at the California Medical Facility, the California Men's Colony, and the California Institution for Men which were in the process of licensure in 1987.

(6) This subdivision shall remain operative only until January 1, 1993.

SEC. 1.1. Section 1250 of the Health and Safety Code is amended to read:

1250. As used in this chapter, "health facility" means any facility, place, or building which is organized, maintained, and operated for the diagnosis, care, prevention, and treatment of human illness, physical or mental, including convalescence and rehabilitation and including care during and after pregnancy, or for any one or more of these purposes, for one or more persons, to which the persons are admitted for a 24-hour stay or longer, and includes the following types:

(a) "General acute care hospital" means a health facility having a duly constituted governing body with overall administrative and professional responsibility and an organized medical staff which provides 24-hour inpatient care, including the following basic services: medical, nursing, surgical, anesthesia, laboratory, radiology, pharmacy, and dietary services. A general acute care hospital may include more than one physical plant maintained and operated on separate premises as provided in Section 1250.8. A general acute care hospital which exclusively provides acute medical rehabilitation center services, including at least physical therapy, occupational therapy, and speech therapy, may provide for the required surgical and anesthesia services through a contract with another acute care hospital. In addition, a general acute care hospital which, on July 1, 1983, provided required surgical and anesthesia services through a contract or agreement with another acute care hospital may continue to provide these surgical and anesthesia services through a contract or agreement with an acute care hospital.

(b) "Acute psychiatric hospital" means a health facility having a duly constituted governing body with overall administrative and professional responsibility and an organized medical staff which provides 24-hour inpatient care for mentally disordered, incompetent, or other patients referred to in Division 5 (commencing with Section 5000) or Division 6 (commencing with Section 6000) of the Welfare and Institutions Code, including the following basic services: medical, nursing, rehabilitative, pharmacy, and dietary services.

(c) "Skilled nursing facility" means a health facility which provides skilled nursing care and supportive care to patients whose primary need is for availability of skilled nursing care on an extended basis.

(d) "Intermediate care facility" means a health facility which provides inpatient care to ambulatory or nonambulatory patients who have recurring need for skilled nursing supervision and need supportive care, but who do not require availability of continuous skilled nursing care.

(e) "Intermediate care facility/developmentally disabled habilitative" means a facility with a capacity of four to 15 beds which provides 24-hour personal care, habilitation, developmental, and supportive health services to 15 or fewer developmentally disabled persons who have intermittent recurring needs for nursing services, but have been certified by a physician as not requiring availability of continuous skilled nursing care.

(f) "Special hospital" means a health facility having a duly constituted governing body with overall administrative and professional responsibility and an organized medical or dental staff which provides inpatient or outpatient care in dentistry or maternity.

(g) "Intermediate care facility/developmentally disabled" means a facility which provides 24-hour personal care, habilitation,

developmental, and supportive health services to developmentally disabled clients whose primary need is for developmental services and who have a recurring but intermittent need for skilled nursing services.

(h) "Intermediate care facility/developmentally disabled—nursing" means a facility with a capacity of four to 15 beds which provides 24-hour personal care, developmental services, and nursing supervision for developmentally disabled persons who have intermittent recurring needs for skilled nursing care but have been certified by a physician as not requiring continuous skilled nursing care. The facility shall serve medically fragile persons who have developmental disabilities or demonstrate significant developmental delay that may lead to a developmental disability if not treated.

(i) "Congregate living health facility" means a residential home with a capacity of no more than six beds, which provides inpatient care to mentally alert, physically disabled residents, who may be ventilator dependent, and which provides the following basic services: medical supervision, 24-hour skilled nursing and supportive care to residents, including ventilator assisted or dependent residents, all of whom would otherwise require long-term institutional care without this licensure classification and who no longer require care in an acute care facility, as determined by their physicians.

(j) (1) "Correctional treatment center" means a health facility operated by the Department of Corrections, the Department of the Youth Authority, or a county, city, or city and county law enforcement agency which, as determined by the state department, provides outpatient health services, in addition to inpatient health services, to that portion of the inmate population who do not require a general acute care level of basic services. This definition shall not apply to those areas of a city, county, or city and county law enforcement facility which houses inmates or wards that may be receiving outpatient services and are housed separately for reasons of security and protection. The health services provided by a correctional treatment center shall include, but are not limited to, all of the following basic services: physician, psychiatrist, psychologist, nursing, pharmacy, dental, and dietary. A correctional treatment center may provide the following services: laboratory, radiology, perinatal, and any other services approved by the state department.

(2) Outpatient surgical care with anesthesia may be provided, if the correctional treatment center meets the same requirements as a surgical clinic licensed pursuant to Section 1204, with the exception of the requirement that patients remain less than 24 hours.

(3) Correctional treatment centers shall maintain written service agreements with general acute care hospitals to provide for those inmate physical health needs that cannot be met by the correctional treatment center.

(4) Physician and surgeon services shall be readily available in a correctional treatment center on a 24-hour basis.

(5) It is not the intent of the Legislature to have a correctional treatment center supplant the facilities at the California Medical Facility, the California Men's Colony, and the California Institution for Men which were in the process of licensure in 1987.

(6) This subdivision shall remain operative only until January 1, 1993.

(k) AIDS hospice facility, as defined in Chapter 9 (commencing with Section 1750).

(*l*) AIDS residential intermediate care facility, as defined in Chapter 9 (commencing with Section 1750).

SEC. 1.2. Section 1250 of the Health and Safety Code is amended to read:

1250. As used in this chapter, "health facility" means any facility, place, or building which is organized, maintained, and operated for the diagnosis, care, prevention, and treatment of human illness, physical or mental, including convalescence and rehabilitation and including care during and after pregnancy, or for any one or more of these purposes, for one or more persons, to which the persons are admitted for a 24-hour stay or longer, and includes the following types:

(a) "General acute care hospital" means a health facility having a duly constituted governing body with overall administrative and professional responsibility and an organized medical staff which provides 24-hour inpatient care, including the following basic services: medical, nursing, surgical, anesthesia, laboratory, radiology, pharmacy, and dietary services. A general acute care hospital may include more than one physical plant maintained and operated on separate premises as provided in Section 1250.8. A general acute care hospital which exclusively provides acute medical rehabilitation center services, including at least physical therapy, occupational therapy, and speech therapy, may provide for the required surgical and anesthesia services through a contract with another acute care hospital. In addition, a general acute care hospital which, on July 1, 1983, provided required surgical and anesthesia services through a contract or agreement with another acute care hospital may continue to provide these surgical and anesthesia services through a contract or agreement with an acute care hospital.

(b) "Acute psychiatric hospital" means a health facility having a duly constituted governing body with overall administrative and professional responsibility and an organized medical staff which provides 24-hour inpatient care for mentally disordered, incompetent, or other patients referred to in Division 5 (commencing with Section 5000) or Division 6 (commencing with Section 6000) of the Welfare and Institutions Code, including the following basic services: medical, nursing, rehabilitative, pharmacy, and dietary services.

(c) "Skilled nursing facility" means a health facility which provides skilled nursing care and supportive care to patients whose primary need is for availability of skilled nursing care on an extended

basis.

(d) "Intermediate care facility" means a health facility which provides inpatient care to ambulatory or nonambulatory patients who have recurring need for skilled nursing supervision and need supportive care, but who do not require availability of continuous skilled nursing care.

(e) "Intermediate care facility/developmentally disabled habilitative" means a facility with a capacity of four to 15 beds which provides 24-hour personal care, habilitation, developmental, and supportive health services to 15 or fewer developmentally disabled persons who have intermittent recurring needs for nursing services, but have been certified by a physician as not requiring availability of continuous skilled nursing care.

(f) "Special hospital" means a health facility having a duly constituted governing body with overall administrative and professional responsibility and an organized medical or dental staff which provides inpatient or outpatient care in dentistry or maternity.

(g) "Intermediate care facility/developmentally disabled" means a facility which provides 24-hour personal care, habilitation, developmental, and supportive health services to developmentally disabled clients whose primary need is for developmental services and who have a recurring but intermittent need for skilled nursing services.

(h) "Intermediate care facility/developmentally disabled—nursing" means a facility with a capacity of four to 15 beds which provides 24-hour personal care, developmental services, and nursing supervision for developmentally disabled persons who have intermittent recurring needs for skilled nursing care but have been certified by a physician as not requiring continuous skilled nursing care. The facility shall serve medically fragile persons who have developmental disabilities or demonstrate significant developmental delay that may lead to a developmental disability if not treated.

(i) "Congregate living health facility" means a residential home with a capacity of no more than six beds, which provides inpatient care to mentally alert, physically disabled residents, who may be ventilator dependent, and which provides the following basic services: medical supervision, 24-hour skilled nursing and supportive care to residents, including ventilator assisted or dependent residents, all of whom would otherwise require long-term institutional care without this licensure classification and who no longer require care in an acute care facility, as determined by their physicians.

(j) (1) "Correctional treatment center" means a health facility operated by the Department of Corrections, the Department of the Youth Authority, or a county, city, or city and county law enforcement agency which, as determined by the state department, provides outpatient health services, in addition to inpatient health services, to that portion of the inmate population who do not require

a general acute care level of basic services. This definition shall not apply to those areas of a city, county, or city and county law enforcement facility which houses inmates or wards that may be receiving outpatient services and are housed separately for reasons of security and protection. The health services provided by a correctional treatment center shall include, but are not limited to, all of the following basic services: physician, psychiatrist, psychologist, nursing, pharmacy, dental, and dietary. A correctional treatment center may provide the following services: laboratory, radiology, perinatal, and any other services approved by the state department.

(2) Outpatient surgical care with anesthesia may be provided, if the correctional treatment center meets the same requirements as a surgical clinic licensed pursuant to Section 1204, with the exception of the requirement that patients remain less than 24 hours.

(3) Correctional treatment centers shall maintain written service agreements with general acute care hospitals to provide for those inmate physical health needs that cannot be met by the correctional treatment center.

(4) Physician and surgeon services shall be readily available in a correctional treatment center on a 24-hour basis.

(5) It is not the intent of the Legislature to have a correctional treatment center supplant the facilities at the California Medical Facility, the California Men's Colony, and the California Institution for Men which were in the process of licensure in 1987.

(6) This subdivision shall remain operative only until January 1, 1993.

(k) "Hospice acute inpatient facility" means a health facility, which is a component part of a hospice as defined in Section 1339.41, which provides general inpatient care, as defined in federal Medicare program regulations adopted pursuant to Section 1861(DD)(2) and Section 1814(a)(8) of the federal Social Security Act, and which has a duly constituted governing body with overall administrative and professional responsibility and an organized medical staff which performs or provides 24-hour inpatient care, whose primary goal is pain control and symptom management of the terminally ill, including all of the following basic services, as defined in Section 1139.42: medical, nursing, dietary, pharmacy, clinical laboratory, radiology, inhalation therapy, physical therapy, speech therapy, psychosocial therapy, and spiritual care.

SEC. 1.3. Section 1250 of the Health and Safety Code is amended to read:

1250. As used in this chapter, "health facility" means any facility, place, or building which is organized, maintained, and operated for the diagnosis, care, prevention, and treatment of human illness, physical or mental, including convalescence and rehabilitation and including care during and after pregnancy, or for any one or more of these purposes, for one or more persons, to which the persons are admitted for a 24-hour stay or longer, and includes the following types:

(a) "General acute care hospital" means a health facility having a duly constituted governing body with overall administrative and professional responsibility and an organized medical staff which provides 24-hour inpatient care, including the following basic services: medical, nursing, surgical, anesthesia, laboratory, radiology, pharmacy, and dietary services. A general acute care hospital may include more than one physical plant maintained and operated on separate premises as provided in Section 1250.8. A general acute care hospital which exclusively provides acute medical rehabilitation center services, including at least physical therapy, occupational therapy, and speech therapy, may provide for the required surgical and anesthesia services through a contract with another acute care hospital. In addition, a general acute care hospital which, on July 1, 1983, provided required surgical and anesthesia services through a contract or agreement with another acute care hospital may continue to provide these surgical and anesthesia services through a contract or agreement with an acute care hospital.

(b) "Acute psychiatric hospital" means a health facility having a duly constituted governing body with overall administrative and professional responsibility and an organized medical staff which provides 24-hour inpatient care for mentally disordered, incompetent, or other patients referred to in Division 5 (commencing with Section 5000) or Division 6 (commencing with Section 6000) of the Welfare and Institutions Code, including the following basic services: medical, nursing, rehabilitative, pharmacy, and dietary services.

(c) "Skilled nursing facility" means a health facility which provides skilled nursing care and supportive care to patients whose primary need is for availability of skilled nursing care on an extended basis.

(d) "Intermediate care facility" means a health facility which provides inpatient care to ambulatory or nonambulatory patients who have recurring need for skilled nursing supervision and need supportive care, but who do not require availability of continuous skilled nursing care.

(e) "Intermediate care facility/developmentally disabled habilitative" means a facility with a capacity of four to 15 beds which provides 24-hour personal care, habilitation, developmental, and supportive health services to 15 or fewer developmentally disabled persons who have intermittent recurring needs for nursing services, but have been certified by a physician as not requiring availability of continuous skilled nursing care.

(f) "Special hospital" means a health facility having a duly constituted governing body with overall administrative and professional responsibility and an organized medical or dental staff which provides inpatient or outpatient care in dentistry or maternity.

(g) "Intermediate care facility/developmentally disabled" means a facility which provides 24-hour personal care, habilitation,

developmental, and supportive health services to developmentally disabled clients whose primary need is for developmental services and who have a recurring but intermittent need for skilled nursing services.

(h) "Intermediate care facility/developmentally disabled—nursing" means a facility with a capacity of four to 15 beds which provides 24-hour personal care, developmental services, and nursing supervision for developmentally disabled persons who have intermittent recurring needs for skilled nursing care but have been certified by a physician as not requiring continuous skilled nursing care. The facility shall serve medically fragile persons who have developmental disabilities or demonstrate significant developmental delay that may lead to a developmental disability if not treated.

(i) "Congregate living health facility-A" means a residential home with a capacity of no more than six beds, which provides inpatient care to mentally alert, physically disabled residents, who may be ventilator dependent, and which provides the following basic services: medical supervision, 24-hour skilled nursing and supportive care to residents, including ventilator assisted or dependent residents, all of whom would otherwise require long-term institutional care without this licensure classification and who no longer require care in an acute care facility, as determined by their physicians.

(j) "Congregate living health facility-B" means a health facility with a capacity of one to 15 beds which provides 24-hour inpatient care to persons whose primary need is for availability of skilled nursing care on a recurring, intermittent, extended, or continuous basis. However, a congregate living health facility-B which is located in a county with a population of 500,000 or more persons may have a capacity of 25 beds.

(1) A congregate living health facility-B shall have a noninstitutional, homelike environment.

(2) No person shall be admitted, or accepted for care, or discharged, by a congregate care health facility-B except upon the order of a physician. Admission criteria will be subject to review and approval by the department. All persons admitted or accepted for care by the congregate living health facility-B shall remain under the care of a physician who shall visit the resident at least every 30 calendar days or more frequently if required by the resident's medical condition.

(k) (1) "Correctional treatment center" means a health facility operated by the Department of Corrections, the Department of the Youth Authority, or a county, city, or city and county law enforcement agency which, as determined by the state department, provides outpatient health services, in addition to inpatient health services, to that portion of the inmate population who do not require a general acute care level of basic services. This definition shall not apply to those areas of a city, county, or city and county law enforcement facility which houses inmates or wards that may be

receiving outpatient services and are housed separately for reasons of security and protection. The health services provided by a correctional treatment center shall include, but are not limited to, all of the following basic services: physician, psychiatrist, psychologist, nursing, pharmacy, dental, and dietary. A correctional treatment center may provide the following services: laboratory, radiology, perinatal, and any other services approved by the state department.

(2) Outpatient surgical care with anesthesia may be provided, if the correctional treatment center meets the same requirements as a surgical clinic licensed pursuant to Section 1204, with the exception of the requirement that patients remain less than 24 hours.

(3) Correctional treatment centers shall maintain written service agreements with general acute care hospitals to provide for those inmate physical health needs that cannot be met by the correctional treatment center.

(4) Physician and surgeon services shall be readily available in a correctional treatment center on a 24-hour basis.

(5) It is not the intent of the Legislature to have a correctional treatment center supplant the facilities at the California Medical Facility, the California Men's Colony, and the California Institution for Men which were in the process of licensure in 1987.

(6) This subdivision shall remain operative only until January 1, 1993.

SEC. 1.4. Section 1250 of the Health and Safety Code is amended to read:

1250. As used in this chapter, "health facility" means any facility, place, or building which is organized, maintained, and operated for the diagnosis, care, prevention, and treatment of human illness, physical or mental, including convalescence and rehabilitation and including care during and after pregnancy, or for any one or more of these purposes, for one or more persons, to which the persons are admitted for a 24-hour stay or longer, and includes the following types:

(a) "General acute care hospital" means a health facility having a duly constituted governing body with overall administrative and professional responsibility and an organized medical staff which provides 24-hour inpatient care, including the following basic services: medical, nursing, surgical, anesthesia, laboratory, radiology, pharmacy, and dietary services. A general acute care hospital may include more than one physical plant maintained and operated on separate premises as provided in Section 1250.8. A general acute care hospital which exclusively provides acute medical rehabilitation center services, including at least physical therapy, occupational therapy, and speech therapy, may provide for the required surgical and anesthesia services through a contract with another acute care hospital. In addition, a general acute care hospital which, on July 1, 1983, provided required surgical and anesthesia services through a contract or agreement with another acute care hospital may continue to provide these surgical and anesthesia services through a

contract or agreement with an acute care hospital.

(b) "Acute psychiatric hospital" means a health facility having a duly constituted governing body with overall administrative and professional responsibility and an organized medical staff which provides 24-hour inpatient care for mentally disordered, incompetent, or other patients referred to in Division 5 (commencing with Section 5000) or Division 6 (commencing with Section 6000) of the Welfare and Institutions Code, including the following basic services: medical, nursing, rehabilitative, pharmacy, and dietary services.

(c) "Skilled nursing facility" means a health facility which provides skilled nursing care and supportive care to patients whose primary need is for availability of skilled nursing care on an extended basis.

(d) "Intermediate care facility" means a health facility which provides inpatient care to ambulatory or nonambulatory patients who have recurring need for skilled nursing supervision and need supportive care, but who do not require availability of continuous skilled nursing care.

(e) "Intermediate care facility/developmentally disabled habilitative" means a facility with a capacity of four to 15 beds which provides 24-hour personal care, habilitation, developmental, and supportive health services to 15 or fewer developmentally disabled persons who have intermittent recurring needs for nursing services, but have been certified by a physician as not requiring availability of continuous skilled nursing care.

(f) "Special hospital" means a health facility having a duly constituted governing body with overall administrative and professional responsibility and an organized medical or dental staff which provides inpatient or outpatient care in dentistry or maternity.

(g) "Intermediate care facility/developmentally disabled" means a facility which provides 24-hour personal care, habilitation, developmental, and supportive health services to developmentally disabled clients whose primary need is for developmental services and who have a recurring but intermittent need for skilled nursing services.

(h) "Intermediate care facility/developmentally disabled—nursing" means a facility with a capacity of four to 15 beds which provides 24-hour personal care, developmental services, and nursing supervision for developmentally disabled persons who have intermittent recurring needs for skilled nursing care but have been certified by a physician as not requiring continuous skilled nursing care. The facility shall serve medically fragile persons who have developmental disabilities or demonstrate significant developmental delay that may lead to a developmental disability if not treated.

(i) "Congregate living health facility" means a residential home with a capacity of no more than six beds, which provides inpatient care to mentally alert, physically disabled residents, who may be

ventilator dependent, and which provides the following basic services: medical supervision, 24-hour skilled nursing and supportive care to residents, including ventilator assisted or dependent residents, all of whom would otherwise require long-term institutional care without this licensure classification and who no longer require care in an acute care facility, as determined by their physicians.

(j) (1) "Correctional treatment center" means a health facility operated by the Department of Corrections, the Department of the Youth Authority, or a county, city, or city and county law enforcement agency which, as determined by the state department, provides outpatient health services, in addition to inpatient health services, to that portion of the inmate population who do not require a general acute care level of basic services. This definition shall not apply to those areas of a city, county, or city and county law enforcement facility which houses inmates or wards that may be receiving outpatient services and are housed separately for reasons of security and protection. The health services provided by a correctional treatment center shall include, but are not limited to, all of the following basic services: physician, psychiatrist, psychologist, nursing, pharmacy, dental, and dietary. A correctional treatment center may provide the following services: laboratory, radiology, perinatal, and any other services approved by the state department.

(2) Outpatient surgical care with anesthesia may be provided, if the correctional treatment center meets the same requirements as a surgical clinic licensed pursuant to Section 1204, with the exception of the requirement that patients remain less than 24 hours.

(3) Correctional treatment centers shall maintain written service agreements with general acute care hospitals to provide for those inmate physical health needs that cannot be met by the correctional treatment center.

(4) Physician and surgeon services shall be readily available in a correctional treatment center on a 24-hour basis.

(5) It is not the intent of the Legislature to have a correctional treatment center supplant the facilities at the California Medical Facility, the California Men's Colony, and the California Institution for Men which were in the process of licensure in 1987.

(6) This subdivision shall remain operative only until January 1, 1993.

(k) AIDS hospice facility, as defined in Chapter 9 (commencing with Section 1750).

(*l*) AIDS residential intermediate care facility, as defined in Chapter 9 (commencing with Section 1750).

(m) "Hospice acute inpatient facility" means a health facility, which is a component part of a hospice as defined in Section 1339.41, which provides general inpatient care, as defined in federal Medicare program regulations adopted pursuant to Section 1861(DD)(2) and Section 1814(a)(8) of the federal Social Security Act, and which has a duly constituted governing body with overall

administrative and professional responsibility and an organized medical staff which performs or provides 24-hour inpatient care, whose primary goal is pain control and symptom management of the terminally ill, including all of the following basic services, as defined in Section 1139.42: medical, nursing, dietary, pharmacy, clinical laboratory, radiology, inhalation therapy, physical therapy, speech therapy, psychosocial therapy, and spiritual care.

SEC. 1.5. Section 1250 of the Health and Safety Code is amended to read:

1250. As used in this chapter, "health facility" means any facility, place, or building which is organized, maintained, and operated for the diagnosis, care, prevention, and treatment of human illness, physical or mental, including convalescence and rehabilitation and including care during and after pregnancy, or for any one or more of these purposes, for one or more persons, to which the persons are admitted for a 24-hour stay or longer, and includes the following types:

(a) "General acute care hospital" means a health facility having a duly constituted governing body with overall administrative and professional responsibility and an organized medical staff which provides 24-hour inpatient care, including the following basic services: medical, nursing, surgical, anesthesia, laboratory, radiology, pharmacy, and dietary services. A general acute care hospital may include more than one physical plant maintained and operated on separate premises as provided in Section 1250.8. A general acute care hospital which exclusively provides acute medical rehabilitation center services, including at least physical therapy, occupational therapy, and speech therapy, may provide for the required surgical and anesthesia services through a contract with another acute care hospital. In addition, a general acute care hospital which, on July 1, 1983, provided required surgical and anesthesia services through a contract or agreement with another acute care hospital may continue to provide these surgical and anesthesia services through a contract or agreement with an acute care hospital.

(b) "Acute psychiatric hospital" means a health facility having a duly constituted governing body with overall administrative and professional responsibility and an organized medical staff which provides 24-hour inpatient care for mentally disordered, incompetent, or other patients referred to in Division 5 (commencing with Section 5000) or Division 6 (commencing with Section 6000) of the Welfare and Institutions Code, including the following basic services: medical, nursing, rehabilitative, pharmacy, and dietary services.

(c) "Skilled nursing facility" means a health facility which provides skilled nursing care and supportive care to patients whose primary need is for availability of skilled nursing care on an extended basis.

(d) "Intermediate care facility" means a health facility which provides inpatient care to ambulatory or nonambulatory patients

who have recurring need for skilled nursing supervision and need supportive care, but who do not require availability of continuous skilled nursing care.

(e) "Intermediate care facility/developmentally disabled habilitative" means a facility with a capacity of four to 15 beds which provides 24-hour personal care, habilitation, developmental, and supportive health services to 15 or fewer developmentally disabled persons who have intermittent recurring needs for nursing services, but have been certified by a physician as not requiring availability of continuous skilled nursing care.

(f) "Special hospital" means a health facility having a duly constituted governing body with overall administrative and professional responsibility and an organized medical or dental staff which provides inpatient or outpatient care in dentistry or maternity.

(g) "Intermediate care facility/developmentally disabled" means a facility which provides 24-hour personal care, habilitation, developmental, and supportive health services to developmentally disabled clients whose primary need is for developmental services and who have a recurring but intermittent need for skilled nursing services.

(h) "Intermediate care facility/developmentally disabled—nursing" means a facility with a capacity of four to 15 beds which provides 24-hour personal care, developmental services, and nursing supervision for developmentally disabled persons who have intermittent recurring needs for skilled nursing care but have been certified by a physician as not requiring continuous skilled nursing care. The facility shall serve medically fragile persons who have developmental disabilities or demonstrate significant developmental delay that may lead to a developmental disability if not treated.

(i) "Congregate living health facility-A" means a residential home with a capacity of no more than six beds, which provides inpatient care to mentally alert, physically disabled residents, who may be ventilator dependent, and which provides the following basic services: medical supervision, 24-hour skilled nursing and supportive care to residents, including ventilator assisted or dependent residents, all of whom would otherwise require long-term institutional care without this licensure classification and who no longer require care in an acute care facility, as determined by their physicians.

(j) "Congregate living health facility-B" means a health facility with a capacity of one to 15 beds which provides 24-hour inpatient care to persons whose primary need is for availability of skilled nursing care on a recurring, intermittent, extended, or continuous basis. However, a congregate living health facility-B which is located in a county with a population of 500,000 or more persons may have a capacity of 25 beds.

(1) A congregate living health facility-B shall have a noninstitutional, homelike environment.

(2) No person shall be admitted, or accepted for care, or discharged, by a congregate care health facility-B except upon the order of a physician. Admission criteria will be subject to review and approval by the department. All persons admitted or accepted for care by the congregate living health facility-B shall remain under the care of a physician who shall visit the resident at least every 30 calendar days or more frequently if required by the resident's medical condition.

(k) (1) "Correctional treatment center" means a health facility operated by the Department of Corrections, the Department of the Youth Authority, or a county, city, or city and county law enforcement agency which, as determined by the state department, provides outpatient health services, in addition to inpatient health services, to that portion of the inmate population who do not require a general acute care level of basic services. This definition shall not apply to those areas of a city, county, or city and county law enforcement facility which houses inmates or wards that may be receiving outpatient services and are housed separately for reasons of security and protection. The health services provided by a correctional treatment center shall include, but are not limited to, all of the following basic services: physician, psychiatrist, psychologist, nursing, pharmacy, dental, and dietary. A correctional treatment center may provide the following services: laboratory, radiology, perinatal, and any other services approved by the state department.

(2) Outpatient surgical care with anesthesia may be provided, if the correctional treatment center meets the same requirements as a surgical clinic licensed pursuant to Section 1204, with the exception of the requirement that patients remain less than 24 hours.

(3) Correctional treatment centers shall maintain written service agreements with general acute care hospitals to provide for those inmate physical health needs that cannot be met by the correctional treatment center.

(4) Physician and surgeon services shall be readily available in a correctional treatment center on a 24-hour basis.

(5) It is not the intent of the Legislature to have a correctional treatment center supplant the facilities at the California Medical Facility, the California Men's Colony, and the California Institution for Men which were in the process of licensure in 1987.

(6) This subdivision shall remain operative only until January 1, 1993.

(*l*) AIDS hospice facility, as defined in Chapter 9 (commencing with Section 1750).

(m) AIDS residential intermediate care facility, as defined in Chapter 9 (commencing with Section 1750).

SEC. 1.6. Section 1250 of the Health and Safety Code is amended to read:

1250. As used in this chapter, "health facility" means any facility, place, or building which is organized, maintained, and operated for the diagnosis, care, prevention, and treatment of human illness,

physical or mental, including convalescence and rehabilitation and including care during and after pregnancy, or for any one or more of these purposes, for one or more persons, to which the persons are admitted for a 24-hour stay or longer, and includes the following types:

(a) "General acute care hospital" means a health facility having a duly constituted governing body with overall administrative and professional responsibility and an organized medical staff which provides 24-hour inpatient care, including the following basic services: medical, nursing, surgical, anesthesia, laboratory, radiology, pharmacy, and dietary services. A general acute care hospital may include more than one physical plant maintained and operated on separate premises as provided in Section 1250.8. A general acute care hospital which exclusively provides acute medical rehabilitation center services, including at least physical therapy, occupational therapy, and speech therapy, may provide for the required surgical and anesthesia services through a contract with another acute care hospital. In addition, a general acute care hospital which, on July 1, 1983, provided required surgical and anesthesia services through a contract or agreement with another acute care hospital may continue to provide these surgical and anesthesia services through a contract or agreement with an acute care hospital.

(b) "Acute psychiatric hospital" means a health facility having a duly constituted governing body with overall administrative and professional responsibility and an organized medical staff which provides 24-hour inpatient care for mentally disordered, incompetent, or other patients referred to in Division 5 (commencing with Section 5000) or Division 6 (commencing with Section 6000) of the Welfare and Institutions Code, including the following basic services: medical, nursing, rehabilitative, pharmacy, and dietary services.

(c) "Skilled nursing facility" means a health facility which provides skilled nursing care and supportive care to patients whose primary need is for availability of skilled nursing care on an extended basis.

(d) "Intermediate care facility" means a health facility which provides inpatient care to ambulatory or nonambulatory patients who have recurring need for skilled nursing supervision and need supportive care, but who do not require availability of continuous skilled nursing care.

(e) "Intermediate care facility/developmentally disabled habilitative" means a facility with a capacity of four to 15 beds which provides 24-hour personal care, habilitation, developmental, and supportive health services to 15 or fewer developmentally disabled persons who have intermittent recurring needs for nursing services, but have been certified by a physician as not requiring availability of continuous skilled nursing care.

(f) "Special hospital" means a health facility having a duly constituted governing body with overall administrative and

professional responsibility and an organized medical or dental staff which provides inpatient or outpatient care in dentistry or maternity.

(g) "Intermediate care facility/developmentally disabled" means a facility which provides 24-hour personal care, habilitation, developmental, and supportive health services to developmentally disabled clients whose primary need is for developmental services and who have a recurring but intermittent need for skilled nursing services.

(h) "Intermediate care facility/developmentally disabled—nursing" means a facility with a capacity of four to 15 beds which provides 24-hour personal care, developmental services, and nursing supervision for developmentally disabled persons who have intermittent recurring needs for skilled nursing care but have been certified by a physician as not requiring continuous skilled nursing care. The facility shall serve medically fragile persons who have developmental disabilities or demonstrate significant developmental delay that may lead to a developmental disability if not treated.

(i) "Congregate living health facility-A" means a residential home with a capacity of no more than six beds, which provides inpatient care to mentally alert, physically disabled residents, who may be ventilator dependent, and which provides the following basic services: medical supervision, 24-hour skilled nursing and supportive care to residents, including ventilator assisted or dependent residents, all of whom would otherwise require long-term institutional care without this licensure classification and who no longer require care in an acute care facility, as determined by their physicians.

(j) "Congregate living health facility-B" means a health facility with a capacity of one to 15 beds which provides 24-hour inpatient care to persons whose primary need is for availability of skilled nursing care on a recurring, intermittent, extended, or continuous basis. However, a congregate living health facility-B which is located in a county with a population of 500,000 or more persons may have a capacity of 25 beds.

(1) A congregate living health facility-B shall have a noninstitutional, homelike environment.

(2) No person shall be admitted, or accepted for care, or discharged, by a congregate care health facility-B except upon the order of a physician. Admission criteria will be subject to review and approval by the department. All persons admitted or accepted for care by the congregate living health facility-B shall remain under the care of a physician who shall visit the resident at least every 30 calendar days or more frequently if required by the resident's medical condition.

(k) (1) "Correctional treatment center" means a health facility operated by the Department of Corrections, the Department of the Youth Authority, or a county, city, or city and county law enforcement agency which, as determined by the state department,

provides outpatient health services, in addition to inpatient health services, to that portion of the inmate population who do not require a general acute care level of basic services. This definition shall not apply to those areas of a city, county, or city and county law enforcement facility which houses inmates or wards that may be receiving outpatient services and are housed separately for reasons of security and protection. The health services provided by a correctional treatment center shall include, but are not limited to, all of the following basic services: physician, psychiatrist, psychologist, nursing, pharmacy, dental, and dietary. A correctional treatment center may provide the following services: laboratory, radiology, perinatal, and any other services approved by the state department.

(2) Outpatient surgical care with anesthesia may be provided, if the correctional treatment center meets the same requirements as a surgical clinic licensed pursuant to Section 1204, with the exception of the requirement that patients remain less than 24 hours.

(3) Correctional treatment centers shall maintain written service agreements with general acute care hospitals to provide for those inmate physical health needs that cannot be met by the correctional treatment center.

(4) Physician and surgeon services shall be readily available in a correctional treatment center on a 24-hour basis.

(5) It is not the intent of the Legislature to have a correctional treatment center supplant the facilities at the California Medical Facility, the California Men's Colony, and the California Institution for Men which were in the process of licensure in 1987.

(6) This subdivision shall remain operative only until January 1, 1993.

(*l*) "Hospice acute inpatient facility" means a health facility, which is a component part of a hospice as defined in Section 1339.41, which provides general inpatient care, as defined in federal Medicare program regulations adopted pursuant to Section 1861(DD)(2) and Section 1814(a)(8) of the federal Social Security Act, and which has a duly constituted governing body with overall administrative and professional responsibility and an organized medical staff which performs or provides 24-hour inpatient care, whose primary goal is pain control and symptom management of the terminally ill, including all of the following basic services, as defined in Section 1139.42: medical, nursing, dietary, pharmacy, clinical laboratory, radiology, inhalation therapy, physical therapy, speech therapy, psychosocial therapy, and spiritual care.

SEC. 1.7. Section 1250 of the Health and Safety Code is amended to read:

1250. As used in this chapter, "health facility" means any facility, place, or building which is organized, maintained, and operated for the diagnosis, care, prevention, and treatment of human illness, physical or mental, including convalescence and rehabilitation and including care during and after pregnancy, or for any one or more of these purposes, for one or more persons, to which the persons are

admitted for a 24-hour stay or longer, and includes the following types:

(a) "General acute care hospital" means a health facility having a duly constituted governing body with overall administrative and professional responsibility and an organized medical staff which provides 24-hour inpatient care, including the following basic services: medical, nursing, surgical, anesthesia, laboratory, radiology, pharmacy, and dietary services. A general acute care hospital may include more than one physical plant maintained and operated on separate premises as provided in Section 1250.8. A general acute care hospital which exclusively provides acute medical rehabilitation center services, including at least physical therapy, occupational therapy, and speech therapy, may provide for the required surgical and anesthesia services through a contract with another acute care hospital. In addition, a general acute care hospital which, on July 1, 1983, provided required surgical and anesthesia services through a contract or agreement with another acute care hospital may continue to provide these surgical and anesthesia services through a contract or agreement with an acute care hospital.

(b) "Acute psychiatric hospital" means a health facility having a duly constituted governing body with overall administrative and professional responsibility and an organized medical staff which provides 24-hour inpatient care for mentally disordered, incompetent, or other patients referred to in Division 5 (commencing with Section 5000) or Division 6 (commencing with Section 6000) of the Welfare and Institutions Code, including the following basic services: medical, nursing, rehabilitative, pharmacy, and dietary services.

(c) "Skilled nursing facility" means a health facility which provides skilled nursing care and supportive care to patients whose primary need is for availability of skilled nursing care on an extended basis.

(d) "Intermediate care facility" means a health facility which provides inpatient care to ambulatory or nonambulatory patients who have recurring need for skilled nursing supervision and need supportive care, but who do not require availability of continuous skilled nursing care.

(e) "Intermediate care facility/developmentally disabled habilitative" means a facility with a capacity of four to 15 beds which provides 24-hour personal care, habilitation, developmental, and supportive health services to 15 or fewer developmentally disabled persons who have intermittent recurring needs for nursing services, but have been certified by a physician as not requiring availability of continuous skilled nursing care.

(f) "Special hospital" means a health facility having a duly constituted governing body with overall administrative and professional responsibility and an organized medical or dental staff which provides inpatient or outpatient care in dentistry or maternity.

(g) "Intermediate care facility/developmentally disabled" means a facility which provides 24-hour personal care, habilitation, developmental, and supportive health services to developmentally disabled clients whose primary need is for developmental services and who have a recurring but intermittent need for skilled nursing services.

(h) "Intermediate care facility/developmentally disabled—nursing" means a facility with a capacity of four to 15 beds which provides 24-hour personal care, developmental services, and nursing supervision for developmentally disabled persons who have intermittent recurring needs for skilled nursing care but have been certified by a physician as not requiring continuous skilled nursing care. The facility shall serve medically fragile persons who have developmental disabilities or demonstrate significant developmental delay that may lead to a developmental disability if not treated.

(i) "Congregate living health facility-A" means a residential home with a capacity of no more than six beds, which provides inpatient care to mentally alert, physically disabled residents, who may be ventilator dependent, and which provides the following basic services: medical supervision, 24-hour skilled nursing and supportive care to residents, including ventilator assisted or dependent residents, all of whom would otherwise require long-term institutional care without this licensure classification and who no longer require care in an acute care facility, as determined by their physicians.

(j) "Congregate living health facility-B" means a health facility with a capacity of one to 15 beds which provides 24-hour inpatient care to persons whose primary need is for availability of skilled nursing care on a recurring, intermittent, extended, or continuous basis. However, a congregate living health facility-B which is located in a county with a population of 500,000 or more persons may have a capacity of 25 beds.

(1) A congregate living health facility-B shall have a noninstitutional, homelike environment.

(2) No person shall be admitted, or accepted for care, or discharged, by a congregate care health facility-B except upon the order of a physician. Admission criteria will be subject to review and approval by the department. All persons admitted or accepted for care by the congregate living health facility-B shall remain under the care of a physician who shall visit the resident at least every 30 calendar days or more frequently if required by the resident's medical condition.

(k) (1) "Correctional treatment center" means a health facility operated by the Department of Corrections, the Department of the Youth Authority, or a county, city, or city and county law enforcement agency which, as determined by the state department, provides outpatient health services, in addition to inpatient health services, to that portion of the inmate population who do not require a general acute care level of basic services. This definition shall not

apply to those areas of a city, county, or city and county law enforcement facility which houses inmates or wards that may be receiving outpatient services and are housed separately for reasons of security and protection. The health services provided by a correctional treatment center shall include, but are not limited to, all of the following basic services: physician, psychiatrist, psychologist, nursing, pharmacy, dental, and dietary. A correctional treatment center may provide the following services: laboratory, radiology, perinatal, and any other services approved by the state department.

(2) Outpatient surgical care with anesthesia may be provided, if the correctional treatment center meets the same requirements as a surgical clinic licensed pursuant to Section 1204, with the exception of the requirement that patients remain less than 24 hours.

(3) Correctional treatment centers shall maintain written service agreements with general acute care hospitals to provide for those inmate physical health needs that cannot be met by the correctional treatment center.

(4) Physician and surgeon services shall be readily available in a correctional treatment center on a 24-hour basis.

(5) It is not the intent of the Legislature to have a correctional treatment center supplant the facilities at the California Medical Facility, the California Men's Colony, and the California Institution for Men which were in the process of licensure in 1987.

(6) This subdivision shall remain operative only until January 1, 1993.

(*l*) AIDS hospice facility, as defined in Chapter 9 (commencing with Section 1750).

(m) AIDS residential intermediate care facility, as defined in Chapter 9 (commencing with Section 1750).

(n) "Hospice acute inpatient facility" means a health facility, which is a component part of a hospice as defined in Section 1339.41, which provides general inpatient care, as defined in federal Medicare program regulations adopted pursuant to Section 1861(DD)(2) and Section 1814(a)(8) of the federal Social Security Act, and which has a duly constituted governing body with overall administrative and professional responsibility and an organized medical staff which performs or provides 24-hour inpatient care, whose primary goal is pain control and symptom management of the terminally ill, including all of the following basic services, as defined in Section 1139.42: medical, nursing, dietary, pharmacy, clinical laboratory, radiology, inhalation therapy, physical therapy, speech therapy, psychosocial therapy, and spiritual care.

SEC. 2. Section 1250.1 of the Health and Safety Code is amended to read:

1250.1. The state department shall adopt regulations which define all of the following bed classifications for health facilities:

(a) General acute care.

(b) Skilled nursing.

(c) Intermediate care-developmental disabilities.

(d) Intermediate care-other.
(e) Acute psychiatric.
(f) Specialized care, with respect to special hospitals only.
(g) Chemical dependency recovery.
(h) Intermediate care facility/developmentally disabled habilitative.
(i) Intermediate care facility/developmentally disabled nursing.
(j) Congregate living health facility.
(k) Correctional treatment center. For correctional treatment centers that provide psychiatric and psychological services provided by county mental health agencies in local detention facilities, the State Department of Mental Health shall adopt regulations specifying acute and nonacute levels of 24-hour care. This subdivision shall remain operative only until January 1, 1993.

Except as provided in Section 1253.1, beds classified as intermediate care beds, on September 27, 1978, shall be reclassified by the state department as intermediate care—other. This reclassification shall not constitute a "project" within the meaning of Section 437.10 and shall not be subject to any requirement for a certificate of need under Part 1.5 (commencing with Section 437) of Division 1, and regulations of the state department governing intermediate care prior to such effective date shall continue to be applicable to the intermediate care—other classification unless and until amended or repealed by the state department.

Licensed inpatient beds in a correctional treatment center shall be used only for the purpose of providing health services. This paragraph shall remain operative only until January 1, 1993.

SEC. 2.5. Section 1250.1 of the Health and Safety Code is amended to read:

1250.1. The state department shall adopt regulations which define all of the following bed classifications for health facilities:
(a) General acute care.
(b) Skilled nursing.
(c) Intermediate care-developmental disabilities.
(d) Intermediate care-other.
(e) Acute psychiatric.
(f) Specialized care, with respect to special hospitals only.
(g) Chemical dependency recovery.
(h) Intermediate care facility/developmentally disabled habilitative.
(i) Intermediate care facility/developmentally disabled nursing.
(j) Congregate living health facility-A.
(k) Congregate living health facility-B.
(*l*) Correctional treatment center. For correctional treatment centers that provide psychiatric and psychological services provided by county mental health agencies in local detention facilities, the State Department of Mental Health shall adopt regulations specifying acute and nonacute levels of 24-hour care. This subdivision shall remain operative only until January 1, 1993.

Except as provided in Section 1253.1, beds classified as intermediate care beds, on September 27, 1978, shall be reclassified by the state department as intermediate care—other. This reclassification shall not constitute a "project" within the meaning of Section 437.10 and shall not be subject to any requirement for a certificate of need under Part 1.5 (commencing with Section 437) of Division 1, and regulations of the state department governing intermediate care prior to such effective date shall continue to be applicable to the intermediate care—other classification unless and until amended or repealed by the state department.

Licensed inpatient beds in a correctional treatment center shall be used only for the purpose of providing health services. This paragraph shall remain operative only until January 1, 1993.

SEC. 3. Section 1250.4 is added to the Health and Safety Code, to read:

1250.4. Each health care facility in the Department of Corrections and in the Department of the Youth Authority shall have a medical director in charge of the health care services of that facility who shall be a physician and surgeon licensed to practice in California and who shall be appointed by the directors of the departments. The medical director shall direct the medical treatment programs for all health services and services supporting the health services provided in the facility.

SEC. 4. 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 board 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 board 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, 217.1, or 220, subdivision (b) of Section 241, Section 244, paragraph (1) or (2) of subdivision (a) of Section 245, subdivision (2) of Section 261, Section 264.1, subdivision (c) or (d) of Section 286, Section 288, subdivision (c) or (d) of Section 288a, 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 Board of Prison Terms 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. 5. Section 6261 of the Penal Code is amended to read:

6261. (a) To the extent that public and private nonprofit and profit corporations have available beds and satisfy the criteria specified in this chapter, the Department of Corrections shall contract with them to provide reentry work furlough programs for all inmates 120 days prior to scheduled release and who are not excluded under this chapter.

(b) The Department of Corrections shall contract with private nonprofit and profit corporations for at least ⅓ of all reentry work furlough beds, unless the department determines these beds are not available or do not comply with this chapter. The department shall report annually in writing to the fiscal and appropriate policy committees of the Legislature of the actions performed to locate those beds or reasons for noncompliance. This provision shall not be interpreted to impair existing contracts.

SEC. 6. Section 1753.3 of the Welfare and Institutions Code is amended to read:

1753.3. (a) The Director of the Youth Authority may enter into an agreement with a city, county, or city and county, to permit transfer of wards in the custody of the Director of the Youth Authority to an appropriate facility of the city, county, or city and county, if the official having jurisdiction over the facility has consented. The agreement shall provide for contributions to the city, county, or city and county toward payment of costs incurred with reference to the transferred wards.

(b) When an agreement entered into pursuant to subdivision (a) is in effect with respect to a particular local facility, the Director of the Youth Authority may transfer wards and parole violators to the facility.

(c) Notwithstanding subdivision (b), the Director of the Youth Authority may deny placement in a local facility to a parole violator who was committed to the Youth Authority for the commission of any offense set forth in subdivision (b) of Section 707.

(d) Wards transferred to those facilities are subject to the rules and regulations of the facility in which they are confined, but remain under the legal custody of the Department of the Youth Authority.

SEC. 7. Section 1.5 of Chapter 1435 of the Statutes of 1987 is amended to read:

Sec. 1.5. Section 1.2 shall apply to every parolee regardless of whether his or her parole is revoked before or after the effective date of the act. However, no parolee is eligible for worktime credits prior to the effective date of the act.

SEC. 8. (a) Section 1.1 of this bill incorporates amendments to Section 1250 of the Health and Safety Code proposed by both this bill and SB 2207. It shall only become operative if (1) both bills are enacted and become effective January 1, 1989, (2) each bill amends Section 1250 of the Health and Safety Code, (3) SB 2468 and AB 4536 are not enacted or as enacted do not amend that section, and (4) this bill is enacted after SB 2207, in which case Sections 1, 1.2, 1.3, 1.4, 1.5, 1.6, and 1.7 of this bill shall not become operative.

(b) Section 1.2 of this bill incorporates amendments to Section 1250 of the Health and Safety Code proposed by both this bill and SB 2468. It shall only become operative if (1) both bills are enacted and become effective January 1, 1989, (2) each bill amends Section 1250 of the Health and Safety Code, (3) SB 2207 and AB 4536 are not enacted or as enacted do not amend that section, and (4) this bill is enacted after SB 2468, in which case Sections 1, 1.1, 1.3, 1.4, 1.5, 1.6, and 1.7 of this bill shall not become operative.

(c) Section 1.3 of this bill incorporates amendments to Section 1250 of the Health and Safety Code proposed by both this bill and AB 4536. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1989, (2) each bill amends Section 1250 of the Health and Safety Code, (3) SB 2207 and SB 2468 are not enacted or as enacted do not amend that section, and (4) this bill is enacted after AB 4536, in which case Section 1250 of the Health and Safety Code, as amended by AB 4536, shall remain operative only

until the effective date of this bill, at which time Section 1.3 of this bill shall become operative and Sections 1, 1.1, 1.2, 1.4, 1.5, 1.6, and 1.7 of this bill shall not become operative.

(d) Section 1.4 of this bill incorporates amendments to Section 1250 of the Health and Safety Code proposed by this bill, SB 2207, and SB 2468. It shall only become operative if (1) this bill, SB 2207, and SB 2468 are all enacted and become effective January 1, 1989, (2) each bill amends Section 1250 of the Health and Safety Code, (3) AB 4536 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after SB 2207 and SB 2468 in which case Sections 1, 1.1, 1.2, 1.3, 1.5, 1.6, and 1.7 of this bill shall not become operative.

(e) Section 1.5 of this bill incorporates amendments to Section 1250 of the Health and Safety Code proposed by this bill, SB 2207, and AB 4536. It shall only become operative if (1) this bill, SB 2207, and AB 4536 are all enacted and become effective on or before January 1, 1989, (2) each bill amends Section 1250 of the Health and Safety Code, (3) SB 2468 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after SB 2207 and AB 4536 in which case Section 1250 of the Health and Safety Code, as amended by AB 4536, shall remain operative only until the effective date of this bill, at which time Section 1.5 of this bill shall become operative and Sections 1, 1.1, 1.2, 1.3, 1.4, 1.6, and 1.7 of this bill shall not become operative.

(f) Section 1.6 of this bill incorporates amendments to Section 1250 of the Health and Safety Code proposed by this bill, SB 2468, and AB 4536. It shall only become operative if (1) this bill, SB 2468, and AB 4536 are all enacted and become effective on or before January 1, 1989, (2) each bill amends Section 1250 of the Health and Safety Code, (3) SB 2207 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after SB 2468 and AB 4536 in which case Section 1250 of the Health and Safety Code, as amended by AB 4536, shall remain operative only until the effective date of this bill, at which time Section 1.6 of this bill shall become operative and Sections 1, 1.1, 1.2, 1.3, 1.4, 1.5, and 1.7 of this bill shall not become operative.

(g) Section 1.7 of this bill incorporates amendments to Section 1250 of the Health and Safety Code proposed by this bill, SB 2207, SB 2468, and AB 4536. It shall only become operative if (1) all four bills are enacted and become effective on or before January 1, 1989, (2) each bill amends Section 1250 of the Health and Safety Code, and (3) this bill is enacted after SB 2207, SB 2468, and AB 4536, in which case Section 1250 of the Health and Safety Code, as amended by AB 4536, shall remain operative only until the effective date of this bill, at which time Section 1.7 of this bill shall become operative and Sections 1, 1.1, 1.2, 1.3, 1.4, 1.5, and 1.6 of this bill shall not become operative.

SEC. 9. Section 2.5 of this bill incorporates amendments to Section 1250.1 of the Health and Safety Code proposed by both this

bill and AB 4536. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1989, (2) each bill amends Section 1250.1 of the Health and Safety Code, and (3) this bill is enacted after AB 4536, in which case Section 1250.1 of the Health and Safety Code, as amended by AB 4536, shall remain operative only until the effective date of this bill, at which time Section 2.5 of this bill shall become operative and Section 2 of this bill shall not become operative.

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## CHAPTER 1609

An act to amend Section 556 of, and to add Section 12998 to, the Insurance Code, and to amend Sections 548 and 803 of the Penal Code, relating to insurance fraud.

[Approved by Governor September 30, 1988. Filed with Secretary of State September 30, 1988.]

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

SECTION 1. Section 556 of the Insurance Code is amended to read:

556. (a) It is unlawful to:

(1) Knowingly present or cause to be presented any false or fraudulent claim for the payment of a loss, including payment of a loss under a contract of insurance.

(2) Knowingly present multiple claims for the same loss or injury, including presentation of multiple claims to more than one insurer, with an intent to defraud.

(3) Knowingly cause or participate in a vehicular collision, or any other vehicular accident, for the purpose of presenting any false or fraudulent claim.

(4) Knowingly prepare, make, or subscribe any writing, with intent to present or use the same, or to allow it to be presented in support of any such claim.

(b) Every person who violates any provision of this section is punishable by imprisonment in the state prison, for two, three, or five years, or by fine not exceeding twenty-five thousand dollars ($25,000), or by both.

(c) Notwithstanding any other provision of law, probation shall not be granted to, nor shall the execution or imposition of a sentence be suspended for, any adult person convicted of a violation of this section who has been previously convicted of violations of this section as an adult under charges separately brought and tried two or more times. The existence of any fact which would make a person ineligible for probation under this subdivision 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.

Except where the existence of such fact was not admitted or found to be true 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.

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.

SEC. 2. Section 12998 is added to the Insurance Code, to read:

12998. Each insurance company doing business in this state shall pay an annual fee to be determined by the Insurance Commissioner, but not to exceed thirty cents ($0.30) for each automobile insurance policy it issues in this state, in order to fund increased investigation and prosecution of fraudulent automobile insurance claims. After incidental expenses, 40 percent of those funds shall be distributed to the Bureau of Fraudulent Claims of the Department of Insurance for enhanced investigative efforts, and 60 percent of funds shall be distributed to local district attorneys, according to population, for investigation and prosecution of automobile fraud cases. The funds received under this section shall be deposited in the Insurance Fund and be expended and distributed when appropriated by the Legislature.

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.

SEC. 3. Section 548 of the Penal Code is amended to read:

548. 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 same be 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.

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

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 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 of this code or Section 556 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 or Chapter 6.5 (commencing with Section 25100) of Division 20 or Part 4 (commencing with Section 41500) of Division 26 of the Health and Safety Code, or Section 386.

SEC. 5. 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 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 of this code or Section 556 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 or Chapter 6.5 (commencing with Section 25100) of Division 20 or Part 4 (commencing with Section 41500) of Division 26 of the Health and Safety Code, or Section 386.

(f) The time within which a criminal prosecution may be commenced shall be tolled during the time a defendant is released pursuant to a precomplaint diversion program under Chapter 2.68 (commencing with Section 1000.40) of Title 6.

SEC. 6. 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 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 of this code

or Section 556 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), Chapter 6.7 (commencing with Section 25280), 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.

SEC. 7. 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 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 of this code or Section 556 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), Chapter 6.7 (commencing with Section 25280), 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) The time within which a criminal prosecution may be commenced shall be tolled during the time a defendant is released pursuant to a precomplaint diversion program under Chapter 2.68 (commencing with Section 1000.40) of Title 6.

SEC. 8. (a) Section 5 of this bill incorporates amendments to Section 803 of the Penal Code proposed by both this bill and AB 4273. It shall only become operative if (1) both bills are enacted and become effective January 1, 1989, (2) each bill amends Section 803 of the Penal Code, and (3) AB 4373 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 4273, in which case Sections 4, 6, and 7 of this bill shall not become operative.

(b) Section 6 of this bill incorporates amendments to Section 803 of the Penal Code proposed by both this bill and AB 4373. It shall only become operative if (1) both bills are enacted and become effective January 1, 1989, (2) each bill amends Section 803 of the Penal Code, (3) AB 4273 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 4373 in which case Sections 4, 5, and 7 of this bill shall not become operative.

(c) Section 7 of this bill incorporates amendments to Section 803 of the Penal Code proposed by this bill, AB 4273, and AB 4373. It shall only become operative if (1) all three bills are enacted and become effective January 1, 1989, (2) all three bills amend Section 803 of the Penal Code, and (3) this bill is enacted after AB 4273 and AB 4373 in which case Sections 4, 5, and 6 of this bill shall not become operative.

## CHAPTER 1610

An act to amend Section 8855.5 of the Government Code, and to add Chapter 7.5 (commencing with Section 33740) to Part 1 of Division 24 of, to add Article 5.5 (commencing with Section 34376) to Chapter 1 of Part 2 of Division 24 of, and to add Chapter 8 (commencing with Section 52100) to Part 5 of Division 31 of, the Health and Safety Code, relating to housing.

[Approved by Governor September 30, 1988. Filed with Secretary of State September 30, 1988.]

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

SECTION 1. Section 8855.5 of the Government Code is amended to read:

8855.5. (a) Any redevelopment agency which issues revenue bonds to finance residential construction pursuant to Chapter 7.5 (commencing with Section 33740) or Chapter 8 (commencing with Section 33750) of Part 1 of Division 24 of the Health and Safety Code, any housing authority which issues revenue bonds to finance housing developments or residential structures pursuant to the Housing Authorities Law, Chapter 1 (commencing with Section 34200) of Part 2 of Division 24 of the Health and Safety Code, any local agency which issues bonds to finance residential rehabilitation pursuant to the Marks-Foran Residential Rehabilitation Act of 1973 (Part 13 (commencing with Section 37910), Division 24, Health and Safety Code), and any city or county which issues bonds for purposes of a home financing program carried on pursuant to Chapter 1 (commencing with Section 52000) to Chapter 6 (commencing with Section 52060), inclusive, of Part 5 of Division 31 of the Health and Safety Code or for purposes of financing the construction, acquisition, or development of multifamily rental housing pursuant to Chapter 7 (commencing with Section 52075) or Chapter 8 (commencing with Section 52100) of Part 5 of Division 31 of the Health and Safety Code, shall report to the California Debt Advisory Commission the incomes, family size, and rents or mortgage payments of the occupants; the number, size, cost, sales price, and geographical distribution of the units developed; the length of time the units are required to be held for occupancy by targeted income groups, and, if applicable, the number of years the units are required to be held as rentals; and the distribution of housing developments among for-profit, limited dividend, and nonprofit sponsors. For the purposes of this section, "nonprofit sponsors" includes public agencies.

(b) The information required to be reported by subdivision (a) shall be reported at least annually during the time that a percentage of the units are required to be occupied by, or made available to, persons or families within a particular income group.

(c) The failure of any entity to report the information required by subdivision (a) shall not affect the validity of the issuance of any of the bonds issued under the authority of any of the provisions described in subdivision (a).

(d) The report required by subdivision (a) shall only apply to housing units financed with the proceeds of bonds that are authorized to be issued, and which are issued, on and after January 1, 1985, pursuant to any of the provisions described in subdivision (a). For purposes of this section, "bonds" means any bonds, notes, interim certificates, debentures, or other obligations issued under the authority of any of the provisions described in subdivision (a).

The redevelopment agency, housing authority, local agency, or city and county may charge a fee to the recipient of agency financing not to exceed the cost of making the reports required by this section.

SEC. 2. Chapter 7.5 (commencing with Section 33740) is added to Part 1 of Division 24 of the Health and Safety Code, to read:

## CHAPTER 7.5. LOANS TO TAX-EXEMPT ORGANIZATIONS

33740. The Legislature hereby finds and declares that it would be beneficial to empower redevelopment agencies to issue tax-exempt revenue bonds for the purpose of lending the proceeds to nonprofit organizations exempt from federal income taxation pursuant to Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (26 U.S.C. Sec. 501(c)(3)), for the housing purposes specified in Section 33741.

33741. An agency may issue bonds to provide funds to be loaned by the agency to nonprofit organizations exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (26 U.S.C. Sec. 501(c)(3)), for use by the organization to finance the acquisition of multifamily rental housing to provide housing within the territorial jurisdiction of the agency in accordance with the organization's tax-exempt purposes under that federal law. The bonds shall be issued so as to satisfy the requirements of Section 145 of the Internal Revenue Code of 1986, as amended (26 U.S.C. Sec. 145).

33742. (a) Occupancy and rent restrictions with respect to housing acquired pursuant to this chapter shall either meet the requirements of subparagraphs (A) and (B) of paragraph (1) or the requirements of paragraph (2), as follows:

(1) (A) Not less than 20 percent of the total number of units in a multifamily rental housing development financed, or for which financing has been extended or committed, pursuant to this chapter from the proceeds of the sale of bonds of each bond issuance of the agency shall be for occupancy on a priority basis by lower income households, as defined by Section 50079.5. If a multifamily rental housing development is located within a targeted area project, as defined by Section 103(b)(12)(A) of Title 26 of the United States Code, not less than 15 percent of the total number of units financed,

or for which financing has been extended or committed pursuant to this chapter, shall be for occupancy on a priority basis by lower income households. Not less than one-half of the units required for occupancy on a priority basis by lower income households shall be for occupancy on a priority basis for very low income households, as defined by Section 50105.

(B) The rental payments on the units required for occupancy by very low income households paid by the persons occupying the units (excluding any supplemental rental assistance from the state, the federal government, or any other public agency to those persons or on behalf of those units) shall not exceed 30 percent of an amount equal to 50 percent of area median income. If the nonprofit organization elects to establish a base rent for all or part of the units for lower income households and very low income households, the base rents shall be adjusted for household size. In adjusting rents for household size for this purpose, it shall be assumed that one person will occupy a studio unit, two persons will occupy a one-bedroom unit, three persons will occupy a two-bedroom unit, four persons will occupy a three-bedroom unit, and five persons will occupy a four-bedroom unit.

(2) The multifamily rental housing development is a "qualified low-income housing project," within the meaning of Section 42(g) of the federal Internal Revenue Code ( 26 U.S.C. Sec. 42), because it meets the criteria set forth in Section 42 (g) (1) (B) and (2) of the federal Internal Revenue Code.

(b) If at the time of acquisition any of the units are occupied by ineligible households, that fact alone shall neither constitute a cause for the tenant's eviction nor render the project ineligible. Upon vacation of any unit initially occupied by an ineligible household, that unit shall be rented to an eligible household until the required residency by eligible households is attained.

(c) As a condition of financing pursuant to this chapter, the nonprofit organization shall enter into a regulatory agreement with the agency, which shall require that units reserved for occupancy by lower income households shall remain available on a priority basis for occupancy for the term of the bonds issued to provide the financing or 30 years, whichever is greater. The regulatory agreement shall contain a provision making the covenants and conditions of the agreement binding upon successors in interest of the nonprofit organization. The regulatory agreement shall be recorded in the office of the county recorder of the county in which the multifamily rental housing development is located. The regulatory agreement shall be recorded in the grantor-grantee index to the name of the property owner as grantor and to the name of the agency as grantee.

33743. An agency may, in conjunction with the financing of multifamily rental housing pursuant to this chapter, finance the acquisition of commercial property for lease, subject to all of the following conditions:

(a) No more than 10 percent of the proceeds of any revenue

bonds issued pursuant to this chapter may be used to acquire the commercial property for lease.

(b) The commercial property acquired will be located on the same parcel or on a parcel adjacent to a multifamily rental housing development.

(c) As a condition of the financing, any lease payments collected in excess of payments necessary for debt service, operating expenses and any required reserves related to the property, shall be used to reduce rents or units reserved for occupancy by lower income households and very low income households in a multifamily rental housing development.

33744. Whenever a complaint is received concerning a violation of the restrictions imposed pursuant to Section 33742, the agency shall investigate promptly and make a report to the complaining party on whether the violation existed and whether it persists, and if it persists, what action the agency will take to remedy the violation. When the agency determines that a violation exists, whether determined upon an investigation of a complaint or on its own motion, the agency shall take all appropriate action, including necessary legal action, to promptly eliminate the violation.

Notwithstanding other provisions of this section, any person aggrieved by a violation of the restrictions imposed pursuant to Section 33742 may seek a judicial remedy without regard to whether a complaint has been made to the agency or whether the agency is then taking any action to remedy the violation.

33745. For the purposes of this chapter, an agency shall have the power to issue its bonds to defray, in whole or in part, the costs of studies and surveys, insurance premiums, underwriting fees, and legal, accounting and marketing services incurred in connection with the issuance and sale of bonds pursuant to this chapter, including bond and mortgage reserve accounts, trustee, custodian, and rating agency fees, and any other costs which are reasonably related to the foregoing.

33746. (a) Bonds issued pursuant to this chapter shall be repayable solely from payments of principal and interest on account of the loans funded thereby. The agency may pledge all or any portion of these payments to secure the bonds.

(b) Neither the members of the agency nor any person executing the bonds shall be personally liable on the bonds or be subject to any personal liability or accountability by reason of the issuance thereof.

(c) The exercise of the powers granted by this chapter shall be in all respects for the benefit of the people of this state and for their health and welfare. Any bonds issued under this chapter, their transfer, and income therefrom shall at all times be free from taxation of every kind by the state and by the municipalities and political subdivisions of the state, except estate taxes.

(d) This chapter provides an alternative method for issuing bonds and lending moneys for acquisition of multifamily rental housing by private nonprofit organizations.

SEC. 3. Article 5.5 (commencing with Section 34376) is added to Chapter 1 of Part 2 of Division 24 of the Health and Safety Code, to read:

Article 5.5. Loans to Tax-Exempt Organizations

34376. The Legislature hereby finds and declares that it would be beneficial to empower housing authorities to issue tax-exempt revenue bonds for the purpose of lending the proceeds to nonprofit organizations exempt from federal income taxation pursuant to Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (26 U.S.C. Sec. 501(c)(3)), for the housing purposes specified in Section 34377.

34377. An authority may issue bonds to provide funds to be loaned by the authority to nonprofit organizations exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (26 U.S.C. Sec. 501(c)(3)), for use by the organization to finance the acquisition of multifamily rental housing to provide housing within the territorial jurisdiction of the authority in accordance with the organization's tax-exempt purposes under that federal law. The bonds shall be issued so as to satisfy the requirements of Section 145 of the Internal Revenue Code of 1986, as amended (26 U.S.C. Sec. 145).

34377.2. (a) Occupancy and rent restrictions with respect to housing acquired pursuant to this article shall either meet the requirements of subparagraphs (A) and (B) of paragraph (1) or the requirements of paragraph (2) as follows:

(1) (A) Not less than 20 percent of the total number of units in a multifamily rental housing development financed, or for which financing has been extended or committed, pursuant to this article from the proceeds of the sale of bonds of each bond issuance of the authority shall be for occupancy on a priority basis by lower income households, as defined by Section 50079.5. If a multifamily rental housing development is located within a targeted area project, as defined by Section 103(b)(12)(A) of Title 26 of the United States Code, not less than 15 percent of the total number of units financed, or for which financing has been extended or committed pursuant to this chapter, shall be for occupancy on a priority basis by lower income households. Not less than one-half of the units required for occupancy on a priority basis by lower income households shall be for occupancy on a priority basis for very low income households, as defined by Section 50105.

(B) The rental payments on the units required for occupancy by very low income households paid by the persons occupying the units (excluding any supplemental rental assistance from the state, the federal government, or any other public agency to those persons or on behalf of those units) shall not exceed 30 percent of an amount equal to 50 percent of area median income. If the nonprofit organization elects to establish a base rent for all or part of the units

for lower income households and very low income households, the base rents shall be adjusted for household size. In adjusting rents for household size for this purpose, it shall be assumed that one person will occupy a studio unit, two persons will occupy a one-bedroom unit, three persons will occupy a two-bedroom unit, four persons will occupy a three-bedroom unit, and five persons will occupy a four-bedroom unit.

(2) The multifamily rental housing development is a "qualified low-income housing project," within the meaning of Section 42(g) of the Internal Revenue Code ( 26 U.S.C. Sec. 42), because it meets the criteria set forth in Section 42(g)(1)(B) and (2) of the Internal Revenue Code.

(b) If at the time of acquisition any of the units are occupied by ineligible households, that fact alone shall neither constitute a cause for the tenant's eviction nor render the project ineligible. Upon vacation of any unit initially occupied by an ineligible household, that unit shall be rented to an eligible household until the required residency by eligible households is attained.

(c) As a condition of financing pursuant to this article, the nonprofit organization shall enter into a regulatory agreement with the authority, which shall require that units reserved for occupancy by lower income households shall remain available on a priority basis for occupancy for the term of the bonds issued to provide the financing or 30 years, whichever is greater. The regulatory agreement shall contain a provision making the covenants and conditions of the agreement binding upon successors in interest of the nonprofit organization. The regulatory agreement shall be recorded in the office of the county recorder of the county in which the multifamily rental housing development is located. The regulatory agreement shall be recorded in the grantor-grantee index to the name of the property owner as grantor and to the name of the authority as grantee.

34377.4. An authority may, in conjunction with the financing of multifamily rental housing pursuant to this article, finance the acquisition of commercial property for lease, subject to all of the following conditions:

(a) No more than 10 percent of the proceeds of any revenue bonds issued pursuant to this article may be used to acquire the commercial property for lease.

(b) The commercial property acquired will be located on the same parcel or on a parcel adjacent to a multifamily rental housing development.

(c) As a condition of the financing, any lease payments collected in excess of payments necessary for debt service, operating expenses and any required reserves related to such property, shall be used to reduce rents on units reserved for occupancy by lower income households and very low income households in a multifamily rental housing development.

34377.6. Whenever a complaint is received concerning a

violation of the restrictions imposed pursuant to Section 34377.2, the authority shall investigate promptly and make a report to the complaining party on whether the violation existed and whether it persists, and if it persists, what action the authority will take to remedy the violation. When the authority detemines that a violation exists, whether determined upon an investigation of a complaint or on its own motion, the authority shall take all appropriate action, including necessary legal action, to promptly eliminate the violation.

Notwithstanding other provisions of this section, any person aggrieved by a violation of the restrictions imposed pursuant to Section 34377.2 may seek a judicial remedy without regard to whether a complaint has been made to the agency or whether the agency is then taking any action to remedy the violation.

34378. For the purposes of this article, an authority shall have the power to issue its bonds to defray, in whole or in part, the costs of studies and surveys, insurance premiums, underwriting fees, and legal, accounting and marketing services incurred in connection with the issuance and sale of bonds pursuant to this chapter, including bond and mortgage reserve accounts; trustee, custodian, and rating agency fees, and any other costs which are reasonably related to the foregoing.

34379. (a) Bonds issued pursuant to this article shall be repayable solely from payments of principal and interest on account of the loans funded thereby. The agency may pledge all or any portion of these payments to secure the bonds.

(b) Neither the members of the authority nor any person executing the bonds shall be personally liable on the bonds or be subject to any personal liability or accountability by reason of the issuance thereof.

(c) The exercise of the powers granted by this article shall be in all respects for the benefit of the people of this state and for their health and welfare. Any bonds issued under this article, their transfer, and income therefrom shall at all times be free from taxation of every kind by the state and by the municipalities and political subdivisions of the state, except estate taxes.

(d) This article provides an alternative method for issuing bonds and lending moneys for acquisition of multifamily rental housing by private nonprofit organizations.

SEC. 4. Chapter 8 (commencing with Section 52100) is added to Part 5 of Division 31 of the Health and Safety Code, to read:

## CHAPTER 8. LOANS TO TAX-EXEMPT ORGANIZATIONS

52100. The Legislature hereby finds and declares that it would be beneficial to empower counties and cities to issue tax-exempt revenue bonds for the purpose of lending the proceeds to nonprofit organizations exempt from federal income taxation pursuant to Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (26 U.S.C. Sec. 501(c)(3)), for the housing purposes specified in

Section 52101.

52101. A city or county may issue bonds to provide funds to be loaned by the city or county to nonprofit organizations exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (26 U.S.C. Sec. 501(c)(3)), for use by the organization to finance the acquisition of multifamily rental housing to provide housing within the territorial jurisdiction of the city or county in accordance with the organization's tax-exempt purposes under that federal law. The bonds shall be issued so as to satisfy the requirements of Section 145 of the Internal Revenue Code of 1986, as amended (26 U.S.C. Sec. 145).

52102. (a) Occupancy and rent restrictions with respect to housing acquired pursuant to this chapter shall either meet the requirement of subparagraphs (A) and (B) of paragraph (1) or the requirements of paragraph (2), as follows:

(1) (A) Not less than 20 percent of the total number of units in a multifamily rental housing development financed, or for which financing has been extended or committed, pursuant to this chapter from the proceeds of the sale of bonds of each bond issuance of the city or county shall be for occupancy on a priority basis by lower income households, as defined by Section 50079.5. If a multifamily rental housing development is located within a targeted area project, as defined by Section 103(b)(12)(A) of Title 26 of the United States Code, not less than 15 percent of the total number of units financed, or for which financing has been extended or committed pursuant to this chapter, shall be for occupancy on a priority basis by lower income households. Not less than one-half of the units required for occupancy on a priority basis by lower income households shall be for occupancy on a priority basis for very low income households, as defined by Section 50105.

(B) The rental payments on the units required for occupancy by very low income households paid by the persons occupying the units (excluding any supplemental rental assistance from the state, the federal government, or any other public agency to those persons or on behalf of those units) shall not exceed 30 percent of an amount equal to 50 percent of area median income. If the nonprofit organization elects to establish a base rent for all or part of the units for lower income households and very low income households, the base rents shall be adjusted for household size. In adjusting rents for household size for this purpose, it shall be assumed that one person will occupy a studio unit, two persons will occupy a one-bedroom unit, three persons will occupy a two-bedroom unit, four persons will occupy a three-bedroom unit, and five persons will occupy a four-bedroom unit.

(2) The multifamily rental housing development is a "qualified low-income housing project," within the meaning of Section 42(g) of the Internal Revenue Code ( 26 U.S.C. Sec. 42), because it meets the criteria set forth in Section 42(g)(1)(B) and (2) of the Internal Revenue Code.

(b) If at the time of acquisition any of the units are occupied by ineligible households, that fact alone shall neither constitute a cause for the tenant's eviction nor render the project ineligible. Upon vacation of any unit initially occupied by an ineligible household, that unit shall be rented to an eligible household until the required residency by eligible households is attained.

(c) As a condition of financing pursuant to this chapter, the nonprofit organization shall enter into a regulatory agreement with the city or county, which shall require that units reserved for occupancy by lower income households shall remain available on a priority basis for occupancy for the term of the bonds issued to provide the financing or 30 years, whichever is greater. The regulatory agreement shall contain a provision making the covenants and conditions of the agreement binding upon successors in interest of the nonprofit organization. The regulatory agreement shall be recorded in the office of the county recorder of the county in which the multifamily rental housing development is located. The regulatory agreement shall be recorded in the grantor-grantee index to the name of the property owner as grantor and to the name of the city or county as grantee.

52103. A city or county may, in conjunction with the financing of multifamily rental housing pursuant to this chapter, finance the acquisition of commercial property for lease, subject to all of the following conditions:

(a) No more than 10 percent of the proceeds of any revenue bonds issued pursuant to this chapter may be used to acquire the commercial property for lease.

(b) The commercial property acquired will be located on the same parcel or on a parcel adjacent to a multifamily rental housing development.

(c) As a condition of the financing, any lease payments collected in excess of payments necessary for debt service, operating expenses, and any required reserves related to such property, shall be used to reduce rents on units reserved for occupancy by lower income households and very low income households in a multifamily rental housing development.

52104. Whenever a complaint is received concerning a violation of the restrictions imposed pursuant to Section 52102, the city or county shall investigate promptly and make a report to the complaining party on whether the violation existed and whether it persists, and if it persists, what action the city or county will take to remedy the violation. When the city or county determines that a violation exists, whether determined upon an investigation of a complaint or on its own motion, the city or county shall take all appropriate action, including necessary legal action, to promptly eliminate the violation.

Notwithstanding other provisions of this section, any person aggrieved by a violation of the restrictions imposed pursuant to Section 52102 may seek a judicial remedy without regard to whether

a complaint has been made to the city or county or whether the city or county is then taking any action to remedy the violation.

52105. For the purposes of this chapter, a city or county shall have the power to issue its bonds to defray, in whole or in part, the costs of studies and surveys, insurance premiums, underwriting fees, and legal, accounting, and marketing services incurred in connection with the issuance and sale of bonds pursuant to this chapter, including bond and mortgage reserve accounts; trustee, custodian, and rating agency fees, and any other costs which are reasonably related to the foregoing.

52106. (a) Bonds issued pursuant to this chapter shall be repayable solely from payments of principal and interest on account of the loans funded thereby. The issuing city or county may pledge all or any portion of these payments to secure the bonds.

(b) Neither the members of the governing body of the issuing city or county nor any person executing the bonds shall be personally liable on the bonds or be subject to any personal liability or accountability by reason of the issuance thereof.

(c) The exercise of the powers granted by this chapter shall be in all respects for the benefit of the people of this state and for their health and welfare. Any bonds issued under this chapter, their transfer, and income therefrom shall at all times be free from taxation of every kind by the state and by the municipalities and political subdivisions of the state, except estate taxes.

(d) This chapter provides an alternative method for issuing bonds and lending moneys for acquisition of multifamily rental housing by private nonprofit organizations exempt from federal income taxation pursuant to Section 501 (c) (3) of the Internal Revenue Code of 1986, as amended (26 U.S.C. Sec. 501 (c) (3)).

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## CHAPTER 1611

An act to amend Sections 8855.5 and 8855.8 of, and to add Section 8855.7 to, the Government Code, and to amend Sections 50155 and 51005 of the Health and Safety Code, relating to housing.

[Approved by Governor September 30, 1988. Filed with Secretary of State September 30, 1988.]

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

SECTION 1. Section 8855.5 of the Government Code is amended to read:

8855.5. (a) (1) Any redevelopment agency which issues revenue bonds to finance residential construction pursuant to Chapter 8 (commencing with Section 33750) of Part 1 of Division 24 of the Health and Safety Code, (2) any housing authority which issues revenue bonds to finance housing developments or residential

structures pursuant to the Housing Authorities Law, Chapter 1 (commencing with Section 34200) of Part 2 of Division 24 of the Health and Safety Code, (3) any local agency which issues bonds to finance residential rehabilitation pursuant to the Marks-Foran Residential Rehabilitation Act of 1973 (Part 13 (commencing with Section 37910), Division 24, Health and Safety Code), (4) any city or county which issues bonds for purposes of a home financing program carried on pursuant to Chapter 1 (commencing with Section 52000) to Chapter 6 (commencing with Section 52060), inclusive, of Part 5 of Division 31 of the Health and Safety Code or for purposes of financing the construction or development of multifamily rental housing pursuant to Chapter 7 (commencing with Section 52075) of Part 5 of Division 31 of the Health and Safety Code, (5) any local agency, including any charter city or city and county, that issues revenue bonds to finance the purchase, construction, or rehabilitation of housing pursuant to any statute or under the authority of its charter, and (6) any nonprofit corporation that has qualified under Section 501(c)(3) of the federal Internal Revenue Code and which issues indebtedness for which the interest is exempt from federal income taxation to finance the purchase, construction, or rehabilitation of housing in this state, shall report to the California Debt Advisory Commission the incomes, family size, and rents or mortgage payments of the occupants; the number, size, cost, sales price, location by zip code, and geographical distribution of the units developed; the length of time the units are required to be held for occupancy by targeted income groups, and, if applicable, the number of years the units are required to be held as rentals; and the distribution of housing developments among for-profit, limited dividend, and nonprofit sponsors. For the purposes of this section, "nonprofit sponsors" includes public agencies.

(b) The information required to be reported by subdivision (a) shall be reported at least annually during the time that a percentage of the units are required to be occupied by, or made available to, persons or families within a particular income group.

(c) The report required by subdivision (a) shall only apply to housing units financed with the proceeds of bonds that are authorized to be issued, and which are issued, on and after January 1, 1985, pursuant to any of the provisions described in subdivision (a) or implementing provisions supplementary thereto, such as the authorizations contained in Chapter 5 (commencing with Section 6500) of Division 7 of Title 1. For purposes of this section, "bonds" means any bonds, notes, interim certificates, debentures, or other obligations issued under the authority of any of the provisions, or as otherwise, described in subdivision (a), and "issues" includes the issuance of bonds to refund previously issued bonds pursuant to the statutory provisions authorizing the original issuance or pursuant to supplementary authorization, such as Article 10 (commencing with Section 53570) of Chapter 3 of Part 1 of Division 2 of Title 5.

The redevelopment agency, housing authority, local agency, or

city and county may charge a fee to the recipient of agency financing not to exceed the cost of making the reports required by this section.

SEC. 1.5. Section 8855.5 of the Government Code is amended to read:

8855.5. (a) (1) Any redevelopment agency which issues revenue bonds to finance residential construction pursuant to Chapter 7.5 (commencing with Section 33740) or Chapter 8 (commencing with Section 33750) of Part 1 of Division 24 of the Health and Safety Code, (2) any housing authority which issues revenue bonds to finance housing developments or residential structures pursuant to the Housing Authorities Law, Chapter 1 (commencing with Section 34200) of Part 2 of Division 24 of the Health and Safety Code, (3) any local agency which issues bonds to finance residential rehabilitation pursuant to the Marks-Foran Residential Rehabilitation Act of 1973 (Part 13 (commencing with Section 37910), Division 24, Health and Safety Code), (4) any city or county which issues bonds for purposes of a home financing program carried on pursuant to Chapter 1 (commencing with Section 52000) to Chapter 6 (commencing with Section 52060), inclusive, of Part 5 of Division 31 of the Health and Safety Code or for purposes of financing the construction, acquisition, or development of multifamily rental housing pursuant to Chapter 7 (commencing with Section 52075) or Chapter 8 (commencing with Section 52100) of Part 5 of Division 31 of the Health and Safety Code, (5) any local agency, including any charter city or city and county, that issues revenue bonds to finance the purchase, construction, or rehabilitation of housing pursuant to any statute or under the authority of its charter, and (6) any nonprofit corporation that has qualified under Section 501(c)(3) of the federal Internal Revenue Code and which issues indebtedness for which the interest is exempt from federal income taxation to finance the purchase, construction, or rehabilitation of housing in this state, shall report to the California Debt Advisory Commission the incomes, family size, and rents or mortgage payments of the occupants; the number, size, cost, sales price, location by zip code, and geographical distribution of the units developed; the length of time the units are required to be held for occupancy by targeted income groups, and, if applicable, the number of years the units are required to be held as rentals; and the distribution of housing developments among for-profit, limited dividend, and nonprofit sponsors. For the purposes of this section, "nonprofit sponsors" includes public agencies.

(b) The information required to be reported by subdivision (a) shall be reported at least annually during the time that a percentage of the units are required to be occupied by, or made available to, persons or families within a particular income group. The report required by subdivision (a) shall only apply to housing units financed with the proceeds of bonds that are authorized to be issued, and which are issued, on and after January 1, 1985, pursuant to any of the provisions described in subdivision (a) or implementing provisions

supplementary thereto, such as the authorizations contained in Chapter 5 (commencing with Section 6500) of Division 7 of Title 1. For purposes of this section, "bonds" means any bonds, notes, interim certificates, debentures, or other obligations issued under the authority of any of the provisions, or as otherwise, described in subdivision (a), and "issues" includes the issuance of bonds to refund previously issued bonds pursuant to the statutory provisions authorizing the original issuance or pursuant to supplementary authorization, such as Article 10 (commencing with Section 53570) of Chapter 3 of Part 1 of Division 2 of Title 5.

The redevelopment agency, housing authority, local agency, or city and county may charge a fee to the recipient of agency financing not to exceed the cost of making the reports required by this section.

SEC. 2. Section 8855.7 is added to the Government Code, to read:

8855.7. (a) The reports required by Section 8855.5 shall also contain an analysis by the reporting agency of compliance with the targeting requirements of subsection (d) of Section 142 of the Internal Revenue Code of 1986 (26 U.S.C. Sec. 142) with respect to any issue of its bonds subject to those requirements for the federal tax exemption under Section 103 of the Internal Revenue Code of 1986 (26 U.S.C. Sec. 103). The analysis shall identify the numbers of rental units subject to this reporting requirement by categories based on the number of bedrooms per unit, and shall report as to each of these categories.

(b) No public agency or nonprofit corporation subject to the reporting requirements of Section 8855.5 may issue any bonds, including bonds to refund previously issued bonds, subject to the reporting requirements of that section until the Treasurer certifies to the Legislature that the public agency or nonprofit corporation has filed the information required by Section 8855.5 and this section with the California Debt Advisory Commission.

SEC. 3. Section 8855.8 of the Government Code is amended to read:

8855.8. The commission shall compile and summarize the information reported to the commission pursuant to Section 8855.5 and issue that summary to the Legislature and the Legislative Analyst on or before November 1 of each year that the information is received by the commission. This summary shall also list any redevelopment agency, housing authority, local agency, city, and county which issued bonds under the authority of any of the programs specified in subdivision (a) of Section 8855.5 without first obtaining a certification from the Treasurer required pursuant to Section 33760, 34312.3, 52097.5, or 52045 of the Health and Safety Code.

SEC. 4. Section 50155 of the Health and Safety Code is amended to read:

50155. The Legislative Analyst shall include in the annual budget analysis, as needed, an analysis of the costs of tax-exempt mortgage revenue bond financing programs of (a) the California Housing

Finance Agency, (b) cities, counties, and cities and counties pursuant to the provisions enacted by Chapter 114 of the Statutes of 1982, Chapter 1069 of the Statutes of 1979, Chapter 48 of the Statutes of 1975, Chapter 1201 of the Statutes of 1973, Chapter 610 of the Statutes of 1977, as amended, (c) charter cities and cities and counties acting pursuant to their charter powers to finance the purchase, construction, or rehabilitation of housing, and (d) nonprofit corporations that have qualified under Section 501(c)(3) of the federal Internal Revenue Code and which issue indebtedness for which the interest is exempt from federal income taxation to finance the purchase, construction, or rehabilitation of housing in this state. The analyst shall include information with respect to the cost to the state of tax incentives available to sponsors of housing developments under these programs, and shall specify the assumptions upon which the cost estimate is made. Each year in the annual budget analysis, the Legislative Analyst shall include information with respect to the benefits derived from the use of these tax incentives, including the incomes, family size, rents, and mortgage payments of initial occupants; the number, size, cost, and geographical distribution of the units developed; the length of the time the units shall be held for occupancy by targeted income groups, and, where applicable, the number of years units shall be held as rentals, and the distribution of housing developments among for-profit, limited dividend, and nonprofit sponsors. The analysis prepared pursuant to this section shall apply to bonds issued to refund previously issued bonds of programs specified in this section.

SEC. 5. Section 51005 of the Health and Safety Code is amended to read:

51005. (a) The agency shall, by November 1 of each year, submit an annual report of its activities under this division for the preceding year to the Governor, the Secretary of the Business and Transportation Agency, the Director of Housing and Community Development, the Treasurer, the Joint Legislative Budget Committee, the Legislative Analyst, and the Legislature. The report shall set forth a complete operating and financial statement of the agency during the concluded fiscal year. The report shall specify the number of units assisted, the distribution of units among the metropolitan, nonmetropolitan, and rural areas of the state, and shall contain a summary of statistical data relative to the incomes of households occupying assisted units, the monthly rentals charged to occupants of rental housing developments, and the sales prices of housing developments purchased during the previous fiscal year by housing sponsors who are persons or families of low or moderate income. The report shall also include a statement of accomplishment during the previous year with respect to the agency's progress, priorities, and affirmative action efforts. The agency shall specifically include in its report on affirmative action goals, statistical data on the numbers and percentages of minority sponsors, developers, contractors, subcontractors, suppliers, architects, engineers,

attorneys, mortgage bankers or other lenders, insurance agents, and managing agents.

(b) The report shall also include specific information evaluating the extent to which the programs administered by the agency have attained the statutory objectives of the agency, including, but not limited to, (1) the primary purpose of the agency in meeting the housing needs of persons and families of low or moderate income pursuant to Section 50950, (2) the occupancy requirements for very low income households established pursuant to Sections 50951 and 51226, (3) the elderly and orthopedic disability occupancy requirements established pursuant to Section 51230, (4) the use of surplus moneys pursuant to Section 51007, (5) the metropolitan, nonmetropolitan, and rural goals established pursuant to subdivision (h) of Section 50952, (6) the California Statewide Housing Plan, as required by Section 50154, (7) the statistical and other information developed and maintained pursuant to Section 51650, (8) the implementation and administration of the Senior Citizens Housing Assistance Program established pursuant to Chapter 9 (commencing with Section 51450), including (A) the number of assisted units in rental housing developments, (B) the number of units in rental housing developments occupied by, or available to, eligible households, (C) the number of units in rental housing developments occupied by, or available to, very low income eligible households, (D) the average income of, and the distribution of annual incomes among, eligible households, (E) the average and median cost of a unit in each rental housing development, (F) the administrative costs incurred by the agency to implement and manage each program, (G) the agency's recommendations, as needed, to improve the operation of each program, (9) the number of manufactured housing units assisted by the agency, (10) information with respect to the proceeds derived from the issuance of bonds or securities and any interest or other increment derived from the investment of bonds or securities, and the uses for which those proceeds or increments are being made as provided for in Section 51365, including the amount by which each fund balance exceeds indenture requirements, (11) any recommendations described in subdivision (d), (12) any recommendations described in Section 51227, (13) the revenue bonding authority plan adopted pursuant to Section 51004.5, (14) the statistical and other information required to be provided pursuant to Section 50155, and (15) an analysis of the agency's compliance with the targeting requirements of subsection (d) of Section 142 of the Internal Revenue Code of 1986 (26 U.S.C. Sec. 142) with respect to any issue of bonds subject to those requirements under Section 103 of the Internal Revenue Code of 1986 (26 U.S.C. Sec. 103), including the numbers of rental units subject to this reporting requirement by categories based on the number of bedrooms per unit.

The agency may, at its option, include the information required by this section in a single document or may separately report the

statistical portion of the information in a supplement appended to its annual report. This statistical supplement shall be distributed with copies of the agency's annual report, but need not be provided to bond rating agencies, underwriters, investors, developers, or financial institutions.

The Legislative Analyst shall include an analysis of the information in the report on the Senior Citizens Housing Assistance Program in the Legislative Analyst's analysis of the 1989 and 1990 Budget Bills and evaluate the extent to which the objectives of Chapter 9 (commencing with Section 51450) are being accomplished along with any recommendations for improving program performance and meeting statutory objectives.

(c) The agency shall cause an audit of its books and accounts with respect to its activities under this division to be made at least once during each fiscal year by an independent certified public accountant and the agency shall be subject to audit by the Department of Finance not more often than once each fiscal year.

(d) The agency shall assess any obstacles or problems which it has encountered in meeting its mandate to serve nonmetropolitan and rural metropolitan areas, and recommend legislative and administrative solutions to overcome these obstacles or problems. The agency shall separately assess its progress in meeting the rehabilitation needs of rural areas and the new construction needs of rural areas, and separately assess its progress as to single and multifamily units. The agency shall include in its report a quantification and evaluation of its progress in meeting the housing needs of communities of various sizes in rural areas.

(e) By December 1 of each fiscal year, the agency shall ascertain that not less than 25 percent of the total units financed by mortgage loans during the preceding 12 months pursuant to this part were made available to very low income households. If the agency finds that these very low income occupancy goals have not been met, the agency shall immediately notify the Governor, the Speaker of the Assembly, and the Senate Rules Committee, and shall recommend legislation or other action as may be required to make (1) at least 25 percent of the units so available, and (2) at least 25 percent of the units thereafter financed so available. In housing developments for which the agency provides a construction loan but not a mortgage loan, the agency shall report annually on the percentage of units projected to be made available for occupancy and actually occupied by lower income households.

SEC. 6. Section 1.5 of this bill incorporates amendments to Section 8855.5 of the Government Code proposed by both this bill and SB 2117. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1989, (2) each bill amends Section 8855.5 of the Government Code, and (3) this bill is enacted after SB 2117, in which case Section 1 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 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.

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## CHAPTER 1612

An act to amend Section 118 of the Streets and Highways Code, relating to surplus state property.

[Approved by Governor September 30, 1988 Filed with Secretary of State September 30, 1988.]

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

SECTION 1. Section 118 of the Streets and Highways Code is amended to read:

118. (a) Whenever the department determines that any real property or interest therein, previously or hereafter acquired by the state for highway purposes, is no longer necessary for those purposes, the department may sell, contract to sell, sell by trust deed, or exchange the real property or interest therein in the manner and upon terms, standards, and conditions established by the commission. The payment period in any contract of sale or sale by trust deed shall not extend longer than 10 years from the time the contract of sale or trust deed is executed, and any transaction involving a contract of sale or sale by trust deed to private parties shall require a downpayment of at least 30 percent of the purchase price, except as follows:

(1) In the case of improved and unimproved real property sold or exchanged for the purpose of housing for persons and families of low or moderate income, as defined in Section 50093 of the Health and Safety Code, the payment period may not exceed 40 years and the downpayment shall be at least 5 percent of the purchase price. All contracts of sale or sales by trust deed, for the purpose of housing for persons and families of low- or moderate-income shall bear interest. The rate of interest for any such contract or sale shall be computed annually, and shall be the same as the average rate returned by the Pooled Money Investment Board for the past five fiscal years immediately preceding the year in which the payment is made. The contract of sale and sales by trust deeds shall not be utilized if the proposed development or sale qualifies for financing from other sources and if the financing makes feasible the provision of low- and moderate-income housing.

(2) All improved residential property sold to a local public agency pursuant to paragraph (1), if subsequently sold or transferred to a nonprofit housing organization, shall have the endorsement of the city in which the parcels are located, or the county if the parcels are

located in an unincorporated area, that the housing shall remain at affordable housing costs to persons and families of low- or moderate-income and very low income households for the longest feasible time, but for not less than 15 years, as determined by the city or county, as the case may be. By endorsing such a sale, the city or county accepts the responsibility of ensuring the housing remains affordable. The local public agency shall record in the office of the county recorder, covenants or restrictions implementing this subdivision. Notwithstanding any other provision of law, the covenants or restrictions shall run with the land and shall be enforceable against the original purchaser from the department and successors in interest.

(b) Any conveyance under this section shall be approved by the commission and shall be executed on behalf of the state by the director and the purchase price shall be paid into the State Treasury to the credit of any fund, available to the department for highway purposes, which the commission designates.

(c) Any such real property or interest therein may in like manner be exchanged, either as whole or part consideration, for any other real property or interest therein needed for state highway purposes.

SEC. 2. (a) The Director of General Services, with the approval of the State Public Works Board and the Director of Corrections, may sell to the City of Vacaville for current market value and upon such terms and conditions and subject to such reservations and exceptions as the Director of General Services determines are in the best interest of the state, approximately 5.0 acres, being a portion of the California Medical Facility in Vacaville, fronting on Peabody Road at the southeast corner of the facility, subject to the conditions that the property be used solely for animal care and shelter purposes and, if for any reason, the property ceases to be so used, the state may reenter the property and, upon that reentry, any interest in the property shall terminate and ownership shall vest entirely in the state.

(b) The sale of the parcel described in subdivision (a) is exempt from Chapter 3 (commencing with Section 21100) to 6 (commencing with Section 21165), inclusive, of Division 13 of the Public Resources Code.

(c) The Department of General Services shall be reimbursed for any cost or expense incurred in the disposition of the parcel described in subdivision (a), subject to appropriation therefor by the Legislature, from the proceeds of that disposition.

(d) After deducting the amount necessary for the purposes of subdivision (c), the net proceeds received from the disposition of that parcel shall be deposited in the General Fund.

(e) As to the property sold pursuant to subdivision (a), the Director of General Services shall except and reserve to the state all mineral deposits, as defined in Section 6407 of the Public Resources Code, below a depth of 500 feet, without surface rights of entry.

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.

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## CHAPTER 1613

An act to add Article 6.5 (commencing with Section 8910) to Part 6 of Division 1 of the Education Code, relating to teenagers.

[Approved by Governor September 30, 1988. Filed with Secretary of State September 30, 1988.]

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

SECTION 1. Article 6.5 (commencing with Section 8910) is added to Part 6 of Division 1 of the Education Code, to read:

### Article 6.5. Coordination of Programs Serving Pregnant and Parenting Teens

8910. The Legislature finds and declares the following:

(a) Pregnancy of teens continues to be a serious problem in California. In 1984, 28,834 teens 18 years of age and under gave birth in California, including 891 who were 14 years of age or younger. Each year, over 58,000 California teens are either pregnant or parenting.

(b) Teen pregnancy is the point of entry into the system of public social services, and the point of exit from the school system, and the greatest single cause of school dropout for female pupils. Continued school enrollment is a deterrent to second pregnancies. Completion of school and acquisition of marketable skills also prevent long-term and costly dependency on the system of public social services.

(c) Local school districts vary in the amount of state and local fiscal resources to serve pregnant and parenting teens. In the last 20 years legislative enactments have created education-based categorical approaches to serving pregnant and parenting teens. These include schoolage and parent infant development programs, pregnant minor programs, employability programs, child development programs, dropout prevention programs, and family life education programs. The Legislature also has created health-based programs such as the adolescent family life program, perinatal access program, and community-based perinatal services.

(d) A comprehensive, coordinated, and integrated education, health, and employability program will result in a more efficient use of existing funds and prevent overlap and duplication of services.

(e) It is in the best interests of pregnant and parenting teens that school districts develop and implement a coordinated and integrated

service plan for pregnant and parenting teens, in order to improve the delivery of services and continuity of education.

8911. (a) The Superintendent of Public Instruction shall give highest priority to the awarding of new and continuing funds for programs serving pregnant and parenting teens to those school districts, consortiums of school districts, or county superintendents which satisfy the criteria and standards that the State Department of Education may establish for the award of new and continuing funds and which have a plan, approved by the Superintendent of Public Instruction, for coordination of pregnant and parenting teen programs available to teens within the applicable area, including, but not limited to, coordination of public and private social welfare and health service programs. Existing programs may continue to receive funding at the discretion of the Superintendent of Public Instruction and shall submit a plan for the coordination of programs serving pregnant and parenting teens on or before June 30, 1992.

(b) The plan shall address the following goals:

(1) Mobilizing existing services.

(2) Preventing school dropouts.

(3) Encouraging school reentry.

(4) Preventing second pregnancies.

(5) Providing pregnant and parenting teens with employability skills, and thereby assisting them to avoid dependency on public social services.

(6) Ensuring that transitional education services are provided to pregnant and parenting teens between the secondary and postsecondary levels.

(7) Ensuring that transitional services are provided to help pregnant and parenting teens who seek employment following completion of their secondary education.

(8) Improving health and nutrition.

(9) Providing adequate child care.

(10) Developing parenting skills.

(11) Providing transportation services between home and program sites to pregnant and parenting teens.

(c) The plan shall include at a minimum the following information with regard to the applicable area: the incidence of teen pregnancy, the current educational and child development resources, the current public and private resources impacting on pregnant and parenting teens, and a description of service coordinating agreements between the school district, consortium of school districts, or county superintendent and public and private agencies. The plan shall include a component describing transitional service between secondary education and postsecondary programs, and an evaluation of the impact of coordinated and comprehensive service on school dropouts, repeat pregnancies, and low infant birthweights.

(d) The plan shall identify regulatory and statutory barriers to coordination of services that exist in programs which benefit

pregnant and parenting teens, school age parent-infant development programs, continuation school, independent studies, vocational education, child development, special education, general education, and community colleges. The plan also shall describe the district's specific plans for integrating categorical programs to ensure that pregnant and parenting teens receive all available and necessary services. The Superintendent of Public Instruction shall report to the Legislature on the barriers to program coordination as identified in the district's plans. The information provided by the Superintendent of Public Instruction to the Legislature, regarding program coordination barriers, shall be utilized as an information base in the development of a comprehensive statewide plan for pregnant and parenting teens.

(e) Notwithstanding subdivision (a), the Superintendent of Public Instruction shall notify school districts, consortiums of school districts, and county superintendents regarding the enactment of this section, and shall invite them to submit plans in accordance with this section. The Superintendent of Public Instruction shall collect and disseminate to school districts models of successful coordination plans and shall assist districts, upon request, in the development of coordination plans.

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## CHAPTER 1614

An act to add Sections 5003.02 and 5080.38 to the Public Resources Code, to amend Section 5 of Chapter 812 of, and Section 8 of Chapter 1358 of, the Statutes of 1987, and to amend and supplement the Budget Act of 1988 by adding Items 3790-102-722 and 3790-304-721 to Section 2.00 thereof, relating to public property, and making an appropriation therefor.

[Approved by Governor September 30, 1988. Filed with Secretary of State September 30, 1988.]

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

SECTION 1. The Director of General Services, with the approval of the State Public Works Board, may sell, exchange, or lease for current market value or for any lesser consideration authorized by law and upon such terms and conditions and subject to such reservations and exceptions as the Director of General Services determines are in the best interest of the state, all or any part of the following real property:

PARCEL 1. Approximately 0.46 acre of vacant land, being a portion of Lot 9, Block 1, Etiwanda Colony Lands, as shown on that certain map recorded in the Office of the County Recorder of the County of San Bernardino and filed in Book 2 of Maps at page 24, and fronting on Etiwanda Avenue between Highland and Victoria

Avenues, City of Rancho Cucamonga.

PARCEL 2. Approximately 6.26 acres of vacant land, being a portion of Section 34, T31N, R1E, Mt. Diablo Base and Meridian, lying south of State Route 44 and immediately east of the Shingletown Forest Fire Station, Shasta County.

SEC. 2. The Director of General Services, with the approval of the State Public Works Board, may sell to the University of Southern California for current market value and upon such terms and conditions and subject to such reservations and exceptions as the Director of General Services determines are in the best interest of the state, all of Parcel 1, as described in Section 5 of Chapter 1358 of the Statutes of 1987, consisting of approximately 1.84 acres, with a structure, known as 3500 South Hope Street, Los Angeles.

SEC. 3. The Director of General Services, with the approval of the State Public Works Board and the Director of Parks and Recreation, may exchange with the Salvation Army, Inc., a California corporation, for current market value only, and upon such terms and conditions and subject to such reservations and exceptions as the Director of General Services determines are in the best interest of the state, any portion of Malibu Creek State Park, in Los Angeles County, and any recreational or park lands added to Malibu Creek State Park as the result of any exchange completed pursuant to Section 4 of Chapter 1358 of the Statutes of 1987, subject to the following conditions:

(a) State park lands shall be exchanged only for contiguous, unimproved lands that are determined by the Director of Parks and Recreation to be appropriate and desirable as recreational or park lands to be added to Malibu Creek State Park.

(b) The Salvation Army shall enter into an agreement with the Department of Parks and Recreation requiring it to operate the former state property solely as a not-for-profit youth camp and conference center in perpetuity.

(c) The Salvation Army shall not undertake any improvement on the former state property without the express approval of the Director of Parks and Recreation or the director's designee.

(d) Upon any breach of any of the conditions imposed pursuant to this section, the state may reenter the property and, upon that reentry, the interest of the Salvation Army shall terminate and ownership shall vest entirely in the state.

SEC. 4. (a) Notice of every public auction or bid opening shall be posted on the property to be sold under Section 1 and shall be published in a newspaper of general circulation published in the county in which the real property to be sold is situated.

(b) Any sale, exchange, or lease of the parcels described in Sections 1, 2, and 3 are exempt from Chapters 3 (commencing with Section 21100) to 6 (commencing with Section 21165), inclusive, of Division 13 of the Public Resources Code.

SEC. 5. (a) The Department of General Services shall be reimbursed for any cost or expense incurred in the disposition of any

parcels described in this act, subject to appropriation therefor by the Legislature, from the proceeds of that disposition.

(b) After deducting the amount necessary for the purposes of subdivision (a), the net proceeds of any moneys received from the disposition of any parcel described in Sections 1 and 2 shall be deposited in the General Fund.

SEC. 6. As to any property sold pursuant to Section 1 consisting of 15 acres or less, the Director of General Services shall except and reserve to the state all mineral deposits, as defined in Section 6407 of the Public Resources Code, below a depth of 500 feet, without surface rights of entry. As to property sold pursuant to Section 1 consisting of more than 15 acres, the Director of General Services shall except and reserve to the state all mineral deposits, as defined in Section 6407 of the Public Resources Code, together with the right to prospect for, mine, and remove the deposits. The rights to prospect for, mine, and remove the deposits shall be limited to those areas of the property conveyed which the director, after consultation with the State Lands Commission, determines to be reasonably necessary for the removal of the deposits.

SEC. 7. Section 5003.02 is added to the Public Resources Code, to read:

5003.02. The Legislature hereby finds and declares that the City of Santa Monica is letting a concession for the development of extensive new public facilities at Santa Monica State Beach and that the standard, 20-year term authorized by law is insufficient to enable any concessionaire to amortize the type and scale of improvements that the city requires of the concessionaire.

Accordingly, pursuant to subdivision (a) of Section 5080.18, the term of the concession contract entered into by the City of Santa Monica for the development of extensive new public facilities at Santa Monica State Beach may be for a period not to exceed 60 years if the contract also provides that the rent be reviewed and adjusted at least every five years to reflect any change in the Los Angeles-Long Beach Consumer Price Index.

SEC. 8. Section 5080.38 is added to the Public Resources Code, to read:

5080.38. Notwithstanding any provision of this article, if title in fee, to the so-called Marconi property, near the community of Marshall in the County of Marin, is acquired at no cost to the state, the department may enter into an operating agreement with a qualified nonprofit organization for the development, improvement, restoration, care, maintenance, administration, and control of the Marconi Conference Center.

SEC. 9. Section 5 of Chapter 812 of the Statutes of 1987 is amended to read:

Sec. 5. (a) The Department of General Services shall conduct a study regarding the feasibility of consolidating all central state offices in the County of Riverside into a new state building in the western part of the county for reasons of economy and the centralization of

state offices in an area capable of serving the largest number of citizens.

(b) As used in this section, "central state offices" means offices of agencies of state government that generally provide services to the general public on a regional basis or perform functions that typically do not require frequent interaction with members of the general public in the agency's offices. "Central state offices" does not include state offices customarily described as "field offices" or state offices or facilities which, because of the nature of the operations performed there, are not normally situated in a heavily urbanized area.

(c) The department shall consult with the County of Riverside; the Cities of Banning, Beaumont, Corona, Hemet, Lake Elsinore, Moreno Valley, Norco, Perris, Riverside, and San Jacinto; and such other cities and other local public agencies in the county as the department deems advisable.

(d) The results of this study shall be reported to the Legislature and all local governments and public agencies consulted with pursuant to subdivision (c) by January 1, 1989.

(e) The study shall address at least all of the following issues:

(1) A comparison of:

(A) The present and projected populations for the area that the new state office building in western Riverside County would serve, and

(B) The present and projected populations in the areas that would be served by new centralized state office buildings that the department has already scheduled for construction in Santa Barbara, El Monte, Inglewood, Fresno, Redding, Bakersfield, San Mateo, Ventura, Modesto, Salinas, and Santa Rosa.

(2) A determination of whether there is any other major population area in the state which currently has a population as large as the population of western Riverside County, or which is projected to have a population as large as the projected population of western Riverside County, and which does not have a centralized state office building or which is not scheduled by the department to have a centralized state office building by the 1995–96 fiscal year.

(3) A determination of what other areas of the state, based on present and projected populations, will be served by a centralized state office building comparable to the department's plans for a single, centralized state office building to serve the western portions of both Riverside and San Bernardino Counties, taking into account distances that citizens must travel to reach that building.

(4) A determination of whether there is any other area of the state with the combined total of state office space which could be consolidated into a centralized state office building as large as the combined total in western Riverside County, but which is not on the list of planned state office buildings.

(5) A determination of whether the department plans any expansion of the existing centralized state office building in San Bernardino and, if so, a determination of when that expansion is

planned, what use is planned for the building, and whether any state offices now located in western Riverside County are planned for relocation to that building.

(6) The feasibility of negotiating with the federal government for the construction and operation of a combined state and federal, or state, federal, and local governmental office building in western Riverside County; an estimate of the savings that might be realized from a combined office building; a list of any other areas in the state that have a state office building shared with the federal government; and a list of areas in which a combined office building was determined to be infeasible and the reasons therefor.

SEC. 10. Section 8 of Chapter 1358 of the Statutes of 1987 is amended to read:

Sec. 8. (a) The Department of General Services shall be reimbursed for any cost or expense incurred in the disposition of any parcels, subject to appropriation therefor by the Legislature, from the proceeds of that disposition.

(b) After deducting the amount necessary for the purposes of subdivision (a), the net proceeds of any moneys received from the disposition of any parcel described in Sections 3, 4, 5, and 6 shall be deposited in the General Fund, except as follows:

(1) The net proceeds of any sale of state park property shall be deposited as provided in Section 5003.15 of the Public Resources Code and, in particular, the net proceeds of the sale of Parcel 3 of Section 3 shall be deposited in the Parklands Fund of 1984 and shall be reserved solely for future acquisitions at Henry W. Coe State Park.

(2) The net proceeds from the sale of Parcels 3 and 4 of Section 5 shall be deposited in the Motor Vehicle Account in the State Transportation Fund.

SEC. 11. Item 3790-102-722 is added to Section 2.00 of the Budget Act of 1988 (Chapter 313, Statutes of 1988) to read:

PARKLANDS ACQUISITION AND DEVELOPMENT PROGRAM OF 1984

| | | |
|---|---|---|
| 3790-102-722—For local assistance, Department of Parks and Recreation, payable from the Parklands Fund of 1984 | | 165,000 |
| Schedule: | | |
| (1) County of Riverside, Jensen-Alvarado Ranch historic restoration | 165,000 | |

SEC. 12. Item 3790-304-721 is added to Section 2.00 of the Budget Act of 1988 (Chapter 313, Statutes of 1988), to read:

PARKLANDS ACQUISITION AND DEVELOPMENT

3790-304-721—For capital outlay, Department of Parks and Recreation, payable from the Parklands Fund of 1980 ..... 300,000

Schedule:

(1) Marconi Conference Center—planning, surveys, and equipment..... 300,000

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## CHAPTER 1615

An act to add Section 89905.5 to the Education Code, relating to higher education.

[Approved by Governor September 30, 1988 Filed with Secretary of State September 30, 1988.]

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

SECTION 1. (a) The Legislature finds and declares that:

(1) Auxiliary organizations in the California State University system are entities designed to provide essential campus services consistent with the educational mission of, but separately from, the university they directly serve.

(2) The Associated Students at California State University, Chico, is duly constituted and a recognized California State University auxiliary organization incorporated as a nonprofit corporation under California law and operating separate from, but consistent with, the mission of California State University, Chico.

(3) The Associated Students auxiliary organization at California State University, Chico, as an auxiliary organization, has provided commercial services to the Chico campus community since 1929.

(4) The President of California State University, Chico, has proposed to dissolve the interest of the Associated Students in providing commercial services, and to establish other auxiliary organizations to operate the commercial services, thereby raising serious questions about the potential for liability to the state.

(b) In enacting this measure, it is the Legislature's intent to ensure that auxiliary organizations continue to be operated in a manner that is separate from, but related to, the state so as to protect the state from possible liability.

SEC. 2. Section 89905.5 is added to the Education Code, to read:

89905.5. (a) No auxiliary organization operating a commercial service on the California State University, Chico, campus shall discontinue that commercial service without providing the campus

with adequate notice of its intent to discontinue the service, and the opportunity to continue the service through another means.

(b) No commercial service operated by an auxiliary organization on the California State University, Chico, campus or any aspect of the management of the commercial services shall be taken over by the Trustees of the California State University, the Chancellor of the California State University, the president of a campus of the California State University, or another auxiliary organization unless all of the following conditions are met:

(1) The entity seeking to assume all or part of the management of the commercial service has demonstrated that the commercial service has substantial programmatic or financial difficulties.

(2) The governing board of the auxiliary organization currently operating the commercial service has been provided adequate opportunity to respond to the concerns demonstrated pursuant to paragraph (1).

(3) The governing board of the entity seeking to assume all or part of the management of the commercial service has approved the assumption of the new programmatic or financial responsibility.

(4) The auxiliary organization currently operating the commercial service has been provided adequate compensation for any losses, including, but not limited to, property, inventory, services, or employees directly resulting from the assumption of all or part of the operation of the commercial service by the entity.

(c) If an entity assumes responsibility for commercial services pursuant to subdivision (b), the entity shall be established as an official California State University auxiliary organization operating separate from, but related to, the university of service so as to protect the state from all possible liability associated with the operation of commercial services.

SEC. 3. Due to the unique circumstances concerning the auxiliary organizations on the California State University, Chico, campus and in order that the existing auxiliary organizations on that campus may continue to operate without interruption, 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 1616

An act to amend and supplement the Budget Act of 1988 by amending Item 8550-001-191 of Section 2.00 thereof, relating to horseracing, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 30, 1988. Filed with Secretary of State September 30, 1988.]

I am reducing the appropriation Contained in Section 2 of Assembly Bill No. 2597 by $807,000.

This bill would amend and supplement the Budget Act of 1988 to appropriate an additional $807,000 from the Fair and Exposition Fund to the California Horse Racing Board for support of intertrack stewards.

I recently signed SB 2172 (Chapter 984 of 1988), which contained the identical funding found in AB 2597 Therefore, this augmented appropriation is unnecessary.

With this reduction, I approve Assembly Bill No. 2597.

GEORGE DEUKMEJIAN, Governor

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

SECTION 1. The Legislature finds and declares that the current level of funding for the support of intertrack stewards employed by the California Horse Racing Board at satellite wagering facilities is insufficient to carry out board policy for the assignment of stewards. By reason of the Legislature's budget reduction, the board has six hundred thirty thousand dollars ($630,000) available for the support of intertrack stewards for the 1988–89 fiscal year. That level of funding will support intertrack steward staffing at all satellite wagering facilities through October 31, 1988.

SEC. 2. Item 8550-001-191 of Section 2.00 of the Budget Act of 1988 (Chapter 313, Statutes of 1988) is amended to read:

| | | |
|---|---|---|
| 8550-001-191—For support of California Horse Racing Board, payable from the Fair and Exposition Fund | | 7,555,000 |
| Schedule: | | |
| (a) 100000-Personal Services | 1,946,000 | |
| (b) 300000-Operating Expenses and Equipment | 5,919,000 | |
| (c) Amount payable from the Race-tract Security Account, Special Deposit Fund (Item 8550-001-942) | -310,000 | |

Provisions:

1. On June 30, 1988, the remaining fund balances in the Other Regulatory Licenses and Permits Fund and any other amounts received during the 1988–89 fiscal year are hereby transferred to the Fair and Exposition Fund to supplement purses at fairs pursuant to Sections 19596.5 and 19596.5 (h) of the Business and Professions Code.

SEC. 3. This act is an urgency statute necessary for the immedi-

ate 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 provisions of this act will become operative in time for the current 1988 racing season, it is necessary that this act take effect immediately.

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## CHAPTER 1617

An act to amend Section 6217 of the Public Resources Code, relating to ocean resources.

[Approved by Governor September 30, 1988. Filed with Secretary of State September 30, 1988.]

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

SECTION 1. Section 6217 of the Public Resources Code, as amended by Section 7 of Chapter 888 of the Statutes of 1986, is amended to read:

6217. With the exception of revenues derived from state school lands and from sources described in Sections 6217.6, 6301.5, 6301.6, 6855, and 8551 to 8558, inclusive, and Section 6406 (insofar as the proceeds are from property that has been distributed or escheated to the state in connection with unclaimed estates of deceased persons), the commission shall deposit in the State Treasury all revenues, moneys, and remittances received by it under this division, and under Chapter 138 of the Statutes of 1964, First Extraordinary Session, and these sums shall be applied to the following obligations in the following order:

(a) To the General Fund the revenue necessary to provide in any fiscal year for the following:

(1) Payment of refunds, authorized by the commission and approved by the State Board of Control, out of appropriations made for that purpose by the Legislature.

(2) Payment of expenditures of the commission as provided in the annual Budget Act approved by the Legislature.

(3) Payments to cities and counties of the amounts specified in Section 6817 for the purposes specified in that section, and the revenues so deposited are appropriated for such purpose.

(4) Payments to cities and counties of the amounts agreed to pursuant to the provisions of Section 6875.

(b) To the California Water Fund each fiscal year the amount of twenty-five million dollars ($25,000,000).

(c) To the Central Valley Water Project Construction Fund each fiscal year the amount of five million dollars ($5,000,000).

(d) To the General Fund, the amount of five hundred twenty-five thousand dollars ($525,000) for each of the 1989–90, 1990–91, 1991–92,

1992–93, and 1993–94 fiscal years for distribution for public and private higher education for use as up to two-thirds of the local matching share for projects under the National Sea Grant College and Program Act of 1966 (P.L. 89-688) approved, upon the recommendation of the advisory panel appointed pursuant to this section, by the Secretary of the Resources Agency or his or her designee. The Secretary of the Resources Agency shall submit a report to the Legislature on or before January 1, 1993, which evaluates this program and makes recommendations on whether changes should be made to the program or whether it should be continued. The Legislature shall consider recommendations from the Secretary of the Resources Agency and other interested parties on the benefits to the people of the State of California derived from this program and shall determine whether or not to continue similar appropriations for subsequent fiscal years.

There shall be an advisory panel to the Secretary of the Resources Agency consisting of 16 members, which shall do all of the following:

(1) Identify state needs that might be met through Sea Grant research projects, including, but not limited to, such fields as living marine resources, aquaculture, ocean engineering, marine minerals, public recreation, coastal physical processes and coastal and ocean resources planning and management, and marine data acquisition and dissemination, establish priorities for those needs, and transmit those needs and priorities to the Legislature not later than January 1 of each year and include them in all announcements of proposals for grants in the following fiscal year.

(2) Review all applications for funding under this section and make recommendations based upon the priorities it establishes.

(3) Periodically review progress on Sea Grant research projects subsequent to their approval and funding under this section.

(4) Make recommendations to the Secretary of the Resources Agency with respect to the implementation of this section.

The Secretary of the Resources Agency shall appoint the following members of the advisory panel, who shall serve at the pleasure of the secretary:

(A) A representative of the Department of Boating and Waterways.

(B) A representative of the Department of Conservation.

(C) A representative of the Department of Fish and Game.

(D) The Executive Director of the California Coastal Commission or his or her designee.

(E) A representative of the fish industry.

(F) A representative of the aquaculture industry.

(G) A representative of the ocean engineering industry.

(H) A representative of the University of California.

(I) A representative of the California State University.

(J) A representative of a private California institution of higher education which is participating in the National Sea Grant Program.

(K) A representative of the State Lands Commission.

(L) A representative of the State Department of Health Services.

(M) A representative of the State Water Resources Control Board.

The Senate Committee on Rules shall appoint one Member of the Senate to the panel, who shall serve at the pleasure of the Senate Committee on Rules.

The Speaker of the Assembly shall appoint one Member of the Assembly to the panel, who shall serve at the pleasure of the Speaker. This member shall not be of the same political party as the member appointed by the Senate Committee on Rules.

The Secretary of the Resources Agency, or the secretary's designee, shall serve as chairperson of the panel. Panel members shall serve without compensation.

The Sea Grant research projects selected for state support under this section shall have a clearly defined benefit to the people of the State of California. The Legislature hereby finds and declares that the funding provided by this section is needed to stimulate the development and utilization of ocean and coastal resources by working constructively with private sector firms and individuals. The Legislature further recognizes the high productivity of the California Sea Grant program, the only statewide program systematically devoted to supporting fundamental research, education, and extension activities on the diversity of problems related to marine resource protection and development. Nothing in this section shall be construed to preclude the application for funding of any project that would be eligible for funding under the terms of the National Sea Grant College and Program Act of 1966.

(e) To the Capital Outlay Fund for Public Higher Education for the 1984–85 fiscal year the amount of one hundred two million one hundred sixty-eight thousand dollars ($102,168,000), and for each fiscal year thereafter, the amount necessary to provide for an unencumbered balance available for appropriation on July 1 of each fiscal year of one hundred twenty-five million dollars ($125,000,000).

(f) (1) To the State School Building Lease-Purchase Fund, for each of the fiscal years 1985–86, 1986–87, 1987–88, 1988–89, 1989–90, and 1990–91, the amount of one hundred fifty million dollars ($150,000,000).

(2) For the fiscal years 1984–85, 1985–86, 1986–87, 1987–88, 1988–89, 1989–90, and 1990–91, up to 5 percent of the amounts deposited in the State School Building Lease-Purchase Fund pursuant to this section or any other provision of law may be spent in accordance with Sections 17785 to 17795, inclusive, of the Education Code (Emergency School Classroom Law of 1979).

(g) To the Energy and Resources Fund each fiscal year, commencing with the 1985–86 fiscal year, the amount of sixty-five million dollars ($65,000,000).

(h) To the Special Account for Capital Outlay, the balance of all revenues in excess of the amount distributed under subdivisions (a), (b), (c), (d), (e), (f), and (g).

The commission may, with the approval of the State Board of Control, authorize the refund of moneys received or collected by it illegally or by mistake, inadvertence, or error. Claims authorized by the commission and approved by the State Board of Control shall be filed with the Controller and the Controller shall draw his or her warrant against the General Fund in payment of the refund from any appropriation made for that purpose.

All references in any law to Section 6816 shall be deemed to refer to this section.

SEC. 2. Section 6217 of the Public Resources Code, as amended by Chapter 888 of the Statutes of 1986, is amended to read:

6217. With the exception of revenues derived from state school lands and from sources described in Sections 6217.6, 6301.5, 6301.6, 6855, and 8551 to 8558, inclusive, and Section 6406 (insofar as the proceeds are from property that has been distributed or escheated to the state in connection with unclaimed estates of deceased persons), the commission shall deposit in the State Treasury all revenues, moneys, and remittances received by it under this division, and under Chapter 138 of the Statutes of 1964, First Extraordinary Session, and these sums shall be applied to the following obligations in the following order:

(a) To the General Fund the revenue necessary to provide in any fiscal year for the following:

(1) Payment of refunds, authorized by the commission and approved by the State Board of Control, out of appropriations made for that purpose by the Legislature.

(2) Payment of expenditures of the commission as provided in the annual Budget Act approved by the Legislature.

(3) Payments to cities and counties of the amounts specified in Section 6817 for the purposes specified in that section, and the revenues so deposited are appropriated for such purpose.

(4) Payments to cities and counties of the amounts agreed to pursuant to the provisions of Section 6875.

(b) To the California Water Fund each fiscal year the amount of twenty-five million dollars ($25,000,000).

(c) To the Central Valley Water Project Construction Fund each fiscal year the amount of five million dollars ($5,000,000).

(d) To the General Fund, the amount of five hundred twenty-five thousand dollars ($525,000) for each of the 1989–90, 1990–91, 1991–92, 1992–93, and 1993–94 fiscal years for distribution for public and private higher education for use as up to two-thirds of the local matching share for projects under the National Sea Grant College and Program Act of 1966 (P.L. 89-688) approved, upon the recommendation of the advisory panel appointed pursuant to this section, by the Secretary of the Resources Agency or his or her designee. The Secretary of the Resources Agency shall submit a report to the Legislature on or before January 1, 1993, which evaluates this program and makes recommendations on whether changes should be made to the program or whether it should be

continued. The Legislature shall consider recommendations from the Secretary of the Resources Agency and other interested parties on the benefits to the people of the State of California derived from this program and shall determine whether or not to continue similar appropriations for subsequent fiscal years.

There shall be an advisory panel to the Secretary of the Resources Agency consisting of 16 members, which shall do all of the following:

(1) Identify state needs that might be met through Sea Grant research projects, including, but not limited to, such fields as living marine resources, aquaculture, ocean engineering, marine minerals, public recreation, coastal physical processes and coastal and ocean resources planning and management, and marine data acquisition and dissemination, establish priorities for those needs, and transmit those needs and priorities to the Legislature not later than January 1 of each year and include them in all announcements of proposals for grants in the following fiscal year.

(2) Review all applications for funding under this section and make recommendations based upon the priorities it establishes.

(3) Periodically review progress on Sea Grant research projects subsequent to their approval and funding under this section.

(4) Make recommendations to the Secretary of the Resources Agency with respect to the implementation of this section.

The Secretary of the Resources Agency shall appoint the following members of the advisory panel, who shall serve at the pleasure of the secretary:

(A) A representative of the Department of Boating and Waterways.

(B) A representative of the Department of Conservation.

(C) A representative of the Department of Fish and Game.

(D) The Executive Director of the California Coastal Commission or his or her designee.

(E) A representative of the fish industry.

(F) A representative of the aquaculture industry.

(G) A representative of the ocean engineering industry.

(H) A representative of the University of California.

(I) A representative of the California State University.

(J) A representative of a private California institution of higher education which is participating in the National Sea Grant Program.

(K) A representative of the State Lands Commission.

(L) A representative of the State Department of Health Services.

(M) A representative of the State Water Resources Control Board.

The Senate Committee on Rules shall appoint one Member of the Senate to the panel, who shall serve at the pleasure of the Senate Committee on Rules.

The Speaker of the Assembly shall appoint one Member of the Assembly to the panel, who shall serve at the pleasure of the Speaker. This member shall not be of the same political party as the member appointed by the Senate Committee on Rules.

The Secretary of the Resources Agency, or the secretary's designee, shall serve as chairperson of the panel. Panel members shall serve without compensation.

The Sea Grant research projects selected for state support under this section shall have a clearly defined benefit to the people of the State of California. The Legislature hereby finds and declares that the funding provided by this section is needed to stimulate the development and utilization of ocean and coastal resources by working constructively with private sector firms and individuals. The Legislature further recognizes the high productivity of the California Sea Grant program, the only statewide program systematically devoted to supporting fundamental research, education, and extension activities on the diversity of problems related to marine resource protection and development. Nothing in this section shall be construed to preclude the application for funding of any project that would be eligible for funding under the terms of the National Sea Grant College and Program Act of 1966.

(e) To the Capital Outlay Fund for Public Higher Education for the 1984–85 fiscal year the amount of one hundred two million one hundred sixty-eight thousand dollars ($102,168,000), and for each fiscal year thereafter, the amount necessary to provide for an unencumbered balance available for appropriation on July 1 of each fiscal year of one hundred twenty-five million dollars ($125,000,000).

(f) (1) To the State School Building Lease-Purchase Fund, for each of the fiscal years 1985–86, 1986–87, 1987–88, 1988–89, 1989–90, and 1990–91, the amount of one hundred fifty million dollars ($150,000,000).

(2) For the fiscal years 1984–85, 1985–86, 1986–87, 1987–88, 1988–89, 1989–90, and 1990–91, up to 5 percent of the amounts deposited in the State School Building Lease-Purchase Fund pursuant to this section or any other provision of law may be spent in accordance with Sections 17785 to 17795, inclusive, of the Education Code (Emergency School Classroom Law of 1979).

(g) To the Energy and Resources Fund each fiscal year, commencing with the 1985–86 fiscal year, the amount of sixty-five million dollars ($65,000,000).

(h) To the California Housing Trust Fund established pursuant to Section 50841 of the Health and Safety Code, for fiscal year 1989–90, the amount of twenty million dollars ($20,000,000).

(i) To the Special Account for Capital Outlay, the balance of all revenues in excess of the amount distributed under subdivisions (a), (b), (c), (d), (e), (f), (g), and (h).

The commission may, with the approval of the State Board of Control, authorize the refund of moneys received or collected by it illegally or by mistake, inadvertence, or error. Claims authorized by the commission and approved by the State Board of Control shall be filed with the Controller and the Controller shall draw his or her warrant against the General Fund in payment of the refund from any appropriation made for that purpose.

All references in any law to Section 6816 shall be deemed to refer to this section.

SEC. 3. Section 2 of this bill incorporates amendments to Section 6217 of the Public Resources Code proposed by both this bill and SB 2154. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1989, (2) each bill amends Section 6217 of the Public Resources Code, and (3) this bill is enacted after SB 2154, in which case Section 6217 of the Public Resources Code, as amended by SB 2154, shall remain operative only until July 1, 1989, at which time Section 2 of this bill shall become operative, and Section 1 of this bill shall not become operative.

SEC. 4. Section 1 of this act shall become operative on July 1, 1989, if Section 2 of this act does not become operative pursuant to Section 3 of this act.

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## CHAPTER 1618

An act to amend Section 678.1 of, and to add Sections 676.3, 676.4, and 676.6 to, the Insurance Code, relating to insurance.

[Approved by Governor September 30, 1988. Filed with Secretary of State September 30, 1988.]

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

SECTION 1. Section 676.3 is added to the Insurance Code, to read:

676.3. Nothing in Section 676.2 shall preclude the imposition, pursuant to the policy and while the policy is in force, of limitations or exclusions upon coverage by a policy insuring dentists or physicians and surgeons against legal liability arising from the rendering of professional services by an insured licensed pursuant to Chapter 4 (commencing with Section 1600) or Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code, respectively, if these limitations or exclusions are imposed pursuant to the recommendation of an underwriting committee advising the insurer; provided that a majority of the members of that committee are licensed pursuant to the chapter of Division 2 of the Business and Professions Code that is applicable to that particular insured, and written notification of the proposed limitation or exclusion is first given to the insured, and the insured is afforded not less than 30 days to present opposition or argument to the underwriting committee as to why the proposed limitation or exclusion should be modified or withheld, prior to any imposition thereof.

It is the intent of the Legislature to encourage peer review by insurers providing coverage to persons engaged in the provision of health services and the adoption of conditions of coverage which are

intended to protect the public.

SEC. 2. Section 676.4 is added to the Insurance Code, to read:

676.4. Nothing in Section 676.2 shall preclude, while the policies are in force, changes in the rate upon which the premium is based or the conditions of coverage, or both, of policies insuring health care facilities licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code, if the change is imposed pursuant to the recommendation of a health care facility professional liability advisory committee advising the insurer; provided that a majority of the members of the committee are duly authorized representatives of health care facilities licensed pursuant to that Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code, and written notification of the change is given to all affected insureds at least 30 days prior to any such change.

SEC. 3. Section 676.6 is added to the Insurance Code, to read:

676.6. (a) This section applies to commercial umbrella liability insurance policies, commercial excess liability insurance policies, and commercial excess property insurance policies.

(b) As used in this section:

(1) "Umbrella liability insurance policy" means an insurance policy providing liability coverage per person or per occurrence or per claim, when written over one or more underlying liability policies or over a specified amount of self-insured retention.

(2) "Excess liability insurance policy" means an insurance policy providing liability covrage per person or per occurrence or per claim when written over one or more underlying liability policies. Excess liability policies shall include policies written over umbrella liability policies.

(3) "Excess property insurance policy" means a policy providing property coverage per occurrence or per location when written over one or more underlying property insurance policies or a specified amount of self-insured retention.

(c) After a policy defined in subdivision (b) of this section has been in effect for more than 60 days, or if the policy is a renewal, effective immediately, no notice of cancellation shall be effective unless it complies with Section 677.2, is based on one or more of the grounds set forth in subdivision (b) of Section 676.2, or is based on one or more of the following:

(1) A material change in limits, type or scope of coverage, or exclusions in one or more of the underlying policies.

(2) Cancellation or nonrenewal of one or more of the underlying policies where such policies are not replaced without lapse.

(3) A reduction in financial rating or grade of one or more insurers, insuring one or more underlying policies based on an evaluation obtained from a recognized financial rating organization.

(d) A notice of nonrenewal shall not be required in any of the following situations:

(1) The transfer of, or renewal of, a policy without a change in its

terms or conditions or the rate on which the premium is based between insurers which are members of the same insurance group.

(2) The policy has been extended for 90 days or less, if the notice required in subdivision (c) has been given prior to the extension.

(3) The named insured has obtained replacement coverage or has agreed, in writing, within 60 days of the termination of the policy, to obtain that coverage.

(4) The policy is for a period of no more than 60 days and the insured is notified at the time of issuance that it may not be renewed.

(5) The named insured requests a change in the terms or conditions or risks covered by the policy within 60 days prior to the end of the policy period.

(6) The insurer has made a written offer to the insured, within the time period specified in subdivision (c), to renew the policy under changed terms or conditions or at a changed premium rate. As used herein, "terms or conditions" includes, but is not limited to, a reduction in limits, elimination of coverages, or an increase in deductibles.

SEC. 4. Section 678.1 of the Insurance Code is amended to read:

678.1. (a) This section applies only to policies of insurance of commercial insurance which are subject to Sections 675.5 and 676.6.

(b) A notice of nonrenewal shall be in writing and shall be delivered or mailed to the producer of record and to the named insured at the mailing address shown on the policy. Subdivision (a) of Section 1013 of the Code of Civil Procedure shall be applicable if the notice is mailed.

(c) An insurer, at least 45 days, but not more than 120 days, in advance of the end of the policy period, shall give notice of nonrenewal, and the reasons for the nonrenewal, if the insurer intends not to renew the policy, or to condition renewal upon reduction of limits, elimination of coverages, increase in deductibles, or increase of more than 25 percent in the rate upon which the premium is based. Excepting that an insurer for policyholders whose aggregate premium is ten thousand dollars ($10,000) or less shall, at least 60 days but not more than 120 days in advance of the policy period, give notice of nonrenewal, and the reasons for the nonrenewal if the insurer intends to not renew the policy, or, to condition renewal upon reduction of limits, elimination of coverages, increase in deductibles, or increase of more than 25 percent in the rate upon which the premium is based.

(d) If an insurer fails to give timely notice required by subdivision (c), the policy of insurance shall be continued, with no change in its terms or conditions, for a period of 60 days after the insurer gives the notice.

(e) With respect to policies defined in subdivision (b) of Section 676.6, in addition to the bases for conditional renewal set forth in subdivision (c), an insurer may also condition renewal upon requirements relating to the underlying policy or policies. If the requirements are not satisfied as of (1) the expiration date of the

policy, or (2) 30 days after mailing or delivery of such notice, whichever is later, the conditional renewal notice shall be treated as an effective notice of nonrenewal, providing the insurer has sent written confirmation to the first named insured and the producer of record that the conditions were not met and that coverage ceased at the expiration date shown in the expiring policy.

(f) A notice of nonrenewal shall not be required in any of the following situations:

(1) The transfer of, or renewal of, a policy without a change in its terms or conditions or the rate on which the premium is based between insurers which are members of the same insurance group.

(2) The policy has been extended for 90 days or less, if the notice required in subdivision (c) has been given prior to the extension.

(3) The named insured has obtained replacement coverage or has agreed, in writing, within 60 days of the termination of the policy, to obtain that coverage.

(4) The policy is for a period of no more than 60 days and the insured is notified at the time of issuance that it may not be renewed.

(5) The named insured requests a change in the terms or conditions or risks covered by the policy within 60 days prior to the end of the policy period.

(6) The insurer has made a written offer to the insured, within the time period specified in subdivision (c), to renew the policy under changed terms or conditions or at a changed premium rate. As used herein, "terms or conditions" includes, but is not limited to, a reduction in limits, elimination of coverages, or an increase in deductibles.

SEC. 5. It is the further intent of the Legislature that any limitations or exclusions imposed pursuant to Section 676.3 of the Insurance Code shall be for the purpose of remediating unsafe practices of an individual insured. Those limitations or exclusions shall not be for the purpose, or otherwise have the effect of, prohibiting or restricting the utilization by an insured of a qualified nurse anesthetist to perform procedures within the scope of his or her licensure solely by reason of the category of license held by the provider.

# CHAPTER 1619

An act to amend Sections 7035, 7085.6, 7090.1, and 7109 of the Business and Professions Code, relating to contractors, and making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 30, 1988. Filed with Secretary of State September 30, 1988.]

I am reducing the appropriation contained in Section 5 of Assembly Bill No. 4005 from $165,000 to $119,000.

This bill expands a pilot project permitting local authorities to issue citations for unlicensed activity by those requiring licensure by the Contractors State License Board, extends the sunset date to July 1, 1989, and appropriates $165,000 from the Contractors State License Fund to the Contractors State License Board for this purpose.

$119,000 is sufficient to provide the necessary resources for the completion of this experimental project.

With this reduction, I approve Assembly Bill No 4005.

GEORGE DEUKMEJIAN, Governor

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

SECTION 1. Section 7035 of the Business and Professions Code is amended to read:

7035. (a) There is hereby created a pilot project to be operated in not more than 10 cities, counties, or cities and counties, as determined by the registrar and as authorized by the individual cities, counties, or cities and counties, under which a local building inspector, or a person designated by the city or county, when checking for building or construction permits or for compliance with local or state building laws, may issue a citation to a person who is engaged in contracting without a license in violation of this chapter.

(b) All citations shall be on a form prescribed by the registrar. One copy of the citation shall be given to the alleged violator and one copy shall be forwarded to the registrar within 10 days of issuance.

(c) The board shall reimburse the local entity the sum of fifty dollars ($50) for each citation issued by an inspector of that entity.

(d) This section shall be operative until July 1, 1989, and on that date is repealed, unless a later enacted statute extends or repeals this section.

SEC. 2. Section 7085.6 of the Business and Professions Code is amended to read:

7085.6. The failure of a licensee to comply with an arbitration award rendered under this article shall result in the automatic suspension of a license by operation of law. The registrar shall notify the licensee by certified mail of the failure to comply with the arbitrator's award, and that the license shall be automatically suspended 30 calendar days from the date of that notice. The licensee may appeal the suspension for noncompliance within 15 calendar days after service of the notice by written notice to the registrar. Reinstatement may be made at any time following the suspension by

complying with the arbitrator's award and the final order of the registrar. If no reinstatement of the license is made within one year of the date of the automatic suspension, the license and any other contractors' license issued to the licensee shall be automatically revoked by operation of law for a period to be determined by the registrar pursuant to Section 7102. The licensee shall be automatically prohibited from serving as an officer, director, associate, partner, or qualifying individual of another licensee, for the period determined by the registrar and the employment, election, or association of such a person by another licensee shall constitute grounds for disciplinary action. Any qualifier disassociated pursuant to this section shall be replaced within 90 days from the date of disassociation. Upon failure to replace the qualifier within 90 days of the disassociation, the license of the other licensee shall be automatically suspended or the qualifier's classification removed at the end of the 90 days.

SEC. 3. Section 7090.1 of the Business and Professions Code is amended to read:

7090.1. Notwithstanding any other provisions of law, the failure to pay a civil penalty, or to comply with an order of correction or an order to pay a specified sum to an injured party in lieu of correction once the order has become final, shall result in the automatic suspension of a license by operation of law 30 days after noncompliance with the terms of the order. The registrar shall notify the licensee in writing of the failure to comply with the final order and that the license shall be suspended 30 days from the date of the notice. The licensee may contest the determination of noncompliance within 15 days after service of the notice, by written notice to the registrar. Upon receipt of the written notice, the registrar may reconsider the determination and after reconsideration may affirm or set aside the suspension. Reinstatement may be made at any time following the suspension by complying with the final order of the citation. If no reinstatement of the license is made within one year of the date of the automatic suspension, the cited license and any other contractors' license issued to the licensee shall be automatically revoked by operation of law for a period to be determined by the registrar pursuant to Section 7102. The cited licensee shall also be automatically prohibited from serving as an officer, director, associate, partner, or qualifying individual of another licensee, for the period determined by the registrar, and the employment, election, or association of such a person by a licensee shall constitute grounds for disciplinary action. Any qualifier disassociated pursuant to this section shall be replaced within 90 days of the date of disassociation. Upon failure to replace the qualifier within 90 days of the prohibition, the license of the other licensee shall be automatically suspended or the qualifier's classification removed at the end of the 90 days.

SEC. 4. Section 7109 of the Business and Professions Code is amended to read:

7109. (a) A willful departure in any material respect from accepted trade standards for good and workmanlike construction constitutes a cause for disciplinary action, unless the departure was in accordance with plans and specifications prepared by or under the direct supervision of an architect.

(b) A willful departure from or disregard of plans or specifications in any material respect, which is prejudicial to another, without the consent of the owner or his or her duly authorized representative and without the consent of the person entitled to have the particular construction project or operation completed in accordance with such plans or specifications, constitutes a cause for disciplinary action.

SEC. 5. The sum of one hundred sixty-five thousand dollars ($165,000) is hereby appropriated from the Contractors' License Fund to the Contractors' State License Board for purposes of Section 1 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:

The state currently mandates protection for consumers by requiring cities and counties to verify licensure status of contractors before a building permit is issued. Currently, the means of complying with this verification requirement is cumbersome and difficult, if not impossible. The result is that unlicensed individuals are being issued permits for construction, thereby further exposing the public at large to health and safety risks.

In order that these risks are mitigated at the earliest possible time, to rectify defects in existing law relating to enforcement, and to make the law relating to arbitration easier to administer, as well as to provide for effective discipline of contractors, it is necessary that this act go into immediate effect.

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## CHAPTER 1620

An act to add Section 9719 to the Business and Professions Code, to amend Sections 7051 and 7054.7 of, and to add Section 7051.5 to, the Health and Safety Code, relating to human remains.

[Approved by Governor September 30, 1988 Filed with Secretary of State September 30, 1988.]

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

SECTION 1. Section 9719 is added to the Business and Professions Code, to read:

9719. The board shall inspect the books, records, and premises of any crematory licensed under this chapter or any certificate of authority holder operating a crematory. In making those inspections,

the board shall have access to all books and records, the crematory building, the cremation chambers or furnaces, and the storage areas for human remains before and after cremation, during regular office hours or the hours the crematory is in operation. No prior notification of the inspection is required to be given to the certificate of authority holder or the crematory licensee. If any certificate of authority holder or any crematory licensee fails to allow that inspection or any part thereof, it shall be grounds for the suspension or revocation of a license or other disciplinary action against the licensee. In the case of a certificate of authority holder, the suspension, revocation, or other disciplinary action may be limited to the operation of the crematory. All proceedings under this section shall be conducted in accordance with the provisions of this chapter relating to disciplinary proceedings.

SEC. 2. Section 7051 of the Health and Safety Code is amended to read:

7051. Every person who removes any part of any human remains from any place where it has been interred, or from any place where it is deposited while awaiting interment or cremation, with intent to sell it or to dissect it, without authority of law, or written permission of the person or persons having the right to control the remains under Section 7100, or with malice or wantonness, is punishable by imprisonment in the state prison.

SEC. 3. Section 7051.5 is added to the Health and Safety Code, to read:

7051.5. Every person who removes or possesses dental gold or dental silver from any human remains without specific written permission of the person or persons having the right to control those remains under Section 7100 is punishable by imprisonment in the state prison. The fact that incidental and unavoidable dental gold or dental silver remains in the cremation chamber or other equipment or any container used in a prior cremation is not a violation of this section.

SEC. 4. Section 7054.7 of the Health and Safety Code is amended to read:

7054.7. (a) Except with the express written permission of the person entitled to control the disposition of the remains, no person shall:

(1) Cremate the remains of more than one person at the same time in the same cremation chamber or permit the remains or cremated remains of more than one person to be in the same cremation chamber at the same time. The fact that incidental and unavoidable residue remains in the cremation chamber or other equipment or any container used in a prior cremation is not a violation of this section.

(2) Dispose of or scatter cremated remains in such a manner or in such a location that the remains are commingled with those of another person. The provisions of this paragraph shall not apply to the burial of cremated remains at sea from individual containers or

to the scattering or burial of cremated remains in a dedicated cemetery in a garden area used exclusively for such purposes.

(3) Place cremated or uncremated remains of more than one person in the same container or the same interment plot. This paragraph shall not apply to the following:

(A) Interment of members of the same family in a common container designed for the cremated remains of more than one person.

(B) Interment in a plot or container that has been previously designated at the time of sale as being intended for the interment of remains of more than one person.

(b) Written permission from the person entitled to control the disposition of the cremated remains shall be obtained by the person with whom arrangements are made for disposition of the remains and in such form as shall be prescribed by the Cemetery Board. The document shall be filed with and retained by the person who disposes of or inters the remains.

(c) Any person, including any corporation or partnership, violating any provision of this section is guilty of a misdemeanor.

SEC. 5. No appropriation is made and no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution or Section 2231 or 2234 of the Revenue and Taxation Code 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.

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## CHAPTER 1621

An act to amend Sections 436.2 and 436.8 of the Health and Safety Code, relating to health facilities.

[Approved by Governor September 30, 1988. Filed with Secretary of State September 30, 1988.]

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

SECTION 1. Section 436.2 of the Health and Safety Code is amended to read:

436.2. Unless the context otherwise requires, the definitions in this section govern the construction of this chapter and of Section 32127.2.

(a) "Bondholder" means the legal owner of a bond or other evidence of indebtedness issued by a political subdivision or a nonprofit corporation.

(b) "Borrower" means a political subdivision or nonprofit corporation which has secured or intends to secure a loan for the

construction of a health facility.

(c) "Construction, improvement, or expansion" or "construction, improvement, and expansion" includes construction of new buildings, expansion, modernization, renovation, remodeling and alteration of existing buildings, acquisition of existing buildings or health facilities, and initial or additional equipping of any of these buildings.

In connection therewith, "construction, improvement, or expansion" or "construction, improvement, and expansion" includes the cost of construction or acquisition of all structures, including parking facilities, real or personal property, rights, rights-of-way, the cost of demolishing or removing any buildings or structures on land so acquired, including the cost of acquiring any land to which the buildings or structures may be moved, the cost of all machinery and equipment, financing charges, interest (prior to, during and for a period after completion of the construction), provisions for working capital, reserves for principal and interest and for extensions, enlargements, additions, replacements, renovations and improvements, cost of engineering, financial and legal services, plans, specifications, studies, surveys, estimates of cost and of revenues, administrative expenses, expenses necessary or incident to determining the feasibility or practicability of constructing or incident to the construction; or the financing of the construction or acquisition.

(d) "Council" means the Advisory Health Council.

(e) "Debenture" means any form of written evidence of indebtedness issued by the State Treasurer pursuant to this chapter, as authorized by Section 4 of Article XVI of the California Constitution.

(f) "Fund" means the Health Facility Construction Loan Insurance Fund.

(g) "Health facility" means any facility providing or designed to provide services for the acute, convalescent, and chronically ill and impaired, including but not limited to public health centers, community mental health centers, facilities for the developmentally disabled, nonprofit community care facilities that provide care, habilitation, rehabilitation or treatment to developmentally disabled persons, and general tuberculosis, mental, and other types of hospitals and related facilities, such as laboratories, outpatient departments, extended care, nurses' home and training facilities, offices and central service facilities operated in connection with hospitals, diagnostic or treatment centers, extended care facilities, nursing homes, and rehabilitation facilities. "Health facility" also means an adult day health center and a multilevel facility. Except for facilities for the developmentally disabled or a multilevel facility, "health facility" does not include any institution furnishing primarily domiciliary care.

Unless the context dictates otherwise, "health facility" includes a political subdivision of the state or nonprofit corporation which

operates a facility included within the definition set forth in this subdivision.

(h) "Office" means the Office of Statewide Health Planning and Development.

(i) "Lender" means the provider of a loan and its successors and assigns.

(j) "Loan" means money or credit advanced for the costs of construction or expansion of the health facility, and includes both initial loans and loans secured upon refinancing and may include both interim, or short-term loans, and long-term loans. A duly authorized bond or bond issue, or an installment sale agreement, may constitute a "loan."

(k) "Maturity date" means the date on which the loan indebtedness would be extinguished if paid in accordance with periodic payments provided for by the terms of the loan.

(*l*) "Mortgage" means a first mortgage on real estate. "Mortgage" includes a first deed of trust.

(m) "Mortgagee" includes a lender whose loan is secured by a mortgage. "Mortgagee" includes a beneficiary of a deed of trust.

(n) "Mortgagor" includes a borrower, a loan to whom is secured by a mortgage, and the trustor of a deed of trust.

(o) "Nonprofit corporation" means any corporation formed under or subject to the Nonprofit Public Benefit Corporation Law (Part 2 (commencing with Section 5110) of Division 2 of Title 1 of the Corporations Code) or its equivalent under the laws of the state of incorporation, organized for the purpose of owning and operating a health facility.

(p) "Political subdivision" means any city, county, city and county, joint powers entity, local hospital district, or the California Health Facilities Authority.

(q) "Project property" means the real property upon which the health facility is, or is to be, constructed, improved, or expanded, and also means the health facility and the initial equipment in such health facility.

(r) "Public health facility" means any health facility which is or will be constructed for and operated and maintained by any city, county, city and county, or local hospital district.

(s) "Adult day health center" means a facility defined under subdivision (b) of Section 1570.7, which provides adult day health care, as defined under subdivision (a) of Section 1570.7.

(t) "Multilevel facility" means an institutional arrangement where a residential facility for the elderly is operated as a part of, or in conjunction with, an intermediate care facility, a skilled nursing facility, or a general acute care hospital. "Elderly," for the purposes of this subdivision, means a person 62 years of age or older.

SEC. 1.5. Section 436.2 of the Health and Safety Code, as amended by Section 3 of Assembly Bill 3326, is amended to read:

436.2. Unless the context otherwise requires, the definitions in this section govern the construction of this chapter and of Section 32127.2.

(a) "Bondholder" means the legal owner of a bond or other evidence of indebtedness issued by a political subdivision or a nonprofit corporation.

(b) "Borrower" means a political subdivision or nonprofit corporation which has secured or intends to secure a loan for the construction of a health facility.

(c) "Construction, improvement, or expansion" or "construction, improvement, and expansion" includes construction of new buildings, expansion, modernization, renovation, remodeling and alteration of existing buildings, acquisition of existing buildings or health facilities, and initial or additional equipping of any of these buildings.

In connection therewith, "construction, improvement, or expansion" or "construction, improvement, and expansion" includes the cost of construction or acquisition of all structures, including parking facilities, real or personal property, rights, rights-of-way, the cost of demolishing or removing any buildings or structures on land so acquired, including the cost of acquiring any land to which the buildings or structures may be moved, the cost of all machinery and equipment, financing charges, interest (prior to, during and for a period after completion of the construction), provisions for working capital, reserves for principal and interest and for extensions, enlargements, additions, replacements, renovations and improvements, cost of engineering, financial and legal services, plans, specifications, studies, surveys, estimates of cost and of revenues, administrative expenses, expenses necessary or incident to determining the feasibility or practicability of constructing or incident to the construction; or the financing of the construction or acquisition.

(d) "Council" means the Advisory Health Council.

(e) "Debenture" means any form of written evidence of indebtedness issued by the State Treasurer pursuant to this chapter, as authorized by Section 4 of Article XVI of the California Constitution.

(f) "Fund" means the Health Facility Construction Loan Insurance Fund.

(g) "Health facility" means any facility providing or designed to provide services for the acute, convalescent, and chronically ill and impaired, including but not limited to public health centers, community mental health centers, facilities for the developmentally disabled, nonprofit community care facilities that provide care, habilitation, rehabilitation or treatment to developmentally disabled persons, and general tuberculosis, mental, and other types of hospitals and related facilities, such as laboratories, outpatient departments, extended care, nurses' home and training facilities, offices and central service facilities operated in connection with hospitals, diagnostic or treatment centers, extended care facilities, nursing homes, and rehabilitation facilities. "Health facility" also

means an adult day health center, a multilevel facility, and a hospice or other type of facility for the medical or multidisciplinary care of persons in the last phases of terminal diseases, including, but not limited to, a hospice program as defined in Section 199.91. Except for facilities for the developmentally disabled, a multilevel facility, or a hospice program, "health facility" does not include any institution furnishing primarily domiciliary care.

Unless the context dictates otherwise, "health facility" includes a political subdivision of the state or nonprofit corporation which operates a facility included within the definition set forth in this subdivision.

(h) "Office" means the Office of Statewide Health Planning and Development.

(i) "Lender" means the provider of a loan and its successors and assigns.

(j) "Loan" means money or credit advanced for the costs of construction or expansion of the health facility, and includes both initial loans and loans secured upon refinancing and may include both interim, or short-term loans, and long-term loans. A duly authorized bond or bond issue, or an installment sale agreement, may constitute a "loan."

(k) "Maturity date" means the date on which the loan indebtedness would be extinguished if paid in accordance with periodic payments provided for by the terms of the loan.

(*l*) "Mortgage" means a first mortgage on real estate. "Mortgage" includes a first deed of trust.

(m) "Mortgagee" includes a lender whose loan is secured by a mortgage. "Mortgagee" includes a beneficiary of a deed of trust.

(n) "Mortgagor" includes a borrower, a loan to whom is secured by a mortgage, and the trustor of a deed of trust.

(o) "Nonprofit corporation" means any corporation formed under or subject to the Nonprofit Public Benefit Corporation Law (Part 2 (commencing with Section 5110) of Division 2 of Title 1 of the Corporations Code) or its equivalent under the laws of the state of incorporation, organized for the purpose of owning and operating a health facility.

(p) "Political subdivision" means any city, county, city and county, joint powers entity, local hospital district, or the California Health Facilities Authority.

(q) "Project property" means the real property upon which the health facility is, or is to be, constructed, improved, or expanded, and also means the health facility and the initial equipment in such health facility.

(r) "Public health facility" means any health facility which is or will be constructed for and operated and maintained by any city, county, city and county, or local hospital district.

(s) "Adult day health center" means a facility defined under subdivision (b) of Section 1570.7, which provides adult day health care, as defined under subdivision (a) of Section 1570.7.

(t) "Multilevel facility" means an institutional arrangement where a residential facility for the elderly is operated as a part of, or in conjunction with, an intermediate care facility, a skilled nursing facility, or a general acute care hospital. "Elderly," for the purposes of this subdivision, means a person 62 years of age or older.

SEC. 2. Section 436.8 of the Health and Safety Code is amended to read:

436.8. A loan shall be eligible for insurance under this chapter if all of the following conditions are met:

(a) When the borrower is a nonprofit corporation, such loan shall be secured by a mortgage, first lien, trust indenture, or any other security agreement which the office may require subject only to the conditions, covenants and restrictions, easements, taxes, and assessments of record approved by the office. When the borrower is a political subdivision, the loan may be evidenced by a duly authorized bond issue. A loan to a local hospital district or county may meet the requirement of this subdivision by either method.

(b) When (1) the borrower is a nonprofit corporation or (2) the borrower is a public hospital and the loan is secured by a mortgage or first lien, the borrower obtains an American Land Title Association title insurance policy with the office designated as beneficiary, with liability equal to the amount of the loan insured under this chapter, and with any additional endorsements which the office may reasonably require.

(c) The proceeds of the loan shall be used exclusively for the construction, improvement, or expansion of the health facility, as approved by the office under Section 436.4. However, loans insured pursuant to this chapter may include loans to refinance another prior loan, whether or not state insured and without regard to the date of the prior loan, if the office determines that the prior loan would have been eligible for insurance under this chapter at the time it was made. The office may not insure a loan for a health facility which is not needed as determined by the state plan developed under the authorization of Section 436.4.

(d) The loan shall have a maturity date not exceeding 30 years from the date of the beginning of amortization of the loan, except as authorized by subdivision (e), or 75 percent of the office's estimate of the economic life of the health facility, whichever is the lesser.

(e) The loan shall contain complete amortization provisions requiring periodic payments by the borrower not in excess of its reasonable ability to pay as determined by the office. The office shall permit a reasonable period of time during which the first payment to amortization may be waived on agreement by the lender and borrower. The office may, however, waive the amortization requirements of this subdivision and of subdivision (g) of this section when a term loan would be in the borrower's best interest.

(f) The loan shall bear interest on the amount of the principal obligation outstanding at any time at a rate, as negotiated by the borrower and lender, as the office finds necessary to meet the loan

money market. As used in this chapter, "interest" does not include premium charges for insurance and service charges if any. Where a loan is evidenced by a bond issue of a political subdivision, the interest thereon may be at any rate which the bonds may legally bear.

(g) The loan shall provide for the application of the borrower's periodic payments to amortization of the principal of the loan.

(h) The loan shall contain any terms and provisions with respect to insurance, repairs, alterations, payment of taxes and assessments, foreclosure proceedings, anticipation of maturity, additional and secondary liens, and other matters which the office may in its discretion prescribe.

(i) The loan shall have a principal obligation not in excess of an amount equal to 90 percent of the total construction cost. Where the borrower is a political subdivision, the office may fully insure loans equal to the total construction cost.

(j) The borrower shall offer reasonable assurance that the services of the health facility will be made available to all persons residing or employed in the area served by the facility.

(k) A certificate of need or certificate of exemption has been issued for the project to be financed pursuant to Part 1.5 (commencing with Section 437), unless the project is not subject to the requirement.

(*l*) In the case of acquisitions, a project loan shall be guaranteed only for transactions not in excess of the fair market value of the acquisition.

Fair market value shall be determined, for purposes of this subdivision, pursuant to the following procedure, which shall be utilized during the state review of a loan guarantee application:

(1) Completion of a property appraisal by an appraisal firm qualified to make appraisals, as determined by the office, before closing a loan on the project.

(2) Evaluation of the appraisal in conjunction with the book value of the acquisition by the office. When acquisitions involve additional construction, the office shall evaluate the proposed construction to determine that the costs are reasonable for the type of construction proposed. In those cases where this procedure reveals that the cost of acquisition exceeds the current value of a facility, including improvements, then the acquisition cost shall be deemed in excess of fair market value.

In determining financial feasibility of projects of counties pursuant to this section, the office shall take into consideration any assistance for the project to be provided under Section 16715 of the Welfare and Institutions Code or from other sources. It is the intent of the Legislature that the office endeavor to assist counties in whatever ways are possible to arrange loans which will meet the requirements for insurance prescribed by this section.

SEC. 3. Section 1.5 of this bill incorporates amendments to Section 436.2 of the Health and Safety Code proposed by both this

bill and AB 3326. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1989, (2) each bill amends Section 436.2 of the Health and Safety Code, and (3) this bill is enacted after AB 3326, in which case Section 436.2 of the Health and Safety Code, as amended by AB 3326, 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.

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## CHAPTER 1622

An act relating to schools, and making an appropriation therefor.

[Approved by Governor September 30, 1988. Filed with Secretary of State September 30, 1988.]

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

SECTION 1. The Legislature hereby finds and declares as follows:

(a) Self-acceptance, self-direction, and personal responsibility are critical to pupil achievement. To the extent local school communities can create learning environments that promote greater interaction between pupils, teachers, and parents or guardians, those qualities and, accordingly, pupil achievement, will be enhanced.

(b) The Richmond Unified School District has operated an after-school tutoring program for low-achieving elementary and secondary school pupils in reading, mathematics, and other basic academic skills, focusing on assistance in homework, test preparation, and basic skill development. Pupil participants have shown marked improvement in their academic work, classroom attitudes, and attendance.

(c) The expansion and development of that after-school tutoring program as a model would enhance the capacity to improve pupil achievement in school districts throughout this state.

SEC. 2. (a) To the extent the Legislature makes funding available for this purpose, the Richmond Unified School District shall expand its after-school tutoring program, as described in Section 1 of this act, for the purpose of developing a model after-school tutoring program for application to other school districts of this state.

(b) The model after-school tutoring program to be developed pursuant to this section shall contain, but not necessarily be limited to, all of the following elements:

(1) Tutoring is to occur, at one or more school sites within the district, for at least three hours per week during the academic year to pupils in kindergarten, or any of the grades 1 to 12, inclusive, who are identified by the district as having low academic achievement. The instruction shall be designed to improve the social and academic

skills of those pupils and to promote a positive attitude toward academic success.

(2) The parents or guardians of the pupils are encouraged to be present during the tutorial services, to assist them with practical strategies for enhancing their children's self-esteem and supporting their sense of personal responsibility for academic and social achievement.

(3) The persons employed to provide the tutoring services described in this section shall be students enrolled at campuses of public or accredited private postsecondary educational institutions. Tutors shall be chosen by the project director on the basis of competence in core academic subject areas and effectiveness in teaching and relating to pupils, as determined pursuant to interviews conducted by the project director. Special efforts shall be made to recruit tutors who themselves are from underprivileged and minority households, in order to enhance rapport and personal motivation on the part of the pupils served.

(4) Each tutor shall attend at least 10 hours of training provided under the program, and shall consult on a regular basis with the teachers of the pupils receiving tutoring services under this section.

(5) Community volunteers shall be encouraged to assist the tutors.

(6) The superintendent of the Richmond Unified School District shall assign the responsibility for the implementation of the model after-school tutoring program to the human relations department of the district, including, but not limited to, the development of program materials, the employment of tutors, and the appointment and oversight of the evaluation committee described in Section 2.5.

SEC. 2.5. (a) A team of teachers and parents appointed pursuant to paragraph (6) of subdivision (b) of Section 2 shall perform two evaluations, as described in subdivision (c), of the changes in the attitudes and scholastic accomplishments of the pupils receiving tutoring services under the model after-school tutoring program. The criteria for the evaluations shall include, but not be limited to, class attendance, peer interaction, classroom courtesy, classroom participation, attentiveness, academic achievement, personal relations, motivation, communication skills, and personal responsibility.

(b) If 80 percent or more of the participating pupils are found to have successfully progressed under 70 percent or more of the evaluation criteria employed by the team, the after-school tutoring program shall be deemed to be extremely successful. If 50 percent or more, but less than 80 percent, of the participating pupils are found to have successfully progressed under 70 percent or more of the evaluation criteria employed by the team, the program shall be deemed to be moderately successful.

If 30 percent or fewer of the participating pupils are found to have successfully progressed under 70 percent or more of the evaluation criteria employed by the team, the Superintendent of Public

Instruction shall review the program and make recommendations for its improvement. In that event, it is the intent of the Legislature that no state funding be appropriated for the operation of the program subsequent to that review unless the superintendent's recommendations are adopted and implemented.

(c) One evaluation, covering the period from January 1, 1989, to June 30, 1989, shall be completed no later than August 15, 1989. The second evaluation, covering the period from September 1, 1989, to June 30, 1990, shall be completed no later than August 15, 1990.

SEC. 3. (a) No later than September 1, 1989, the Richmond Unified School District shall submit a preliminary report to the Superintendent of Public Instruction on the progress of the model to be developed pursuant to Section 2, including, but not limited to, the results of the evaluation covering the period from January 1, 1989, to June 30, 1989, as described in subdivision (c) of Section 2.5.

(b) No later than January 1, 1991, the Richmond Unified School District shall submit a final report to the Superintendent of Public Instruction, including, but not limited to, the results of the evaluation covering the period from September 1, 1989, to June 30, 1990, as described in subdivision (c) of Section 2.5, and all information and materials required by the superintendent concerning the developed model, as necessary to permit its dissemination to other school districts in this state. No later than March 1, 1991, the superintendent shall report to the Legislature concerning those results.

SEC. 4. Due to the unique circumstances specified in Section 1 of this act concerning the Richmond Unified 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. 5. (a) The Richmond Unified School District may credit for the purpose of its summer school apportionments computed pursuant to Section 42239 of the Education Code, as amended by the annual Budget Act, the hours of homework and tutorial assistance provided pursuant to Section 1 of this act, provided that the instruction is in core academic areas specified in paragraph (2) of subdivision (d) of Section 42239.

(b) All state funding allocated to the Richmond Unified School District for the purposes of this act shall be expended to supplement, rather than supplant, district funds that would otherwise be expended for the operation and development of a district after-school tutoring program for low-achieving pupils.

SEC. 6. Sections 1, 2, 2.5, and 5 of this act shall remain in effect only until January 1, 1991, and as of that date are repealed, unless a later enacted statute, which is enacted before January 1, 1991, deletes or extends that date.

SEC. 7. The requirements imposed upon the Richmond Unified School District under this act shall apply only to the extent the Legislature makes funding available for the purpose of compliance with those requirements. Accordingly, no reimbursement is

required by this act pursuant to Section 6 of Article XIII B of the California Constitution because no program or level of service is mandated by this act except to the extent funded by the Legislature.

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## CHAPTER 1623

An act to add Section 5924.5 to the Public Resources Code, and to amend and supplement the Budget Act of 1988 by adding Items 3640-302-787, 3790-302-722, and 3860-101-786 to Section 2.00 thereof, relating to wildlife and natural areas enhancement, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 30, 1988. Filed with Secretary of State September 30, 1988.]

I am deleting the 225,000 appropriation contained in Section 3 of Senate Bill No. 4. The funding request for this project should be submitted through the annual budget process so that the proper level of funding and a well-defined scope may be determined.

With this deletion, I approve Senate Bill No. 4.

GEORGE DEUKMEJIAN, Governor

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

SECTION 1. Section 5924.5 is added to the Public Resources Code, to read:

5924.5. In addition to the purposes specified in Section 5924, funds appropriated in subparagraph (C) of paragraph (1) of subdivision (b) of Section 5907 for Palm and Andreas Canyons may also be encumbered for interpretative facilities and minimal facilities necessary to facilitate public access if approved by the Tribal Council of the Agua Caliente Band of Cahuilla Indians.

SEC. 2. Item 3640-302-787 is added to Section 2.00 of the Budget Act of 1988, to read:

| | | |
|---|---|---|
| 3640-302-787—For capital outlay, Wildlife Conservation Board, payable from the Wildlife and Natural Areas Conservation Fund | | 10,500,000 |
| Schedule: | | |
| (1) Acquisition, enhancement, restoration, or protection, or any combination thereof, of lands supporting California's unique, fragile, threatened, or endangered plants, animals, and natural communities pursuant to subdivision (a) of Section 2720 of the Fish and Game Code | 6,000,000 | |
| (2) Acquisition, enhancement, resto- | | |

ration, or protection, or any conbination thereof, of critical habitat areas for fish, game mammals, and game birds pursuant to subdivision (b) of Section 2720 of the Fish and Game Code ..... 2,500,000

(3) Acquisition, enhancement, restoration, or protection, or any combination thereof, of lands providing habitat for threatened, endangered, or fully protected species pursuant to subdivision (c) of Section 2720 of the Fish and Game Code..... 2,000,000

Provisions:

1. The appropriations made in this item shall become operative on November 9, 1988.
2. It is the policy of the state to conform fully with the County of Riverside's habitat conservation plan for the Stephen's kangaroo rat *(Dipodomys stephensi)* and all implementing ordinances when the plan and ordinances are approved and adopted. Accordingly, the appropriation made in this item is subject to the condition that at such time as the plan and ordinances become effective, what would have been the state's share of the cost of any acquisitions for the Stephen's kangaroo rat habitat in Riverside County made with funds allocated by the Wildlife Conservation Board from this appropriation shall be calculated, and the amount thus derived shall be credited to the state's share of any future acquisitions of Stephen's kangaroo rat habitat in Riverside County.

SEC. 3. Item 3790-302-722 is added to Section 2.00 of the Budget Act of 1988, to read:

3790-302-722—For capital outlay, Department of Parks and Recreation, payable from the Parklands Fund of 1984 ..... 225,000

Schedule:

(1) 90.FU.100.880--California Citrus State Historic Park--interpretive and preliminary planning and artifact acquisition ..... 225,000

SEC. 4. Item 3860-101-786 is added to Section 2.00 of the Budget Act of 1988, to read:

3860-101-786—For local assistance, Department of Water Resources, payable from the California Wildlife, Coastal, and Park Land Conservation Fund of 1988 800,000
Schedule:
(1) For grants for the acquisition or restoration of natural lands which contain urban streams, creeks, and riparian areas, and for related administrative costs, pursuant to paragraph (3) of subdivision (e) of Section 5907 of the Public Resources Code ..... 800,000

SEC. 5. The sum of two million three hundred thousand dollars ($2,300,000) is hereby appropriated from the California Environmental License Plate Fund to the California Tahoe Conservancy for expenditure during the 1988–89, 1989–90, and 1990–91 fiscal years for capital outlay and grants to public agencies and nonprofit organizations for land acquisition and site improvements related to erosion control, restoration of disturbed lands, wildlife enhancement, and preservation of natural resources pursuant to Title 7.42 (commencing with Section 66905) of the Government Code. Grants made under the authority of Section 66907.7 of the Government Code are exempt from review by the State Public Works Board.

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 further the purposes of the California Wildlife, Coastal, and Park Land Conservation Act of 1988 in accordance with Section 6 of the initiative measure that added that act, and in order to authorize the expenditure of funds for high priority projects for enhancing wildlife and natural areas, it is necessary that this act take effect immediately.

# CHAPTER 1624

An act relating to hazardous substances, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 30, 1988. Filed with Secretary of State September 30, 1988.]

I am reducing the $3 million General Fund appropriation contained in Section 1 (a) of Senate Bill No. 712 to $500,000.

This bill would appropriate $3 million from the Special Account for Capital Outlay in the General Fund to continue cleanup of the ASARCO hazardous waste site in Contra Costa County.

Since this project had a carry-over appropriation of $2.5 million, I am reducing the appropriation in this bill to provide $3 million, which is the estimated need in Fiscal Year 1988–89.

With this reduction, I approve Senate Bill No. 712.

GEORGE DEUKMEJIAN, Governor

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

SECTION 1. (a) The sum of three million dollars ($3,000,000) is hereby appropriated from the Special Account for Capital Outlay in the General Fund to the State Department of Health Services to carry out a removal and remedial action at the ASARCO hazardous substance release site located in the County of Contra Costa.

(b) If the department expends funds pursuant to subdivision (a) for a removal or remedial action at the ASARCO hazardous substance release site and, as a result of the action filed against a private party pursuant to Section 25360, there is a determination that the state is held to be wholly or partially the responsible party for the site, an amount of money equal to the state's share of the responsibility shall be transferred from the General Fund to the Special Account for Capital Outlay.

(c) Any appropriation made from the Special Account for Capital Outlay pursuant to subdivision (a) is not an admission by the state for any responsibility for any specific portion of the total removal and remedial action for that site.

(d) If the state is awarded any funds from a private party in any action to determine liability for the costs of removal and remedial action at the ASARCO hazardous substance release site specified in subdivision (a), these funds shall be deposited in the Special Account for Capital Outlay for the purpose of reimbursing the Special Account for Capital Outlay for the appropriation made pursuant to subdivision (a).

SEC. 2. Any unencumbered amount remaining on July 1, 1988, from funds appropriated from the Special Account for Capital Outlay by Item 4260-011-036 of Section 2 of the Budget Act of 1987 (Chapter 135, Statutes of 1987) to the State Department of Health Services, to carry out a removal and remedial action at the ASARCO hazardous substance release site, shall not revert to the account on July 1, 1988,

and shall remain available to the department for expenditure until July 1, 1990, to carry out that removal and remedial action.

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 funds available for removal and remedial action at the ASARCO hazardous substance release site at the earliest opportunity, it is necessary that this act take effect immediately.

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## CHAPTER 1625

An act to amend Section 11010.8 of the Business and Professions Code, and to add Section 62.2 to the Revenue and Taxation Code, relating to mobilehome parks.

[Approved by Governor September 30, 1988. Filed with Secretary of State September 30, 1988.]

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

SECTION 1. Section 11010.8 of the Business and Professions Code is amended to read:

11010.8. The requirement that a notice of intention be filed pursuant to Section 11010 is not applicable to the purchase of a mobilehome park by a nonprofit corporation if all of the following occur:

(a) A majority of the shareholders or members of the nonprofit corporation constitute a majority of the tenants of the mobilehome park and majority of the members of the board of directors of the nonprofit corporation are tenants of the mobilehome park.

(b) All members of the corporation are residents of the mobilehome park. Members of the nonprofit corporation may enter into leases with the corporation that are greater than five years in length.

(c) A permit to issue securities under Section 25113 of the Corporations Code is obtained from the Department of Corporations.

(d) All funds of tenants for the purchase of the mobilehome park are deposited in escrow until the document transferring title of the mobilehome park to the nonprofit corporation is recorded.

SEC. 2. Section 62.2 is added to the Revenue and Taxation Code, to read:

62.2. Change in ownership shall not include any transfer on or after January 1, 1989, of a mobilehome park to a nonprofit corporation, stock cooperative corporation, or other entity, if, within 270 days after the transfer, the mobilehome park is transferred by that corporation or other entity to a nonprofit corporation, stock

cooperative corporation, or other entity formed by the tenants of the mobilehome park in a transaction which is excluded from change in ownership by subdivision (a) of Section 62.1. With respect to any transfer of any mobilehome park on or after January 1, 1989, subject to this section, the individual tenants who are renting at least a majority of the spaces in the mobilehome park prior to the transfer to the entity formed by the tenants for the acquisition of the park shall participate in the transaction through the ownership of an aggregate of at least a majority of voting stock of, or other ownership or membership interest in, that entity. This section shall not apply if any fees charged the mobilehome park tenants in connection with either the first or second transfer exceed 15 percent of the total consideration paid for the mobilehome park in the first transfer, plus any accrued interest and taxes. If the assessor is notified in writing at the time the transferee files the change in ownership statement that the transferee intends to qualify the transfer under this section, the mobilehome park shall not be reappraised pending satisfaction of the above conditions. If the transferee fails to satisfy those conditions, the assessor shall reappraise the mobilehome park and levy escape assessments or supplemental assessments, as appropriate.

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## CHAPTER 1626

An act to amend Section 2932 of, and to add Section 3041.2 to, the Penal Code, relating to sentencing.

[Approved by Governor September 30, 1988. Filed with Secretary of State September 30, 1988.]

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

SECTION 1. Section 2932 of the Penal Code is amended to read:

2932. (a) (1) For any time credit accumulated pursuant to Section 2931 or to Section 2933, not more than 360 days of credit may be denied or lost for a single act of murder, attempted murder, solicitation of murder, manslaughter, rape, sodomy, or oral copulation accomplished against the victim's will, attempted rape, attempted sodomy, or attempted oral copulation accomplished against the victim's will, assault or battery causing serious bodily injury, assault with a deadly weapon or caustic substance, taking of a hostage, escape with force or violence, or possession or manufacture of a deadly weapon or explosive device, whether or not prosecution is undertaken for purposes of this paragraph. Solicitation of murder shall be proved by the testimony of two witnesses, or of one witness and corroborating circumstances.

(2) Not more than 180 days of credit may be denied or lost for a single act of misconduct, except as specified in paragraph (1), which could be prosecuted as a felony whether or not prosecution is

undertaken.

(3) Not more than 90 days of credit may be denied or lost for a single act of misconduct which could be prosecuted as a misdemeanor, whether or not prosecution is undertaken.

(4) Not more than 30 days of credit may be denied or lost for a single act of misconduct defined by regulation as a serious disciplinary offense by the Department of Corrections. Any person confined due to a change in custodial classification following the commission of any serious disciplinary infraction shall, in addition to any loss of time credits, be ineligible to receive participation or worktime credit for a period not to exceed the number of days of credit which have been lost for the act of misconduct or 180 days, whichever is less. Any person confined in a secure housing unit for having committed any misconduct specified in paragraph (1) in which great bodily injury is inflicted upon a nonprisoner shall, in addition to any loss of time credits, be ineligible to receive participation or worktime credit for a period not to exceed the number of days of credit which have been lost for that act of misconduct, or for the period that the prisoner is confined in a secure housing unit, whichever is less. In unusual cases, an inmate may be denied the opportunity to participate in a credit qualifying assignment for up to six months beyond the period specified in this subdivision if the Director of Corrections finds, after a hearing, that no credit qualifying program may be assigned to the inmate without creating a substantial risk of physical harm to staff or other inmates. At the end of the six-month period and of successive six-month periods, the denial of the opportunity to participate in a credit qualifying assignment may be renewed upon a hearing and finding by the director.

The prisoner may appeal the decision through the department's review procedure, which shall include a review by an individual independent of the institution who has supervisorial authority over the institution.

(b) For any credit accumulated pursuant to Section 2931, not more than 30 days of participation credit may be denied or lost for a single failure or refusal to participate. Any act of misconduct described by the Department of Corrections as a serious disciplinary infraction if committed while participating in work, educational, vocational, therapeutic or other prison activity shall be deemed a failure to participate.

(c) Any procedure not provided for by this section, but necessary to carry out the purposes of this section, shall be those procedures provided for by the Department of Corrections for serious disciplinary infractions if those procedures are not in conflict with this section.

(1) (A) The Department of Corrections shall, using reasonable diligence to investigate, provide written notice to the prisoner. The written notice shall be given within 15 days after the discovery of information leading to charges that may result in a possible denial of

credit, except that if the prisoner has escaped, the notice shall be given within 15 days of the prisoner's return to the custody of the Director of Corrections. The written notice shall include the specific charge, the date, the time, the place that the alleged misbehavior took place, the evidence relied upon, a written explanation of the procedures that will be employed at the proceedings and the prisoner's rights at the hearing. The hearing shall be conducted by an individual who shall be independent of the case and shall take place within 30 days of the written notice.

(B) The Department of Corrections may delay written notice beyond 15 days when all of the following factors are true:

(i) An act of misconduct is involved which could be prosecuted as murder, attempted murder, or assault on a prison employee, whether or not prosecution is undertaken.

(ii) Further investigation is being undertaken for the purpose of identifying other prisoners involved in the misconduct.

(iii) Within 15 days after the discovery of information leading to charges that may result in a possible denial of credit, the investigating officer makes a written request to delay notifying that prisoner and states the reasons for the delay.

(iv) The warden or superintendent of the institution approves of the delay in writing.

The period of delay under this paragraph shall not exceed 30 days. The prisoner's hearing shall take place within 30 days of the written notice.

(2) The prisoner may elect to be assigned an employee to assist in the investigation, preparation, or presentation of a defense at the disciplinary hearing if it is determined by the department that: (i) the prisoner is illiterate; or (ii) the complexity of the issues or the prisoner's confinement status makes it unlikely that the prisoner can collect and present the evidence necessary for an adequate comprehension of the case.

(3) The prisoner may request witnesses to attend the hearing and they shall be called unless the person conducting the hearing has specific reasons to deny this request. The specific reasons shall be set forth in writing and a copy of the document shall be presented to the prisoner.

(4) The prisoner has the right, under the direction of the person conducting the hearing, to question all witnesses.

(5) At the conclusion of the hearing the charge shall be dismissed if the facts do not support the charge, or the prisoner may be found guilty on the basis of a preponderance of the evidence.

(d) If found guilty the prisoner shall be advised in writing of the guilty finding and the specific evidence relied upon to reach this conclusion and the amount of time-credit loss. The prisoner may appeal the decision through the Department of Corrections' review procedure, and may, upon final notification of appeal denial, within 15 days of the notification demand review of the department's denial of credit to the Board of Prison Terms, and the board may affirm,

reverse, or modify the department's decision or grant a hearing before the board at which hearing the prisoner shall have the rights specified in Section 3041.5.

(e) Each prisoner subject to Section 2931 shall be notified of the total amount of good behavior and participation credit which may be credited pursuant to Section 2931, and his or her anticipated time-credit release date. The prisoner shall be notified of any change in the anticipated release date due to denial or loss of credits, award of worktime credit, under Section 2933, or the restoration of any credits previously forfeited.

(f) If the conduct the prisoner is charged with also constitutes a crime, the Department of Corrections may refer the case to criminal authorities for possible prosecution. The department shall notify the prisoner, who may request postponement of the disciplinary proceedings pending the referral.

The prisoner may revoke his or her request for postponement of the disciplinary proceedings up until the filing of the accusatory pleading. In the event of the revocation of the request for postponement of the proceeding, the department shall hold the hearing within 30 days of the revocation.

Notwithstanding the notification requirements in this paragraph and subparagraphs (A) and (B) of paragraph (1) of subdivision (c), in the event the case is referred to criminal authorities for prosecution and the authority requests that the prisoner not be notified so as to protect the confidentiality of its investigation, no notice to the prisoner shall be required until an accusatory pleading is filed with the court, or the authority notifies the warden or superintendent, in writing, that it will not prosecute or it authorizes the notification of the prisoner. The notice exceptions provided for in this paragraph shall only apply if the criminal authority requests of the warden or superintendent, in writing, and within the 15 days provided in subparagraph (A) of paragraph (1) of subdivision (c), that the prisoner not be notified. Any period of delay of notice to the prisoner shall not exceed 30 days beyond the 15 days referred to in subdivision (c). In the event that no prosecution is undertaken, the procedures in subdivision (c) shall apply, and the time periods set forth in that subdivision shall commence to run from the date the warden or superintendent is notified in writing of the decision not to prosecute. In the event the authority either cancels its requests that the prisoner not be notified before it makes a decision on prosecution or files an accusatory pleading, the provisions of this paragraph shall apply as if no request had been received, beginning from the date of the cancellation or filing.

In the case where the prisoner is prosecuted by the district attorney, the Department of Corrections shall not deny time credit where the prisoner is found not guilty and may deny credit if the prisoner is found guilty, in which case the procedures in subdivision (c) shall not apply.

(g) If time credit denial proceedings or criminal prosecution

prohibit the release of a prisoner who would have otherwise been released, and the prisoner is found not guilty of the alleged misconduct, the amount of time spent incarcerated, in excess of what the period of incarceration would have been absent the alleged misbehavior, shall be deducted from the prisoner's parole period.

(h) Nothing in the amendments to this section made at the 1981–82 Regular Session of the Legislature shall affect the granting or revocation of credits attributable to that portion of the prisoner's sentence served prior to January 1, 1983.

SEC. 2. Section 3041.2 is added to the Penal Code, to read:

3041.2. (a) During the 30 days following the granting, denial, revocation, or suspension by a parole authority of the parole of a person sentenced to an indeterminate prison term based upon a conviction of murder, the Governor, when reviewing the authority's decision pursuant to subdivision (b) of Section 8 of Article V of the Constitution, shall review materials provided by the parole authority.

(b) If the Governor decides to reverse or modify a parole decision of a parole authority pursuant to subdivision (b) of Section 8 of Article V of the Constitution, he or she shall send a written statement to the inmate specifying the reasons for his or her decision.

SEC. 3. Section 2 of this act shall be known as, and may be cited as, the "Boatwright-Eaves Parole Review Act of 1988."

SEC. 4. Sections 2 and 3 of this act shall only become operative if Senate Constitutional Amendment 9 of the 1987–88 Regular Session of the Legislature is adopted by the voters.

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## CHAPTER 1627

An act to amend Sections 3103, 3159, 3161, and 3162 of the Civil Code, relating to liens.

[Approved by Governor September 30, 1988 Filed with Secretary of State September 30, 1988.]

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

SECTION 1. Section 3103 of the Civil Code is amended to read:

3103. "Stop notice" means a written notice, signed and verified by the claimant or his or her agent, stating in general terms all of the following:

(a) The kind of labor, services, equipment, or materials furnished or agreed to be furnished by such claimant.

(b) The name of the person to or for whom the same was done or furnished.

(c) The amount in value, as near as may be, of that already done or furnished and of the whole agreed to be done or furnished.

(d) The name and address of the claimant.

The notice, in the case of any work of improvement other than a public work, shall be delivered to the owner personally or left at his or her residence or place of business with some person in charge, or delivered to his or her architect, if any, if the notice is served upon a construction lender, holding construction funds and maintaining branch offices, it shall not be effective as against the construction lender unless given to or served upon the manager or other responsible officer or person at the office or branch thereof administering or holding the construction funds. The notice, in the case of any public work for the state, shall be filed with the director of the department which let the contract and, in the case of any other public work, shall be filed in the office of the controller, auditor, or other public disbursing officer whose duty it is to make payments under the provisions of the contract, or with the commissioners, managers, trustees, officers, board of supervisors, board of trustees, common council, or other body by whom the contract was awarded. No stop notice shall be invalid by reason of any defect in form if it is sufficient to substantially inform the owner of the information required.

Any stop notice may be served by registered or certified mail with the same effect as by personal service.

SEC. 2. Section 3159 of the Civil Code is amended to read:

3159. Any of the persons named in Sections 3110, 3111, and 3112 may, prior to the expiration of the period within which his or her claim of lien must be recorded under Chapter 2 (commencing with Section 3109), give to a construction lender a stop notice or a bonded stop notice. If a payment bond has previously been recorded in the office of the county recorder where the site is located in accordance with Section 3235 or in accordance with Section 3162, then the construction lender shall withhold funds pursuant to a bonded stop notice filed by an original contractor and may, at its option, withhold funds pursuant to a stop notice or bonded stop notice given by anyone other than an original contractor. The construction lender may elect not to withhold pursuant to a bonded stop notice by reason of a payment bond having previously been recorded in the office of the county recorder of the county where the site is located in accordance with Section 3235. If, when giving the construction lender the stop notice or bonded stop notice, the claimant makes a written request for notice of the election, accompanied by a preaddressed, stamped envelope, the construction lender shall furnish the claimant a copy of the bond within 30 days after making the election. A lender shall not be liable for a failure to furnish a copy of the bond if the failure was not intentional and resulted from a bona fide error, if the lender maintains reasonable procedures to avoid such an error, and if the error was corrected not later than 20 days from the date on which the violation was discovered. The payment bond may be recorded at any time prior to the serving of the first stop notice. The notice may only be given for materials, equipment, or services furnished, or labor performed. In the case of a stop notice

or bonded stop notice filed by the original contractor or by a subcontractor contracting directly with an owner, the original contractor or subcontractor shall only be entitled to recover on his or her stop notice or bonded stop notice the net amount due the original contractor or subcontractor after deducting the stop notice claims of all subcontractors or material suppliers who have filed bonded stop notices on account of work done on behalf of the original contractor or the subcontractor.

SEC. 3. Section 3161 of the Civil Code is amended to read:

3161. It shall be the duty of the owner upon receipt of a stop notice pursuant to Section 3158 to withhold from the original contractor or from any person acting under his or her authority and to whom labor or materials, or both, have been furnished, or agreed to be furnished, sufficient money due or to become due to such contractor to answer such claim and any claim of lien that may be recorded therefor, unless a payment bond has been recorded pursuant to the provisions of Section 3235, in which case the owner may, but is not obligated to, withhold such money.

If the owner elects not to withhold pursuant to a stop notice by reason of a payment bond having been previously recorded, then the owner shall, within 30 days after receipt of the stop notice, give a written notice to the claimant at the address shown in the stop notice that the bond has been recorded and furnish to the claimant a copy of that bond.

SEC. 4. Section 3162 of the Civil Code is amended to read:

3162. Upon receipt of a stop notice pursuant to Section 3159, the construction lender may, and upon receipt of a bonded stop notice the construction lender shall, withhold from the borrower or other person to whom it or the owner may be obligated to make payments or advancement out of the construction fund, sufficient money to answer the claim and any claim of lien that may be recorded therefor. If a payment bond has previously been recorded in the office of the county recorder where the site is located in accordance with Section 3235, then the construction lender shall withhold funds pursuant to a bonded stop notice filed by an original contractor and may, at its option, withhold funds pursuant to a stop notice or bonded stop notice given by anyone other than an original contractor. The construction lender may elect not to withhold pursuant to a bonded stop notice by reason of a payment bond having previously been recorded in the office of the county recorder of the county where the site is located in accordance with Section 3235. If, when giving the construction lender the stop notice or bonded stop notice, the claimant makes a written request for notice of the election, accompanied by a preaddressed, stamped envelope, the construction lender shall furnish the claimant a copy of the bond within 30 days after making the election. A lender shall not be liable for a failure to furnish a copy of the bond if the failure was not intentional and resulted from a bona fide error, if the lender maintains reasonable procedures to avoid such an error, and if the error was corrected not

later than 20 days from the date on which the violation was discovered. The payment bond may be recorded at any time prior to the serving of the first stop notice.

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## CHAPTER 1628

An act to add Section 666.5 to the Penal Code, relating to crime.

[Approved by Governor September 30, 1988. Filed with Secretary of State September 30, 1988 ]

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

SECTION 1. Section 666.5 is added to the Penal Code, to read:

666.5. (a) Every person who, having been previously convicted of felony vehicle theft under Section 10851 of the Vehicle Code, or felony grand theft involving an automobile in violation of subdivision (3) of Section 487, regardless of whether or not the person actually served a prior prison term for those offenses, is subsequently convicted of any of these offenses shall be punishable by imprisonment in the state prison for two, three, or four years, or a fine of ten thousand dollars ($10,000), or both the fine and the imprisonment.

(b) The existence of any fact which would bring a person 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.

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## CHAPTER 1629

An act making an appropriation for the payment of claims against the State of California, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 30, 1988 Filed with Secretary of State September 30, 1988 ]

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

SECTION 1. The sum of seven million seven hundred sixty-two thousand nine hundred fifty-six dollars and sixty-seven cents ($7,762,956.67) is hereby appropriated, in accordance with the following schedule, to the Secretary of the State Board of Control to pay claims accepted by the State Board of Control:

(a) Three hundred thirty-five dollars and forty-two cents

($335.42) from the Bank and Corporation Tax Fund.

(b) Four million four hundred sixty-two thousand three hundred twenty-one dollars and nine cents ($4,462,321.09) from the General Fund.

(c) One hundred fourteen dollars and seven cents ($114.07) from the Motor Vehicle License Fee Account.

(d) Three hundred sixty-three dollars and ninety-one cents ($363.91) from the Motor Vehicles Account.

(e) One thousand four hundred thirty-nine dollars and nineteen cents ($1,439.19) from the Personal Income Tax Fund.

(f) Thirty-seven dollars and fifty cents ($37.50) from the Real Estate Fund.

(g) Sixty-five thousand eight hundred three dollars and seventy cents ($65,803.70) from the Retail Sales Tax Fund.

(h) Eight hundred eighty-one dollars and ninety-one cents ($881.91) from the Service Revolving Fund.

(i) Thirty dollars ($30) from the Special Deposit Fund.

(j) Nine thousand two hundred twenty dollars and twenty-eight cents ($9,220.28) from the State Lottery Fund.

(k) Forty-seven dollars and ninety cents ($47.90) from the State Payroll Revolving Fund.

(*l*) Thirty thousand three hundred thirty-six dollars and eight cents ($30,336.08) from the Tax Relief and Refund Account.

(m) Fifty-three thousand two hundred twenty-six dollars and sixty-three cents ($53,226.63) from the Transportation Tax Fund.

(n) Twenty-five dollars and seventy-one cents ($25.71) from the Unemployment Compensation Disability Fund.

(o) Two thousand four hundred seventy-nine dollars and thirty-four cents ($2,479.34) from the Unemployment Fund.

(p) Three million one hundred thirty-six thousand two hundred ninety-three dollars and ninety-four cents ($3,136,293.94) from funds appropriated in Section 2.00 of the Budget Act of 1988, as follows:

(1) Nine hundred eight dollars and twenty-eight cents ($908.28) from category (a) of Item 0540-001-001.

(2) Fifty-two dollars ($52) from category (b) of Item 0690-001-001.

(3) One hundred dollars ($100) from category (c) of Item 0820-001-001.

(4) Two hundred three dollars and nine cents ($203.09) from category (d) of Item 0820-001-001.

(5) Five hundred ninety-seven dollars and fifty-six cents ($597.56) from category (g) of Item 0820-001-001.

(5.5) One thousand four hundred nine dollars and six cents ($1,409.06) from category (a) of Item 0840-001-001.

(6) Nine hundred eighteen dollars and ninety-two cents ($918.92) from category (a) of Item 0860-001-001.

(7) Eighty dollars and sixty-nine cents ($80.69) from category (b) of Item 0860-001-001.

(7.5) Three hundred nine dollars ($309) from category (a) of Item 0890-001-001.

(8) One thousand eight hundred dollars and sixty-six cents ($1,800.66) from category (b) of Item 1655-090-702.

(8.5) Ninety-six dollars and eighty-one cents ($96.81) from category (a) of Item 1730-001-001.

(8.7) Ninety dollars ($90) from category (b) of Item 1730-001-001.

(9) One thousand three hundred fourteen dollars and twenty-one cents ($1,314.21) from category (a) of Item 1760-001-666.

(9.1) Twenty-three thousand nine hundred sixty-six dollars and twenty-two cents ($23,966.22) from category (b) of Item 1760-001-666.

(9.5) Four thousand one hundred twenty-two dollars ($4,122) from category (a) of Item 1900-001-830.

(10) Nine thousand one hundred eighty-eight dollars and ninety-six cents ($9,188.96) from category (a) of Item 1960-001-001.

(11) Three hundred twenty-six dollars and twenty-four cents ($326.24) from category (a) of Item 1970-011-001.

(11.5) Three thousand one hundred forty-six dollars and ninety-six cents ($3,146.96) from category (a) of Item 2100-001-001.

(12) One thousand nine hundred twenty-seven dollars and two cents ($1,927.02) from category (a) of Item 2200-001-001.

(13) Nine thousand forty dollars and seventy-eight cents ($9,040.78) from category (a) of Item 2240-001-001.

(13.5) Seven thousand four hundred ninety-two dollars and sixty cents ($7,492.60) from category (a) of Item 2240-101-001.

(14) Seven thousand sixty-seven dollars and fifty-four cents ($7,067.54) from category (a) of Item 2290-001-217.

(14.5) One hundred sixty-five dollars ($165) from category (b) of Item 2320-001-317.

(15) Two million two hundred sixty-six thousand one hundred ninety-four dollars and ninety-four cents ($2,266,194.94) from category (b) of Item 2660-001-042.

(16) Four thousand one hundred forty dollars and fifty-two cents ($4,140.52) from category (a) of Item 2720-001-044.

(17) Twelve thousand seventy-five dollars and seventy-nine cents ($12,075.79) from category (a) of Item 2740-001-044.

(18) Sixty-four dollars and twenty-five cents ($64.25) from category (b) of Item 2740-001-044.

(19) One thousand seven hundred sixty-seven dollars ($1,767) from category (a) of Item 3480-001-001.

(20) Eleven thousand eight hundred twenty-eight dollars and seventy-eight cents ($11,828.78) from category (a) of Item 3540-001-001.

(20.1) Eight thousand one hundred forty-four dollars and fifty cents ($8,144.50) from category (b) of Item 3540-001-001.

(20.3) Four hundred one dollars and nineteen cents ($401.19) from category (a) of Item 3560-001-001.

(20.4) One hundred forty-nine thousand six hundred eighty-five dollars and thirty-one cents ($149,685.31) from category (b) of Item 3560-001-001.

(20.6) Eleven thousand four hundred sixty-four dollars and seventy-five cents ($11,464.75) from category (b) of Item 3600-001-200.

(20.8) Five hundred forty-three dollars and seventy-one cents ($543.71) from category (a) of Item 3760-001-565.

(21) Four thousand six hundred seventy-two dollars and twenty-six cents ($4,672.26) from category (a) of Item 3790-001-001.

(22) One thousand six hundred seventy-six dollars and eighty-four cents ($1,676.84) from category (b) of Item 3790-001-001.

(22.1) Three thousand one dollars and forty-five cents ($3,001.45) from category (c) of Item 3860-001-001.

(22.3) Eighty-five thousand seven hundred dollars ($85,700) from category (a) of Item 3940-001-001.

(22.6) Four hundred ninety-one dollars ($491) from category (b) of Item 4140-001-001.

(22.8) Three hundred fifty-eight dollars and one cent ($358.01) from category (a) of Item 4200-001-001.

(23) Seven thousand three hundred eighty-four dollars ($7,384) from category (a) of Item 4200-101-001.

(24) Eight thousand six hundred fifty-two dollars and ninety-seven cents ($8,652.97) from category (a) of Item 4260-001-001.

(24.5) One thousand eight hundred sixty-nine dollars ($1,869) from category (a) of Item 4260-101-001.

(25) Seventeen thousand three hundred ten dollars ($17,310) from category (a) of Item 4300-101-001.

(26) Thirty-five thousand seven hundred eighty-three dollars and sixty-nine cents ($35,783.69) from category (a) of Item 4300-111-001.

(27) Thirty-five thousand four hundred sixty-two dollars and thirty-five cents ($35,462.35) from category (a) of Item 4440-011-001.

(27.9) Two thousand dollars ($2,000) from category (a) of Item 5100-001-870.

(28) Nine thousand nine hundred thirty-one dollars and forty cents ($9,931.40) from category (b) of Item 5100-001-870.

(29) Four hundred three dollars and five cents ($403.05) from category (a) of Item 5160-001-001.

(30) Two thousand seven hundred fifty-two dollars and forty-eight cents ($2,752.48) from category (a) of Item 5180-001-001.

(31) Two hundred fourteen thousand five hundred seventy-eight dollars and three cents ($214.578.03) from category (a) of Item 5240-001-001.

(32) Three thousand four hundred four dollars and seventy-one cents ($3,404.71) from category (b) of Item 5460-001-001.

(32.5) Nineteen thousand nine hundred sixty-four dollars ($19,964) from category (a) of Item 6110-001-001.

(32.7) Two thousand sixty-two dollars and seven cents ($2,062.07) from category (a) of Item 6110-006-001.

(33) One thousand five hundred forty dollars and one cent ($1,540.01) from catgegory (a) of Item 6610-001-001.

(34) One hundred five thousand nine hundred fifty-three dollars and forty cents ($105,953.40) from category (e) of Item 6610-001-001.

(34.7) One thousand six hundred sixty-nine dollars and forty-two cents ($1,669.42) from category (b) of Item 6870-001-001.

(35) Eight thousand nine hundred eighty-eight dollars and forty-eight cents ($8,988.48) from category (b) of Item 6870-101-001.

(35.5) Forty-eight dollars ($48) from category (b) of Item 8260-001-001.

(36) Six thousand one hundred eighty-six dollars and forty-nine cents ($6,186.49) from category (ax) of Item 8350-001-001.

(36.5) Two hundred forty-two dollars and one cent ($242.01) from category (a) of Item 8560-001-510.

(37) Nine thousand nine hundred twenty-eight dollars and fifty-nine cents ($9,928.59) from category (b) of Item 8570-001-001.

(38) Two thousand one hundred seventy-three dollars and fourteen cents ($2,173.14) from category (h) of Item 8570-001-001.

(39) One thousand four hundred seventy-two dollars and seventy-five cents ($1,472.75) from category (a) of Item 8940-001-001.

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 pay claims against the state and end hardship to claimants as quickly as possible, it is necessary for this act to take effect immediately.

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## CHAPTER 1630

An act to add Section 107.7 to the Revenue and Taxation Code, relating to property taxation.

[Approved by Governor September 30, 1988. Filed with Secretary of State September 30, 1988.]

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

SECTION 1. After investigation, the Legislature finds and declares as follows:

(a) The cable television industry is an important news, entertainment, education, and information service whose economic health and continued growth and development are in the best interests of the people of the State of California and are matters of statewide concern.

(b) A cable television system is in the business of providing news, entertainment, education, and information services to its subscribers.

(c) Intangible rights and assets are exempt from property

taxation.

(d) Possessory interests of cable television systems do not sell by themselves.

(e) A significant portion of the fair market value of a cable television system may be attributable to intangible assets and rights in addition to the ownership of real and personal property. These intangible assets and rights may include, but are not limited to, franchises or licenses to construct, operate, and maintain a cable television system for a specified franchise term (excepting therefrom that portion of the franchise or license which grants the possessory interest), subscriber contracts, marketing and programming contracts, nonreal property lease agreements, management and operating systems, a work force in place, going concern value, deferred, startup, or prematurity costs, covenants not to compete, and goodwill.

(f) It is the intent of the Legislature in enacting this act to provide uniformity and certainty in the assessment of any real property possessory interests of a cable television system by providing a method for possessory interest assessment which does not include the value of any intangible assets of a cable television system, but values only real property subject to property tax in accordance with Article XIII and Section 1 of Article XIII A of the California Constitution.

(g) This act is not intended and shall not be construed to affect the existing standard of review of an administrative decision in any judicial proceeding.

SEC. 2. Section 107.7 is added to the Revenue and Taxation Code, to read:

107.7. (a) When valuing possessory interests in real property created by the right to place wires, conduits, and appurtenances along or across public streets, rights-of-way, or public easements contained in a cable television franchise or license granted pursuant to Section 53066 of the Government Code (a "cable television possessory interest"), the assessor shall value these possessory interests consistent with the requirements of Section 401. The methods of valuation shall include, but not be limited to, the comparable sales method, the income method (including, but not limited to, capitalizing rent), or the cost method.

(b) (1) The preferred method of valuation of a cable television possessory interest is capitalizing the annual rent, using an appropriate capitalization rate.

(2) For purposes of this section, the annual rent shall be that portion of that franchise fee received by the franchising authority that is determined to be payment for the cable television possessory interest for the actual remaining term or the reasonably anticipated term of the franchise or license or the appropriate economic rent. If the assessor does not use a portion of the franchise fee as the economic rent, the resulting assessments shall not benefit from any presumption of correctness.

(c) If the comparable sales method, which is not the preferred method, is used by the assessor to value a cable television possessory interest when sold in combination with other property including, but not limited to, intangible assets or rights, the resulting assessments shall not benefit from any presumption of correctness.

(d) Intangible assets or rights of a cable television system are not subject to ad valorem property taxation. These intangible assets or rights, include, but are not limited to: franchises or licenses to construct, operate, and maintain a cable television system for a specified franchise term (excepting therefrom that portion of the franchise or license which grants the possessory interest), subscribers, marketing, and programming contracts, nonreal property lease agreements, management and operating systems, a work force in place, going concern value, deferred, startup, or prematurity costs, covenants not to compete, and goodwill. However, a cable television possessory interest may be assessed and valued by assuming the presence of intangible assets or rights necessary to put the cable television possessory interest to beneficial or productive use in an operating cable television system.

(e) Whenever any change in ownership of a cable television possessory interest occurs, the person or legal entity required to file a statement pursuant to Section 480, 480.1, or 480.2, shall, at the request of the assessor, provide as a part of that statement the following, if applicable: confirmation of the sales price; allocation of the sales price among the counties; and gross revenue and franchise fee expenses of the cable television system by county. Failure to provide this information shall result in a penalty as provided in Section 482, except that the maximum penalty shall be five thousand dollars ($5,000).

SEC. 3. It is the intent of the Legislature in enacting this act to clarify the application of existing law and provide uniformity and certainty in the assessment of cable television possessory interests. It is the further purpose and intent of the Legislature in enacting this act to prohibit an assessment policy that equates any cable television possessory interest with the franchise or license itself or with other intangible assets or rights of a cable television system. Nothing in this act shall be construed as requiring the assessment of any cable television possessory interest at a value less than as required by Section 401 of the Revenue and Taxation Code or as prohibiting the assessment of a cable television possessory interest as an asset put to beneficial or productive use in an operating cable television system.

SEC. 4. If any section, subdivision, sentence, clause, or phrase of this act or the application thereof to any person or circumstance is held to be unenforceable by a court of competent jurisdiction, that section, subdivision, sentence, clause, or phrase and the remainder of this act shall remain effective and enforceable to the fullest extent allowed by law, and all sections, subdivisions, sentences, clauses, or phrases of this act are hereby declared to be severable. The Legislature declares that it would have passed this act and each

section, subdivision, sentence, clause, or phrase thereof, irrespective of the fact that any one or more sections, subdivisions, sentences, clauses, or phrases is held to be unenforceable.

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## CHAPTER 1631

An act to amend Sections 25117, 25120.5, 25121, 25121.5, 25124, 25142, 25143, 25143.2, 25143.5, 25145, 25150, 25154, 25155.5, 25155.6, 25155.7, 25159, 25159.7, 25163, 25179.3, 25179.6, 25179.7, 25179.8, 25179.9, 25179.10, 25179.11, 25179.12, 25187, 25199.6, 25205, 25245, 25246, 25247, 25248, and 25250.1 of, and to add Sections 25106, 25110.02, 25117.9, 25120.1, 25122, 25143.1, 25187.1, and 25204.5 to, the Health and Safety Code, and to amend Sections 13172 and 13227 of the Water Code, relating to hazardous waste.

[Approved by Governor September 30, 1988. Filed with Secretary of State September 30, 1988.]

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

SECTION 1. Section 25106 is added to the Health and Safety Code, to read:

25106. Except as expressly provided by statute, this chapter does not supersede or modify Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 2. Section 25110.02 is added to the Health and Safety Code, to read:

25110.02. "Acutely hazardous waste" means any hazardous waste classified as an acutely hazardous waste in regulations adopted by the department.

SEC. 3. Section 25117 of the Health and Safety Code is amended to read:

25117. "Hazardous waste" means a waste, or combination of wastes, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may either:

(a) Cause, or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness.

(b) Pose a substantial present or potential hazard to human health or environment when improperly treated, stored, transported, or disposed of, or otherwise managed.

Unless expressly provided otherwise, the term "hazardous waste" shall be understood to also include extremely hazardous waste and acutely hazardous waste.

SEC. 4. Section 25117.9 is added to the Health and Safety Code, to read:

25117.9. "Non-RCRA hazardous waste" means all hazardous waste regulated in the state, other than that hazardous waste which

is subject to regulation by the Environmental Protection Agency pursuant to the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Sec. 6901 et seq.), in states that are not authorized pursuant to Section 6926 of Title 42 of the United States Code. A hazardous waste is presumed to be regulated pursuant to the Resource Conservation and Recovery Act of 1976, unless it is determined, pursuant to regulations adopted by the department, that the hazardous waste is a non-RCRA hazardous waste. Until the department adopts regulations to implement this section, a hazardous waste is presumed to be regulated pursuant to the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Sec. 6901 et seq.), unless the generator of the waste determines the hazardous waste is not a hazardous waste pursuant to the standards specified in Part 261 (commencing with Section 261.1) of Subchapter I of Chapter 1 of Title 40 of the Code of Federal Regulations.

SEC. 5. Section 25120.1 is added to the Health and Safety Code, to read:

25120.1. "Reclaimed material" means a material which is processed to recover a usable product, or which is regenerated.

SEC. 6. Section 25120.5 of the Health and Safety Code is amended to read:

25120.5. "Recyclable material" means a hazardous waste that is capable of being recycled, including, but not limited to, any of the following:

(a) A residue.

(b) A spent material, including, but not limited to, a used or spent stripping or plating solution or etchant.

(c) A material that is contaminated to such an extent that it can no longer be used for the purpose for which it was originally purchased or manufactured.

(d) A byproduct listed in the regulations adopted by the department as "hazardous waste from specific sources" or "hazardous waste from nonspecific sources."

(e) Any retrograde material that has not been used, distributed, or reclaimed through treatment by the original manufacturer or owner by the later of the following dates:

(1) One year after the date when the material became a retrograde material.

(2) If the material has been returned to the original manufacturer, one year after the material is returned to the original manufacturer.

SEC. 7. Section 25121 of the Health and Safety Code is amended to read:

25121. "Recycled material" means a material which is used or reused, or reclaimed.

SEC. 8. Section 25121.5 of the Health and Safety Code is amended to read:

25121.5. (a) "Retrograde material" means any hazardous

material which is not to be used, sold, or distributed for use in an originally intended or prescribed manner or for an originally intended or prescribed purpose and which meets any one or more of the following criteria:

(1) Has undergone chemical, biochemical, physical, or other changes due to the passage of time or the environmental conditions under which it was stored.

(2) Has exceeded a specified or recommended shelf life.

(3) Is banned by law, regulation, ordinance, or decree.

(4) Cannot be used for reasons of economics, health or safety, or environmental hazard.

(b) "Retrograde material" does not include material designated in regulations adopted by the department as included in a category which the department shall title "Discarded commercial chemical products, off-specification species, container residues, and spill residues thereof", if either of the following conditions is met:

(1) The material is used in a manner constituting disposal and the material is not normally used in a manner constituting disposal.

(2) The material is burned for energy recovery and the material is not normally burned for energy recovery.

SEC. 9. Section 25122 is added to the Health and Safety Code, to read:

25122. "Used or reused material" means material which is either of the following:

(a) Employed as an ingredient, including use as an intermediate, in an industrial process to make a product. However, a material is not a used or reused material if distinct components of the material are recovered as separate end products.

(b) Employed in a particular function or application as an effective substitute for a commercial product.

SEC. 10. Section 25124 of the Health and Safety Code is amended to read:

25124. (a) "Waste" means any discarded material that is not excluded by this chapter, by regulations adopted pursuant to this chapter, or by a variance issued pursuant to this chapter.

(b) A discarded material is any material which is any of the following:

(1) Abandoned, as specified in subdivision (c).

(2) Recycled, as specified in subdivision (d).

(3) Considered inherently waste like, as specified in regulations adopted by the department.

(4) Mislabled or not adequately labeled, unless the material is correctly labeled or adequately labeled within 10 days after the material is discovered to be mislabeled or inadequately labeled.

(5) Is packaged in deteriorated or damaged containers, unless the material is contained in sound or undamaged containers within 96 hours after the containers are discovered to be deteriorated or damaged.

(c) A material is a waste if it is abandoned by being any of the

following:

(1) Disposed of.

(2) Burned or incinerated.

(3) Accumulated, stored, or treated, but not recycled, before, or in lieu of, being abandoned by being disposed of, burned, or incinerated.

(d) A material is a waste if it is recycled, or accumulated, stored, or treated before recycling, except as provided in Section 25143.2.

SEC. 11. Section 25142 of the Health and Safety Code is amended to read:

25142. Any waste which conforms to a criterion adopted pursuant to Section 25141 shall be managed in accordance with permits, orders, and regulations issued or adopted by the department pursuant to this chapter and building standards published in the State Building Standards Code relating to hazardous waste facilities, or recycled consistent with the list of hazardous wastes which the department, pursuant to Section 25175, finds are economically and technologically feasible to recycle, until the waste is cited in a list adopted by the department pursuant to Section 25140.

SEC. 12. Section 25143 of the Health and Safety Code is amended to read:

25143. (a) The department may grant a variance from one or more of the requirements of this chapter or the regulations adopted pursuant to this chapter for the management of a hazardous waste if all of the following conditions apply:

(1) The hazardous waste is solely a non-RCRA hazardous waste or the hazardous waste management activity is subject to this chapter but has been granted a waiver or variance pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec. 9610 et seq.), or is not otherwise regulated pursuant to the Resource Conservation and Recovery Act of 1976, as amended, (42 U.S.C. Sec. 6901 et seq.).

(2) The department makes one of the following findings:

(A) The hazardous waste or the hazardous waste management activity is insignificant or unimportant as a potential hazard to human health and safety, and the environment.

(B) The handling, processing, or disposal of the hazardous waste, or the hazardous waste management activity, is regulated by another governmental agency in a manner that ensures it will not pose a substantial present or potential hazard to human health and safety, and the environment.

(3) The variance is granted in accordance with this section.

(b) The department may grant a variance only upon receipt of a variance application containing sufficient information to enable the department to determine if all of the conditions required by subdivision (a) are satisfied. Each variance shall be issued on a form prescribed by the department and shall include, at a minimum, all of the following:

(1) The name of the producer of the hazardous waste or the

operator of the hazardous waste management activity to whom the variance is granted.

(2) A description of the physical characteristics and chemical composition of the hazardous waste or the specifications of the hazardous waste management activity to which the variance applies.

(3) The time period during which the variance is effective.

(4) A specification of the requirements of this chapter or the regulations adopted pursuant to this chapter from which the variance is granted.

(5) A specification of the conditions, limitations, or other requirements to which the variance is subject.

(c) Variances issued pursuant to subdivision (a) are subject to review at the discretion of the department and may be revoked at any time. The department shall revoke a variance if the department finds any of the following:

(1) The conditions required by subdivision (a) are no longer satisfied.

(2) The holder of the variance is in violation of one or more of the conditions, limitations, or other requirements of the variance, and as a result of the violation, the conditions required by subdivision (a) are no longer satisfied.

(3) If the variance was granted because of the finding specified in subparagraph (B) of paragraph (2) of subdivision (a), the holder of the variance is in violation of one or more of the regulatory requirements of another governmental agency to which the holder is subject and the violation invalidates that finding.

SEC. 13. Section 25143.1 is added to the Health and Safety Code, to read:

25143.1. Any geothermal waste resulting from drilling for geothermal resources is exempt from the requirements of this chapter because the disposal of these geothermal wastes is regulated by the California regional water quality control boards.

SEC. 14. 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 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.

(b) Except as otherwise provided in subdivision (e), any recyclable material is not a hazardous waste under this chapter when the material can be shown to be recycled by any of the following methods:

(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 subdivisions (b), (d), and (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. However, notwithstanding any other provision of law, a facility storing petroleum refinery waste for more than 90 days prior to its conversion to petroleum coke is subject to the hazardous waste facilities permit requirements applicable to storage facilities.

(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 and used 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 subdivision (e), any recyclable material which is a non-RCRA hazardous waste, as defined in Section 25117.9, is not a waste under this chapter if the material meets any of the following requirements:

(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 contains no hazardous constituents, other than those for which the material is being recycled.

(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 either managed at the site where it was generated or 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.

(iii) The material contains no hazardous constituents other than those for which the material is being recycled.

(3) The material is transferred between two or more facilities operated by the same person, if the material is being transferred for purposes of recycling.

(4) The material is both transported and used or reused, as an ingredient in an industrial process to make a product, if the material is not treated before that use or reuse.

(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 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. The department may adopt regulations to exclude materials from regulation pursuant to this paragraph.

(2) Materials burned for energy recovery, used to produce a fuel, or contained in fuels, except materials exempted under subparagraph (B) or (C) of paragraph (2) of subdivision (d).

(3) Materials accumulated speculatively.

(4) Materials determined to be inherently waste like pursuant to regulations adopted by the department.

(5) 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 conform to either of the following:

(A) Meet a characteristic or a criterion of a hazardous waste established by the Environmental Protection Agency or the department.

(B) Are listed by the Environmental Protection Agency or the department as a hazardous waste.

(6) Used oil, as defined in subdivision (a) of Section 25250.1, unless one of the following applies:

(A) The used oil meets the definition of recycled oil contained in subdivision (c) of Section 25250.1.

(B) The used oil is exempted under subparagraph (B) or (C) of paragraph (2) of subdivision (d) or under paragraph (3) of subdivision (d) of this section, under subdivision (e) of Section 25250.1, or under Section 25250.3.

(C) The used oil is used or reused on the site where it was generated 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 exempted under subparagraph (B) or (C) of paragraph (2) of subdivision (d).

(iii) Accumulated speculatively.

(iv) Determined to be inherently waste like pursuant to regulations adopted by the department.

(f) This section does not limit, abridge, or supersede any authority granted to the department pursuant to Section 25143.

(g) If the department brings an action to enforce this chapter, any person subject to the action who claims that a certain recyclable material is not a waste or is excluded, exempt, or conditionally exempt, from regulation under this chapter, shall demonstrate to the department that there is a known market or disposition for the material, and that the requirements of any exemption, exclusion, or conditional exemption from this chapter are met, by providing appropriate documentation to demonstrate that the material is not a waste or is excluded, exempt, or conditionally exempt, from regulation. Any person subject to an enforcement action and making this claim shall provide to the department, upon request, the name, street and mailing address, and telephone number of the owner or operator of any facility that manages the material, and any other information related to the management of the material requested by the department. Any owner or operator of a facility subject to an action to enforce this chapter who claims to be recycling materials shall show that the facility has the necessary equipment to recycle the material.

SEC. 15. Section 25143.5 of the Health and Safety Code is amended to read:

25143.5. (a) Except as provided in subdivisions (d) and (e), the department shall classify as nonhazardous waste any fly ash, bottom ash, and flue gas emission control residues, generated from the combustion of solid waste or biomass material, if these wastes do not contain significant quantities of industrial sludge or hazardous waste, and if the combustion of the solid waste or biomass material will be adequately monitored and controlled so as to prevent the handling or the disposal of any waste in a manner prohibited by law, unless the department determines that the ash or residue is hazardous, by

testing a representative sample of the ash or residue pursuant to criteria adopted by the department. If the department determines that the ash or residue is nonhazardous, the department shall not repeal or modify that determination unless the department subsequently determines that, since the original testing, there has been a significant change in the fly ash, bottom ash, or flue gas emissions control residues, based upon data obtained from a representative sample of the ash or residue.

(b) The fly ash, bottom ash, and flue gas emission control residues which are classified as nonhazardous by the department are exempt from this chapter.

(c) An operator of a solid waste facility which converts solid waste into energy shall notify the department whenever there has been a significant change in the waste entering the combustion process, the combustion process itself, or in the management of the ash or residues generated by the facility.

(d) The classifications of fly ash, bottom ash, and flue gas emission control residues as nonhazardous, made by the department before January 1, 1985, for the ash or residue generated by an individual solid waste facility which will convert solid waste into energy shall not be modified or repealed by the department unless the department determines all of the following:

(1) New data reveals that there has been a significant change in the solid waste entering the combustion process, in the combustion process itself, or in the management of the ash or residue.

(2) The change specified in paragraph (1) causes the facility to produce waste which is hazardous waste, as defined in Section 25117, as determined by the testing of a representative sample of the ash or residue pursuant to criteria adopted by the department.

(3) The hazard caused by the change specified in paragraph (1) or the hazardous waste produced by the facility is not adequately regulated by any other state or local agency with jurisdiction over the facility which generates the ash or residue.

This subdivision applies to determinations made by the department for individual solid waste conversion facilities, including, but not limited to, those projects which will be constructed or will serve the Counties of San Diego, Humboldt, San Joaquin, Butte, Trinity, Sacramento, and Alameda, and the Cities of San Francisco, Long Beach, Fresno, Modesto, Sanger, and Commerce.

(e) Notwithstanding any other provision of law, this section applies only to fly ash, bottom ash, and flue gas emission control residues which are non-RCRA hazardous waste.

SEC. 16. Section 25145 of the Health and Safety Code is amended to read:

25145. (a) This chapter shall not be construed to limit or abridge the powers or duties granted to the State Water Resources Control Board and each regional water quality control board by Division 7 (commencing with Section 13000) of the Water Code.

(b) Subdivision (a) shall not be construed to limit the power or

authority of the department to take any action necessary to ensure compliance with this chapter or with any regulation adopted pursuant to this chapter, or to limit the duty of any person to comply with this chapter or with any regulation, order, or permit issued pursuant to this chapter. An action taken pursuant to the powers and duties specified in subdivision (a) is not a defense to any action taken to enforce this chapter or any regulation, order, or permit issued pursuant to this chapter.

SEC. 17. Section 25150 of the Health and Safety Code is amended to read:

25150. (a) The department shall adopt, and revise when appropriate, standards and regulations for the management of hazardous wastes to protect against hazards to the public health, to domestic livestock, to wildlife, or to the environment.

(b) The department shall apply the standards and regulations adopted pursuant to subdivision (a) to the use and operation of hazardous waste management facilities and may adopt, and revise when appropriate, additional standards and regulations for the use and operation of these facilities to protect against hazards to public health, domestic livestock, wildlife, or the environment posed by these facilities.

(c) The department shall adopt, and revise when appropriate, regulations for the recycling of hazardous waste to protect against hazards to the public health, domestic livestock, wildlife, or to the environment and to encourage the best use of natural resources.

(d) Before the adoption of regulations, the department shall consult with all agencies of interested local governments, including, but not limited to, local governing bodies, local planning agencies, local health authorities, and local building inspection departments, and secure technical assistance from the Department of Food and Agriculture, the Department of the California Highway Patrol, the Department of Fish and Game, the Department of Industrial Relations, the Division of Industrial Safety, the State Air Resources Board, the State Water Resources Control Board, the State Fire Marshal, regional water quality control boards, the State Building Standards Commission, and the California Waste Management Board.

SEC. 18. Section 25154 of the Health and Safety Code is amended to read:

25154. It shall be unlawful for any person to manage any hazardous waste except as provided for in this chapter or regulations adopted by the department pursuant to this chapter.

SEC. 19. Section 25155.5 of the Health and Safety Code is amended to read:

25155.5. (a) Except as provided in subdivisions (c), (d), and (e) and Sections 25155.6 and 25155.7, any person who disposes of hazardous waste, which has a heating value of more than 3,000 British Thermal Units per pound of waste material, shall dispose of those wastes by incineration, or by any other means of treatment that is

effective and equally protective of the environment and has been authorized by the department as part of a hazardous waste facilities permit issued pursuant to Section 25200. The heating value of the hazardous waste shall be determined without considering any dilution which may occur that is not a normal part of a manufacturing process and shall be determined by tests prescribed by the American Society of Testing and Materials.

(b) Except as provided in subdivisions (c), (d), and (e) and Sections 25155.6 and 25155.7, any person who, after January 1, 1990, disposes of hazardous waste which contains volatile organic compounds in concentrations of more than the percentage by weight determined by the department pursuant to subdivision (f), shall dispose of these hazardous wastes by incineration, or by any other means of treatment that is effective and equally protective of the environment and has been authorized by the department as part of a hazardous waste facilities permit issued pursuant to Section 25200. The concentrations of the volatile organic compounds in the waste shall be determined without considering any dilution which may occur, unless the dilution is a normal part of a manufacturing process.

(c) If the department determines that adequate incineration or treatment capacity does not exist within the state, a person disposing of the hazardous waste specified in either subdivision (a) or (b) is exempt from the requirements of either subdivision (a) or (b), as the case may be, until the department determines that adequate incineration or treatment capacity is available. This subdivision does not exempt a hazardous waste specified in subdivision (a) or (b) from a treatment standard established pursuant to Section 25179.6.

(d) This section does not require the incineration of any hazardous waste which is economically and technologically feasible to recycle, including that waste which the producer reclaims or recycles onsite, as determined by the department pursuant to Section 25175, if the waste is, in fact, reclaimed or recycled. This subdivision does not exempt a hazardous waste specified in subdivision (a) or (b) from a treatment standard established pursuant to Section 25179.6.

(e) Notwithstanding subdivisions (a) and (b), and Sections 25155.6 and 25155.7, any hazardous waste subject to a treatment standard established pursuant to subdivision (b) of Section 25179.6 shall be treated in compliance with that treatment standard.

(f) On or before January 1, 1987, the department shall determine the percentage of volatile organic compounds above which incineration or treatment is required pursuant to subdivision (b). The percentage shall be not less than 1 percent or more than 8 percent. In making this determination, the department shall consider (1) the reliability and availability of testing procedures for determining the volatile organic compound content of waste materials and (2) the technical and economic feasibility of incineration or other means of treatment authorized by subdivision (b). Before making a final determination, the department shall

consult with, and consider the views of, the State Air Resources Board, air pollution control districts and air quality management districts, waste generators, persons who provide incineration or other authorized treatment technology or facilities, and the environmental community.

SEC. 20. Section 25155.6 of the Health and Safety Code is amended to read:

25155.6. Except as provided in subdivision (e) of Section 25155.5, all of the following hazardous wastes are exempt from Section 25155.5:

(a) Drilling fluids, produced waters, and other fluids or materials which are brought to the surface and then reinjected in conjunction with the exploration, development, or production of crude oil, geothermal energy, or natural gas.

(b) Mining overburden, as defined by Section 2732 of the Public Resources Code, which is deposited within a mining permit area pursuant to a permit issued pursuant to the Surface Mining and Reclamation Act of 1975 (Chapter 9 (commencing with Section 2710) of Division 2 of the Public Resources Code).

(c) Contaminated soil from the cleanup of any release of hazardous substances, as defined by Article 2 (commencing with Section 25310) of Chapter 6.8, if all the following conditions are met:

(1) The disposal method for the contaminated soil has been approved by the appropriate responsible state agency as part of the cleanup plan for that particular release.

(2) The department determines that, due to the nature of the release, incineration or any other treatment process is not practicable or feasible.

(d) Contaminated soil from any remedial or removal of any release of hazardous substances not required to be reported.

(e) Hazardous waste which meets the requirements of subdivision (a) or (b) of Section 25155.5, but which cannot either be treated or incinerated, as determined by the department.

SEC. 21. Section 25155.7 of the Health and Safety Code is amended to read:

25155.7. Except as provided in subdivision (e) of Section 25155.5 and subdivision (a) of Section 25179.6, a hazardous waste producer may request the department, in writing, for an emergency variance to exempt a particular hazardous waste from the incineration or treatment requirement of subdivision (a) of Section 25155.5, and to permit the land disposal of that hazardous waste, if the incineration facility used by that producer, either onsite or offsite, has an unplanned shutdown, and if both of the following apply:

(a) There are no other incineration or treatment facilities of adequate capacity available in the state.

(b) The producer's facility and the recyling or treatment facility have insufficient capacity to store the particular hazardous waste for the expected duration of the shutdown.

SEC. 22. Section 25159 of the Health and Safety Code is amended

to read:

25159. The department shall adopt and revise when necessary regulations which will allow the state to receive and maintain authorization to administer a state hazardous waste program in lieu of the federal program pursuant to Section 3006 of Public Law 94-580, as amended (42 U.S.C. Sec. 6926). When reviewing a regulation adopted pursuant to this section, the Office of Administrative Law shall not review the regulation for nonduplication, notwithstanding paragraph (6) of subdivision (a) of Section 11349.1 of the Government Code.

SEC. 23. Section 25159.7 of the Health and Safety Code is amended to read:

25159.7. The department is authorized to carry out all hazardous waste management responsibilities imposed or authorized by Public Law 94-580, as amended, Public Law 96-510 (the Comprehensive Environmental Response, Compensation, and Liability Act of 1980), and subsequent amendments, and any regulations adopted pursuant to these federal acts.

SEC. 24. Section 25163 of the Health and Safety Code is amended to read:

25163. (a) (1) Except as otherwise provided in subdivisions (b) and (c), it is unlawful for any person to carry on, or engage in, the transportation of hazardous wastes, unless the person holds a valid registration issued by the department, and it shall be unlawful for any person to transfer custody of a hazardous waste to a transporter who does not hold a valid registration issued by the department. A person who holds a valid registration issued by the department pursuant to this section is a registered hazardous waste hauler, for purposes of this chapter. Any registration issued by the department to a transporter of hazardous waste is not transferable from the person to whom it was issued to any other person.

(2) Any person who transports hazardous waste in a vehicle shall have a valid registration issued by the department in his or her possession while transporting the hazardous waste. The registration certificate shall be shown upon demand to any representative of the department, officer of the California Highway Patrol, any local health officer, or any public officer designated by the department. Any person registered pursuant to this section may obtain additional copies of the registration from the department upon the payment of a fee of two dollars ($2) for each copy requested, in accordance with Section 12196 of the Government Code.

(3) Commencing January 1, 1986, the hazardous waste information required and collected for registration pursuant to this subdivision shall be recorded and maintained in the management information system operated by the Department of the California Highway Patrol.

(b) Persons transporting only septic tank, cesspool, seepage pit, or chemical toilet waste that does not contain a hazardous waste originating from other than the body of a human or animal and who

hold an unrevoked registration issued by the health officer or the health officer's authorized representative pursuant to Chapter 6 (commencing with Section 25000) are exempt from the requirements of subdivision (a).

(c) Persons transporting hazardous wastes to a permitted hazardous waste facility for transfer, treatment, recycling, or disposal, which wastes do not exceed a total volume of five gallons or do not exceed a total weight of 50 pounds, are exempt from the requirements of subdivisions (a) and (e) and from the requirements of Section 25160 concerning possession of the manifest while transporting hazardous waste, upon meeting all of the following conditions:

(1) The hazardous wastes are transported in closed containers and packed in a manner that prevents the containers from tipping, spilling, or breaking during the transporting.

(2) Different hazardous waste materials are not mixed within a container during the transporting.

(3) If the hazardous waste is extremely hazardous waste or acutely hazardous waste, the extremely hazardous waste or acutely hazardous waste was not generated in the course of any business, and is not more than 2.2 pounds.

(4) The person transporting the hazardous waste is the producer of that hazardous waste, and the person produces no more than 100 kilograms of hazardous waste in any month.

(5) The person transporting the hazardous waste does not accumulate more than a total of 1,000 kilograms of hazardous waste onsite at any one time.

(d) Any person registered as a hazardous waste hauler pursuant to subdivision (a) is not subject to the registration requirements of Chapter 6 (commencing with Section 25000), but shall comply with the terms, conditions, orders, and directions as the health officer or the health officer's authorized representative may deem necessary for the protection of human health and comfort, and shall otherwise comply with the requirements for statements as provided in Section 25007. Violations of those requirements of Section 25007 shall be punished as provided in Section 25010. Proof of registration pursuant to subdivision (a) shall be submitted by mail or in person to the local health officer in the city or county in which the registered hazardous waste hauler will be conducting the activities described in Section 25001.

(e) It is unlawful for any person to transport hazardous waste in any truck, trailer, semitrailer, vacuum tank, or cargo tank not inspected by the California Highway Patrol or to transport hazardous waste in any container, other than a container packaged pursuant to United States Department of Transportation regulations, which has not been inspected by the California Highway Patrol.

SEC. 25. Section 25179.3 of the Health and Safety Code is amended to read:

25179.3. For the purposes of this article, the following definitions

apply:

(a) "Agricultural drainage water" means subsurface water or perched groundwater which is drained from beneath agricultural lands and which results from agricultural irrigation.

(b) "Board" means the State Water Resources Control Board.

(c) "Free liquids" mean liquids which readily separate from the solid portion of a hazardous waste under ambient temperature and pressure.

(d) "Hazardous constituent" has the meaning specified in the regulations adopted by the department.

(e) "Hazardous waste facility" has the same meaning as defined in Section 25117.1.

(f) "Hazardous waste facilities permit" means a permit issued by the department pursuant to Section 25200.

(g) "Hazardous waste landfill" means a disposal facility, or part of a facility, where hazardous waste is placed in or onto land and which is not a land treatment facility, a surface impoundment, or an injection well.

(h) "Land disposal" means placement in or on the land, and includes, but is not limited to, placement in a landfill, surface impoundment, waste pile, injection well, land treatment facility, salt dome formation, salt bed formation, underground mine or cave, or concrete vault or bunker intended for disposal purposes.

(i) "Leachate" means any liquid, including any suspended components in the liquid, that has percolated through or drained from hazardous waste.

(j) Notwithstanding Section 25123.5, and for the purposes of this article only, "treatment" means any method, technique, or process, including incineration, occurring at authorized facilities which changes the physical, chemical, or biological character or composition of any hazardous waste and, by that change, the waste becomes nonhazardous, significantly less hazardous, or more suitable for land disposal because of removal or substantial reduction of undesirable properties, such as toxicity, mobility, persistence, reactivity, bioaccumulation, flammability, or corrosivity. "Treatment" does not include any of the following, to the extent that one or more of the following are the only methods which are used:

(1) Solidification of hazardous waste by the addition of absorbent material which produces a change only in the physical character of the waste without a corresponding change in the chemical character of the waste.

(2) Treatment occurring directly in or on the land, such as land treatment, except that treatment may include in situ treatment necessary for site mitigation.

(3) Dilution of hazardous waste by the addition of nonhazardous material.

(4) Evaporation in a surface impoundment.

(k) "Small containers of hazardous waste in lab packs" means a container meeting the requirements of Section 66910 of Title 22 of

the California Code of Regulations.

(*l*) "Treated hazardous waste" means a hazardous waste which has been subject to treatment, as specified in subdivision (j) which meets treatment standards established by the department pursuant to Section 25179.6, and any applicable treatment standards adopted by the Environmental Protection Agency.

"Treated hazardous waste" also includes a hazardous waste which meets all applicable treatment standards without prior treatment. If a treatment standard has not been established for a hazardous waste that has not been restricted or prohibited by the Environmental Protection Agency pursuant to Section 3004 of the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Sec. 6924), the hazardous waste shall be considered a treated hazardous waste if the waste complies with one of the following:

(1) The waste complies with the criteria and requirements established for special wastes in the regulations adopted by the department and has been classified as a special waste in the regulations adopted by the department.

(2) The waste does not contain any persistent or bioaccumulative toxic substances in excess of the soluble threshold limit concentration for the substance, as established in regulations adopted by the department.

SEC. 26. Section 25179.6 of the Health and Safety Code is amended to read:

25179.6. (a) (1) Notwithstanding any other provision of law, any hazardous waste prohibited from land disposal by the Environmental Protection Agency is prohibited from land disposal in the state, unless the hazardous waste, or the producer of the hazardous waste is granted a variance, extension, exclusion, or exemption by the Administrator of the Environmental Protection Agency.

(2) Except as provided in paragraph (2) and Sections 25179.7, 25179.8, 25179.9, 25179.10, 25179.11, and 25179.12, on or before May 8, 1990, the department shall prohibit the land disposal of any hazardous waste after the effective date of the department's action, unless the waste is either a treated hazardous waste or unless the waste is a solid hazardous waste generated in the cleanup or decontamination of any site contaminated only by hazardous waste which has not been restricted or prohibited by the Environmental Protection Agency pursuant to Section 3004 of the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Sec. 6924), and which does not meet the treatment standards established by the department pursuant to this section, if the disposal of the waste has been approved by the department or other agency authorized to approve the cleanup or decontamination after considering those factors specified in subdivision (c) of Section 25356.1, regardless of whether a remedial action plan has been, or will be, prepared for the cleanup or decontamination.

(b) Notwithstanding subdivision (d), any treatment standard adopted or amended by the Environmental Protection Agency

pursuant to Section 3004 of the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Sec. 6924), shall apply in the state upon the effective date of that adoption or amendment, as specified in the final rule published in the Federal Register. The department shall not grant an extension, variance, or exemption from the treatment standard, unless the Administrator of the Environmental Protection Agency grants an equivalent or less stringent extension, variance, or exemption.

(1) As closely as possible with, but not later than six months following the dates specified in, the schedules required by subsection (g) of Section 6924 of Title 42 of the United States Code, the department shall adopt, on or before May 8, 1990, treatment standards specifying a method or methods of treatment, and the associated performance level, or the level of treatment required prior to the land disposal of each hazardous waste which meets the criteria adopted by the department pursuant to Section 25141.

(2) If the department specifies a method or methods of treatment and an associated performance level, unless the hazardous waste is subject to subdivision (a) of Section 25155.5, any person may use an alternative treatment method if the person demonstrates both of the following to the satisfaction of the department:

(A) The alternative treatment method will result in a level of performance substantially equivalent or greater than that achievable using the method or methods specified by the department.

(B) If the hazardous waste is subject to treatment standards established by the Environmental Protection Agency pursuant to Section 3004 of the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Sec. 6924), the Administrator of the Environmental Protection Agency has approved the use of the alternative treatment method.

(3) The treatment standards adopted pursuant to paragraph (1) shall be designed to minimize the hazardous characteristics of the waste and minimize the potential for bioaccumulation or migration of hazardous constituents from the waste into the air, land, and water resources of the state. In adopting these standards, the department shall consider applicable federal standards adopted by the Environmental Protection Agency to the extent that the federal treatment standards minimize the hazardous characteristics of the waste and the potential for bioaccumulation or migration of hazardous constituents. The department shall adopt treatment standards for any hazardous waste for which a federal treatment standard does not minimize the hazardous characteristics of the waste and the potential for bioaccumulation or migration of hazardous constituents.

(4) For the purposes of this subdivision, the following shall apply:

(A) "Minimization of hazardous characteristics and the potential for bioaccumulation or migration" means that level of treatment which is achievable using the best demonstrated available technology.

(B) "Best demonstrated available technology" means a method of treatment which is available, or can be made available in a reasonable time, on a commercial scale and the performance of which has been demonstrated through reliable test data and project development sufficient in scope to ensure consistent results and standardized applicability.

(c) Regulations establishing treatment standards adopted by the department pursuant to this section shall be deemed a necessity for purposes of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, and the Office of Administrative Law shall not disapprove the regulations on the grounds that they do not meet the requirements of paragraph (1) of subdivision (a) of Section 11349.1 of the Government Code.

(d) At least every seven years from the date of adoption of regulations pursuant to subdivision (b), the department shall review each treatment standard and shall revise the treatment standard if the revised treatment standard will provide substantial additional protection to human health and the environment and the department finds that the cost of compliance to those industries which are required to replace or retrofit existing hazardous waste treatment units or processes is necessary to protect human health and the environment.

A revised treatment standard adopted pursuant to this subdivision shall be applicable to any hazardous waste treatment unit or process constructed after the revised treatment standard is adopted. The land disposal of hazardous waste treated in an existing treatment unit or process which does not provide a level of performance equivalent to the revised treatment standard shall not be prohibited by the department until two years following the adoption of the revised treatment standard, by which time the existing treatment unit or process shall be replaced or retrofitted to provide a level of performance equivalent to the revised treatment standard. The department may, on a case by case basis, extend the date by which an existing treatment unit or process shall be replaced or retrofitted, but not more than 10 additional years, if an extension is needed to avoid significant economic disruption to a specific firm or hazardous waste treatment facility.

SEC. 27. Section 25179.7 of the Health and Safety Code is amended to read:

25179.7. (a) The department may extend the implementation date after which the land disposal of a hazardous waste is prohibited, pursuant to Section 25179.6, for a specific hazardous waste which meets the following requirements:

(1) The hazardous waste has not been restricted or prohibited by the Environmental Protection Agency pursuant to Section 3004 of the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Sec. 6924), or the hazardous waste has been granted a variance by the Environmental Protection Agency pursuant to paragraph (2) of subsection (h) of Section 6924 of Title 42 of the

United States Code.

(2) Recycling and treatment capacity to process substantially all of the specific hazardous waste to meet the treatment standards adopted pursuant to subdivision (b) of Section 25179.6 will not be provided at the site of generation or at a commercial offsite hazardous waste facility in the state.

(b) The department shall establish a date pursuant to subdivision (a) based upon the earliest date on which the department projects that adequate recycling and treatment capacity will be available, but not later than two years following the date the prohibition on land disposal of the waste would otherwise be implemented.

(c) The department shall not extend an implementation date pursuant to subdivision (a), beyond the date established by the Administrator of the Environmental Protection Agency for a specific hazardous waste pursuant to paragraph (2) of subsection (h) of Section 6924 of Title 42 of the United States Code.

SEC. 28. Section 25179.8 of the Health and Safety Code is amended to read:

25179.8. (a) Except as provided in subdivision (f), the department may grant a variance from the requirements of Section 25179.6 for a hazardous waste only if the person demonstrates, to the satisfaction of the department, that all of the following conditions apply to the waste:

(1) The hazardous waste has not been restricted or prohibited by the Environmental Protection Agency pursuant to Section 3004 of the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Sec. 6924), or the hazardous waste has been granted an equivalent or less stringent variance by the Administrator of the Environmental Protection Agency.

(2) The hazardous waste cannot be recycled, reused, or treated to meet the standards adopted by the department pursuant to Section 25179.6 at a commercial offsite hazardous waste facility in the state.

(3) Recycling or treatment alternatives cannot be provided at the site of generation.

(4) Measures have been, or will be, taken to reduce the generation of the hazardous waste.

(5) Land disposal of the hazardous waste is in compliance with all existing statutes and regulations.

(b) If the department, pursuant to Section 25179.7, extends the date to prohibit the use of a land disposal method for a specific hazardous waste, as specified in Section 25179.6, a person applying for a variance for the specified waste shall demonstrate that circumstances beyond the control of the applicant, such as delays in the issuance of a permit, have prevented the development of the needed capacity by the date established by the department.

(c) A variance granted by the department pursuant to subdivision (a) for hazardous waste that has not been restricted or prohibited by the Environmental Protection Agency pursuant to Section 6924 of Title 42 of the United States Code shall remain in effect for one year.

The department may renew the variance once for an additional period of one year, if the applicant demonstrates, to the satisfaction of the department, that the needed capacity can be provided by the end of the period of renewal. A variance granted by the department pursuant to subdivision (a) for a hazardous waste which has been granted a variance by the Administrator of the Environmental Protection Agency shall remain in effect no longer than the federal variance. No variance or renewal of a variance shall remain in effect beyond the two-year period following the effective date after which land disposal of a hazardous waste is prohibited pursuant to Section 25179.6.

(d) The department may grant a variance from the requirements of Section 25179.6 for agricultural drainage waters which meet the criteria established by the department pursuant to Section 25141 if a person demonstrates, to the satisfaction of the department, that all of the following conditions apply to the waste:

(1) There are no technically and economically feasible treatment, reuse, or recycling alternatives available to render the agricultural drainage water nonhazardous.

(2) The applicant can demonstrate that the continued disposal of agricultural drainage waters does not pose an immediate or significant long-term risk to public health or the environment.

(3) The disposal of the agricultural drainage waters is in compliance with the requirements of Section 25179.5.

Notwithstanding subdivision (c), a variance granted by the department pursuant to this subdivision shall remain in effect for three years. The variance may be renewed during or before 1993 for an additional three years, but not beyond 1996, if the applicant demonstrates that treatment, reuse, or recycling capacity may be available within three years from the date of renewal to render the agricultural drainage waters nonhazardous.

(e) When granting a variance pursuant to this section, the department may specify, where appropriate, any treatment which shall be required prior to land disposal of the waste, and may impose requirements which may be necessary to protect the public health and the environment.

(f) The department shall not grant a variance pursuant to subdivision (a) for hazardous waste granted a variance by the Administrator of the Environmental Protection Agency which permits less stringent regulation than that required pursuant to the federal variance.

SEC. 29. Section 25179.9 of the Health and Safety Code is amended to read:

25179.9. Lab packs which contain hazardous waste that has not been restricted or prohibited by the Environmental Protection Agency pursuant to Section 3004 of the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Sec. 6924 et seq.), are exempt from the requirements of Sections 25179.5 and 25179.6 if they are disposed of in accordance with the requirements established by

the department, by regulation.

SEC. 30. Section 25179.10 of the Health and Safety Code is amended to read:

25179.10. (a) The department may grant an exemption from the requirements of Section 25179.6 pursuant to subdivision (b) for either of the following:

(1) Any special waste which meets the criteria and requirements established for special waste in the regulations adopted by the department and has been classified as a special waste pursuant to the regulations adopted by the department but does not meet the treatment standards established by the department pursuant to Section 25179.6.

(2) Any hazardous waste generated in the extraction, beneficiation, or processing of ores and minerals.

(b) The department may grant an exemption for a waste specified in subdivision (a) if a person, upon application, demonstrates to the satisfaction of the department that no economically and technologically feasible alternatives exist to recycle, reuse, or treat the waste to meet the treatment standards adopted by the department pursuant to Section 25179.6 and that there will be no migration of hazardous constituents in concentrations which pollute or threaten to pollute the waters of the state from the disposal unit where the waste is to be disposed. An exemption granted pursuant to this subdivision shall remain in effect for five years. The department may renew the exemption if, upon application, it determines that the findings required by this subdivision still apply.

SEC. 31. Section 25179.11 of the Health and Safety Code is amended to read:

25179.11. (a) A person discharging a hazardous waste into a surface impoundment which was constructed before July 1, 1986, and for which an application for waste discharge requirements was submitted on or before September 1, 1986, is exempt from the requirements of Section 25179.6 if all of the following conditions apply to the surface impoundment:

(1) The hazardous waste is managed in accordance with Section 268.4 of Title 40 of the Code of Federal Regulations, if applicable.

(2) The surface impoundment is in compliance with Article 9.5 (commencing with Section 25208).

(3) Hazardous waste is discharged into the impoundment for the purposes of treating the waste to comply with the treatment standard adopted by the department pursuant to subdivision (b) of Section 25179.6 for that hazardous waste, and the residues which result from the treatment of that hazardous waste which do not meet that treatment standard are removed for subsequent management within one year of the date of placement of the hazardous waste into the surface impoundment, or the operator has received an exemption pursuant to Section 25208.16.

(b) A person discharging hazardous waste into a surface impoundment which was constructed after July 1, 1986, and for

which an application for waste discharge requirements is submitted after September 1, 1986, is exempt from the requirements of Section 25179.6 if all of the following conditions apply to the surface impoundment:

(1) The hazardous waste is managed in accordance with Section 268.4 of Title 40 of the Code of Federal Regulations, if applicable.

(2) The surface impoundment is in compliance with Article 9.5 (commencing with Section 25208).

(3) Hazardous waste is discharged into the surface impoundment for the purposes of treating the waste to comply with the treatment standard adopted by the department pursuant to subdivision (b) of Section 25179.6 for that hazardous waste, and the residues which result from the treatment of that hazardous waste which do not meet that treatment standard are removed for subsequent management within one year of the date of placement of the hazardous waste into the surface impoundment.

(4) The department determines that the use of the surface impoundment to treat the hazardous waste is the only means by which the hazardous waste can be treated using the best demonstrated available technology.

SEC. 32. Section 25179.12 of the Health and Safety Code is amended to read:

25179.12. (a) Except as provided in subdivisions (b) and (c), a person operating a land treatment facility is exempt from the requirements of Section 25179.6 if the facility is in compliance with the requirements of all state and federal statutes and regulations applicable to land treatment facilities, including, but not limited to, subdivision (b), and the facility has either been issued a final permit or is operating under, and in compliance with, the requirements of interim status and the facility operator has submitted an application for a final permit.

(b) Land treatment facilities at which hazardous constituents have migrated from the treatment zone shall not be eligible for an exemption pursuant to subdivision (a) until the contamination has been removed to the satisfaction of the department. In order for the department to determine whether hazardous constituents have migrated from the treatment zone, the owner or operator of the land treatment facility shall provide data to the department on at least all of the following:

(1) Soil cores taken from below the treatment zone.

(2) Groundwater monitoring.

(3) Unsaturated zone monitoring.

(4) Waste analysis.

(5) Historical activities at the facility.

(c) A land treatment facility may not treat hazardous waste which has been restricted or prohibited by the Environmental Protection Agency pursuant to Section 3004 of the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Sec. 6924), unless the land treatment has been authorized by the Administrator of the

Environmental Protection Agency.

SEC. 33. Section 25187 of the Health and Safety Code is amended to read:

25187. (a) Whenever the department determines that any person has violated, or is in violation of, this chapter, Chapter 6.8 (commencing with Section 25300), or Article 3 (commencing with Section 25810) of Chapter 7.6, of this division, or threatens, as defined in subdivision (e) of Section 13304 of the Water Code to violate this chapter, Chapter 6.8 (commencing with Section 25300), or Article 3 (commencing with Section 25810) of Chapter 7.6, of this division, or any permit, rule, regulation, standard, or requirement issued or adopted pursuant to this chapter, Chapter 6.8 (commencing with Section 25300), or Article 3 (commencing with Section 25810) of Chapter 7.6, of this division, or the department determines that there is or has been a release, as defined in Chapter 6.8 (commencing with Section 25300), of hazardous waste or constituents into the environment from a hazardous waste facility, the department may issue an order specifying a schedule for compliance or correction. An order issued pursuant to this section shall include a requirement that the person take corrective action with respect to hazardous waste, including the cleanup of the hazardous waste, abatement of the effects thereof, and any other necessary remedial action. An order issued pursuant to this section which requires corrective action at a hazardous waste facility shall require that corrective action be taken beyond the facility boundary, where necessary to protect human health or the environment. The order shall incorporate as a condition of the order any applicable waste discharge requirements issued by the State Water Resources Control Board or a California regional water quality control board, and shall be consistent with 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 and 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 existing at the time of the issuance of the order, to the extent that the department determines that those plans and policies are not less stringent than this chapter and regulations adopted pursuant to this chapter. The department may also include any more stringent requirement which the department determines is necessary or appropriate to protect water quality. Persons who are subject to an order pursuant to this section include present and prior owners, lessees, or operators of the property where the hazardous waste is located, present or past generators, storers, treaters, transporters, disposers, and handlers of hazardous waste, and persons who arrange, or have arranged, by contract or other agreement, to store, treat, transport, dispose of, or otherwise handle hazardous waste.

(b) For purposes of subdivision (a), "hazardous waste facility" includes the entire site that is under the control of an owner or operator engaged in the management of hazardous waste.

(c) Any order issued pursuant to subdivision (a) shall be served by personal service or certified mail and shall inform the person so served of the right to a hearing.

(d) Any person served with an order pursuant to subdivision (c) who has been unable to resolve any violation or deficiency on an informal basis with the department may, within 10 days after service of the order, request a hearing by filing with the department a notice of defense. A notice of defense shall be deemed filed within the 10-day period provided by this subdivision if it is postmarked within that 10-day period. If no notice of defense is filed within the time limits provided by this subdivision, the order shall become final.

(e) Any hearing requested under subdivision (d) shall be conducted by an independent hearing officer, in accordance with the procedures specified in Sections 11507 to 11517, inclusive, of the Government Code, except as otherwise specified in this section. In making a determination, the hearing officer shall take into consideration the nature, circumstances, extent, and gravity of the violation and the various abatement and cleanup remedies which are appropriate in the given circumstances and which are consistent with the primary emphasis of protecting the public health and safety and the environment. After conducting any hearing requested under subdivision (d), the hearing officer shall, within 30 days after the case is submitted, issue a decision, including any order, if appropriate. The hearing officer's decision, including any order issued therewith, shall be served by the department on each party by personal service or by certified mail.

(f) Any provision of an order issued under subdivision (a) shall take effect upon issuance by the department if the department finds that the violation or violations of law associated with that provision may pose an imminent and substantial endangerment to the public health or safety or the environment, and a request for a hearing shall not stay the effect of that provision of the order pending a decision by the hearing officer under subdivision (e). However, in the event that the department determines that any or all provisions of the order are so related that the public health or safety or the environment can be protected only by immediate compliance with the order as a whole, then the order as a whole shall take effect upon issuance by the department and a request for a hearing shall not stay the effect of the order as a whole pending a decision by the hearing officer under subdivision (e). Any order issued after a hearing requested under subdivision (d) shall take effect upon issuance by the hearing officer.

(g) Within 30 days after service of a copy of a decision issued by the hearing officer, any person so served may file with the superior court a petition for writ of mandate for review of the decision. Any person who fails to file the petition within this 30-day period may not challenge the reasonableness or validity of a decision or order of the hearing officer in any judicial proceedings brought to enforce the decision or order or for other remedies. Except as otherwise

specified in this section, Section 1094.5 of the Code of Civil Procedure shall govern the proceedings conducted pursuant to this subdivision. In all proceedings pursuant to this subdivision, the court shall uphold the decision of the hearing officer if the decision is based upon substantial evidence in the whole record. The filing of a petition for writ of mandate shall not stay any corrective action required pursuant to this chapter or the accrual of any penalties assessed pursuant to this chapter. This subdivision does not prohibit the court from granting any appropriate relief within its jurisdiction.

SEC. 34. Section 25187.1 is added to the Health and Safety Code, to read:

25187.1. (a) If the department determines, upon receipt of any information, that the presence of any hazardous waste at a facility or site at which hazardous waste is, or has been, stored, treated, or disposed of, or the release of any hazardous waste from the facility or site may present a substantial hazard to human health or the environment, the department may issue an order requiring the owner or operator of the facility or site to conduct monitoring, testing, analysis, and reporting with respect to the facility or site which the department deems reasonable to ascertain the nature and extent of the hazard.

(b) If a facility or site subject to subdivision (a) is not in operation at the time the determination is made and the department finds that the owner of the facility or site, could not reasonably be expected to have actual knowledge of the presence of hazardous waste at the facility or site and of its potential for release, the department may issue an order requiring the most recent previous owner or operator of the facility or site who could reasonably be expected to have the actual knowledge to carry out the actions specified in subdivision (a).

(c) Any order issued pursuant to subdivision (a) or (b) shall require the person to whom the order is issued to submit to the department, within 30 days from the issuance of the order, a proposal for carrying out the required monitoring, testing, analysis, and reporting. The department may, after providing the person with an opportunity to confer with the department concerning the proposal, require the person to carry out the monitoring, testing, analysis, and reporting in accordance with the proposal, and with any modifications in the proposal as the department deems reasonable to ascertain the nature and extent of the hazard.

(d) If the department determines that there is no owner or operator specified in subdivision (a) or (b) to conduct monitoring, testing, analysis, or reporting satisfactory to the department, if the department deems the action carried out by an owner or operator is unsatisfactory, or if the department cannot initially determine that there is an owner or operator specified in subdivision (a) or (b) who is able to conduct monitoring, testing, analysis, or reporting, the department may do either of the following:

(1) Conduct monitoring, testing, or analysis, or any combination of these actions, which the department deems reasonable, to

ascertain the nature and extent of the hazard associated with the site.

(2) Authorize a local authority or other person to carry out the action, and require, by order, the owner or operator specified in subdivision (a) or (b) to reimburse the department or other authority or person for the costs of the activity.

(e) The department shall not issue an order pursuant to this section which requires the department to be reimbursed for the costs of any action carried out by the department to conduct monitoring, testing, and analysis to determine the results of the actions carried out by a person pursuant to an order issued pursuant to subdivision (a) or (b).

(f) For purposes of carrying out this subdivision, the department, any local agency, or other person authorized under paragraph (2) of subdivision (d), may take action pursuant to Section 25185.

SEC. 35. Section 25199.6 of the Health and Safety Code is amended to read:

25199.6. (a) Section 65943 of the Government Code does not apply to the department's review of applications for a hazardous waste facilities permit. The department shall review for completeness each application for a hazardous waste facilities permit and notify the applicant in writing whether the application is complete within 60 days of receipt. If the application is incomplete, the department shall require the applicant to provide the information necessary to make the application complete. An application is not deemed to be complete until the department notifies the applicant that the application is complete. After an application is determined to be complete, the department may request additional information only when necessary to clarify, modify, or supplement previously submitted material.

(b) Notwithstanding Section 65952 of the Government Code, a responsible agency for a hazardous waste facility project that is a land disposal facility shall approve or disapprove all permits for the project within one of the following periods of time, whichever is longer:

(1) Within one year from the date on which the lead agency approved or disapproved the permit for the project.

(2) Within one year from the date on which completed applications for permits for the project were received, and accepted as complete, by the responsible agency.

(c) Subdivision (b) of Section 65956 of the Government Code does not apply to the failure of a lead agency or responsible agency to approve or disapprove a permit for a hazardous waste facility project within the time limits established by Sections 65950 and 65952 of the Government Code and subdivision (b) of this section. If a lead agency or a responsible agency fails to act within those time limits, the applicant may file an action pursuant to Section 1085 of the Code of Civil Procedure to compel the agency to approve or disapprove the permit for the project within a reasonable time, as the court may determine.

SEC. 36. Section 25199.6 of the Health and Safety Code is amended to read:

25199.6. (a) Section 65943 of the Government Code does not apply to the department's review of applications for a hazardous waste facilities permit. The department shall review for completeness each application for a hazardous waste facilities permit and notify the applicant in writing whether the application is complete within 60 days of receipt. If the application is incomplete, the department shall require the applicant to provide the information necessary to make the application complete. An application is not deemed to be complete until the department notifies the applicant that the application is complete. After an application is determined to be complete, the department may request additional information only when necessary to clarify, modify, or supplement previously submitted material.

(b) Notwithstanding Section 65952 of the Government Code, any public agency which is a responsible agency for a hazardous waste facility project that is a land disposal facility shall approve or disapprove the project within one of the following periods of time, whichever is longer:

(1) Within one year from the date on which the lead agency approved or disapproved the project.

(2) Within one year from the date on which the completed application for the project has been received, and accepted as complete, by that responsible agency.

(c) Notwithstanding Section 65952 of the Government Code and Section 25199.2, any public agency which is a responsible agency for a hazardous waste facility project that is not a land disposal facility shall approve or disapprove the project within one of the following periods of time, whichever is longer:

(1) Within 180 days from the date on which the lead agency approved or disapproved the project.

(2) Within 180 days from the date on which the completed application for the project has been received, and accepted as complete, by that responsible agency.

(d) Subdivision (b) of Section 65956 of the Government Code does not apply to the failure of a lead agency or responsible agency to approve or disapprove a permit for a hazardous waste facility project within the time limits established by Sections 65950 and 65952 of the Government Code and subdivisions (b) and (c) of this section. If a lead agency or a responsible agency fails to act within those time limits, the applicant may file an action pursuant to Section 1085 of the Code of Civil Procedure to compel the agency to approve or disapprove the permit for the project within a reasonable time, as the court may determine.

SEC. 37. Section 25204.5 is added to the Health and Safety Code, to read:

25204.5. Any action taken by the department pursuant to this article shall be consistent with all applicable regulations adopted by

the State Water Resources Control Board, 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, and 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, to the extent the department determines that those regulations, plans, and policies are not less stringent than this chapter and the regulations adopted pursuant to this chapter. The department shall also incorporate, as a condition of any permit issued, amended, or renewed under this chapter, any waste discharge requirements issued by the State Water Resources Control Board or a California regional water quality control board and any conditions imposed pursuant to Section 13227 of the Water Code, to the extent the department determines those waste discharge requirements, requirements, and limitations are not less stringent than this chapter and the regulations adopted pursuant to this chapter. The department may set more stringent requirements or limitations which the department determines are necessary or appropriate to carry out this chapter.

SEC. 38. Section 25205 of the Health and Safety Code is amended to read:

25205. The department shall not issue or renew a permit to operate a hazardous waste facility unless the owner or operator of the facility establishes and maintains the financial assurance prescribed pursuant to Section 25245.

SEC. 39. Section 25245 of the Health and Safety Code is amended to read:

25245. (a) The department shall adopt, and revise when appropriate, standards and regulations which shall do both of the following:

(1) Specify the financial assurances to be provided by the owner or operator of a hazardous waste facility that are necessary to respond adequately to damage claims arising out of the operation of that type of facility and to provide for the cost of closure and subsequent maintenance of the facility, including, but not limited to, the monitoring of ground water and other aspects of the environment after closure. The financial assurance shall be a trust fund, surety bond, letter of credit, insurance, or, for facilities which manage solely non-RCRA hazardous waste, any other equivalent financial arrangement acceptable to the department.

(2) Provide that every hazardous waste facility can be closed and maintained for at least 30 years subsequent to its closure in a manner that protects human health and the environment and minimizes or eliminates the escape of hazardous waste constituents, leachate, contaminated rainfall, and waste decomposition products to ground and surface waters and to the atmosphere.

(b) In adopting regulations pursuant to subdivision (a), to carry out the purposes of this chapter, the department may specify policy

or other contractual terms, conditions, or defenses which are necessary or are unacceptable in establishing evidence of financial responsibility.

(1) If an owner or operator is in bankruptcy, reorganization, or other arrangement pursuant to Title 11 of the United States Code, or where, with reasonable diligence, the department cannot obtain jurisdiction in any state or federal court over an owner or operator likely to be solvent at the time of judgment, the department may assert any claim arising from conduct for which this section requires evidence of financial responsibility directly against the guarantor who provided the evidence of financial responsibility.

(2) The total liability of any guarantor is limited to the aggregate amount which the guarantor has provided as evidence of financial responsibility to the owner or operator under this chapter.

(3) This subdivision does not limit any other state or federal statutory, contractual, or common law liability of a guarantor to the owner or operator, including, but not limited to, the liability of the guarantor for bad faith in either negotiating or in failing to negotiate the settlement of any claim.

(4) This subdivision does not diminish the liability of any person under Section 107 or 111 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. Secs. 9607 and 9611).

(5) For purposes of this subdivision, "guarantor" means any person, other than the owner or operator, who provides evidence of financial responsibility for an owner or operator under this section.

SEC. 40. Section 25246 of the Health and Safety Code is amended to read:

25246. (a) Each owner or operator of a hazardous waste facility shall submit hazardous waste facility closure and postclosure plans to the department and to the California regional water quality control board for the region in which the facility is located. The plans shall contain the owner's or operator's estimate of the cost of closure and subsequent maintenance, shall conform to the regulations adopted by the department and shall comply with applicable state laws relating to water quality protection and monitoring.

(b) The plans specified in subdivision (a) shall be submitted to the department with the application for a hazardous waste facilities permit or when otherwise requested by the department. The plans shall be submitted to the California regional water quality control board with a report of waste discharge submitted in accordance with Section 13260 of the Water Code. An owner or operator who has submitted a request for, or received a hazardous waste facilities permit prior to, the adoption of the standards and regulations pursuant to Section 25245 shall submit the plans within 180 days after the department issues a written request for the plans. Prior to actual closure of the facility, the plans shall be updated if requested by the department. However, no owner or operator shall be required to revise or amend a closure plan after the department notifies the

owner or operator in writing that the closure of the facility has been completed in accordance with the approved closure plan.

(c) An owner or operator who has not submitted facility closure and postclosure plans shall submit the plans at least 180 days prior to closure of the hazardous waste facility.

SEC. 41. Section 25247 of the Health and Safety Code is amended to read:

25247. (a) The department shall review each plan submitted pursuant to Section 25246 and shall approve the plan if it finds that the plan complies with the regulations adopted by the department and complies with all other applicable state and federal regulations.

(b) The department shall not approve the plan until at least one of the following occurs:

(1) The plan has been approved pursuant to Section 13227 of the Water Code.

(2) Sixty days expire after the owner or operator of an interim status facility complies with Section 25246. If the department denies approval of a plan for an interim status facility, this 60-day period shall not begin until the owner or operator resubmits the plan in compliance with Section 25246.

(3) The director finds that immediate approval of the plan is necessary to protect public health, safety, or the environment.

(c) Any action taken by the department pursuant to this section is subject to Section 25204.5.

SEC. 42. Section 25248 of the Health and Safety Code is amended to read:

25248. The owner or operator of a facility for which closure and postclosure plans have been approved shall carry out the plans during the closure and postclosure period required by law.

SEC. 43. Section 25250.1 of the Health and Safety Code is amended to read:

25250.1. As used in this article, the following terms have the following meanings:

(a) "Used oil" means any of the following:

(1) Any oil that has been refined from crude oil, and has been used, and, as a result of use, has been contaminated with physical or chemical impurities.

(2) Any oil that has been refined from crude oil and, as a consequence of extended storage, spillage, or contamination with nonhazardous impurities such as dirt and water, is no longer useful to the original purchaser.

(3) 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.

(4) Spent industrial oils, including compressor, turbine, and bearing oil, hydraulic oil, metal-working oil, refrigeration oil, and railroad drainings.

(5) Contaminated fuel oil with a flash point greater than 100°F.

"Used oil" does not include oil which has a flash point below 100°F or which has been intentionally mixed with hazardous waste, other than minimal amounts of vehicle fuel. "Used oil" also does not include oil which contains polychlorinated biphenyls (PCBs) at a concentration of 5 ppm or greater.

(b) "Board" means the California Waste Management Board.

(c) "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. The following standards of purity are in effect unless the department, by regulation, establishes more stringent standards:

(1) Flash point: minimum standards set by the American Society for Testing and Materials for the recycled products.

(2) Lead: 100 ppm or less prior to January 1, 1988; 50 ppm or less on and after January 1, 1988.

(3) Arsenic: 5 ppm or less.

(4) Chromium: 10 ppm or less.

(5) Cadmium: 2 ppm or less.

(6) Total Halogens: 3,000 ppm or less.

(7) Polychlorinated biphenyls (PCBs): 5 ppm or less.

Compliance with these standards shall be determined in accordance with the procedures for identification and listing of hazardous waste adopted in regulations by the department.

(d) The standards set in subdivision (c) include the only concentrations allowed above the criteria adopted pursuant to Section 25141.

(e) Used oil which meets the standards set in subdivision (c), is not hazardous pursuant to the criteria adopted pursuant to Section 25141 for constituents other than those listed in subdivision (c), and 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 is not regulated by the department. Any person who generates used oil, and who claims that the oil is exempt from regulation pursuant to this subdivision, shall notify the department 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 and user of the used oil to prove that the oil met those standards and criteria.

SEC. 44. Section 25250.1 of the Health and Safety Code is amended to read:

25250.1. As used in this article, the following terms have the following meanings:

(a) "Used oil" means any of the following:

(1) Any oil that has been refined from crude oil, and has been used, and, as a result of use, has been contaminated with physical or chemical impurities.

(2) Any oil that has been refined from crude oil and, as a

consequence of extended storage, spillage, or contamination with nonhazardous impurities such as dirt and water, is no longer useful to the original purchaser.

(3) 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.

(4) Spent industrial oils, including compressor, turbine, and bearing oil, hydraulic oil, metal-working oil, refrigeration oil, and railroad drainings.

(5) Contaminated fuel oil with a flash point equal to or greater than 100°F.

"Used oil" does not include oil which has a flash point below 100°F or which has been intentionally mixed with hazardous waste, other than minimal amounts of vehicle fuel. "Used oil" also does not include oil which contains polychlorinated biphenyls (PCBs) at a concentration of 5 ppm or greater.

(b) "Board" means the California Waste Management Board.

(c) "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. The following standards of purity are in effect unless the department, by regulation, establishes more stringent standards:

(1) Flash point: minimum standards set by the American Society for Testing and Materials for the recycled products.

(2) Lead: 100 ppm or less prior to January 1, 1988; 50 ppm or less on and after January 1, 1988.

(3) Arsenic: 5 ppm or less.

(4) Chromium: 10 ppm or less.

(5) Cadmium: 2 ppm or less.

(6) Total Halogens: 3,000 ppm or less.

(7) Polychlorinated biphenyls (PCBs): 5 ppm or less.

Compliance with these standards shall be determined in accordance with the procedures for identification and listing of hazardous waste adopted in regulations by the department.

(d) The standards set in subdivision (c) include the only concentrations allowed above the criteria adopted pursuant to Section 25141.

(e) Used oil which meets the standards set in subdivision (c), is not hazardous pursuant to the criteria adopted pursuant to Section 25141 for constituents other than those listed in subdivision (c), and 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 is not regulated by the department. 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 and user of the used oil to prove that the oil met those standards and criteria.

(f) "Used oil recycling facility" means a facility which reprocesses or rerefines used oil.

(g) "Used oil storage facility" means a storage facility, as defined in subdivision (a) of Section 25123.3, which stores used oil.

(h) "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.

SEC. 45. Section 13172 of the Water Code is amended to read:

13172. To ensure adequate protection of water quality and statewide uniformity in the siting, operation, and closure of waste disposal sites, except for sewage treatment plants or those sites which primarily contain fertilizer or radioactive material, the state board shall do all of the following:

(a) Classify wastes according to the risk of impairment to water quality, taking into account toxicity, persistence, degradability, solubility, and other biological, chemical, and physical properties of the wastes.

(b) Classify the types of disposal sites according to the level of protection provided for water quality, taking into account the geology, hydrology, topography, climatology, and other factors relating to ability of the site to protect water quality.

(c) Adopt standards and regulations to implement Sections 13226 and 13227.

(d) Adopt standards and regulations for hazardous waste disposal sites which apply and ensure compliance with all applicable groundwater protection and monitoring requirements of the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Sec. 6901 et seq.), any federal act, enacted before or after January 1, 1989, which amends or supplements the Resource Conservation and Recovery Act of 1976, any federal regulations adopted before or after January 1, 1989, pursuant to the Resource Conservation and Recovery Act of 1976, as amended, together with any more stringent requirements necessary to implement this division or Article 9.5 (commencing with Section 25208) of Chapter 6.5 of Division 20 of the Health and Safety Code.

SEC. 46. Section 13227 of the Water Code is amended to read:

13227. (a) Each regional board, with respect to its region, shall review the facility closure and postclosure plans submitted pursuant to Section 25246 of the Health and Safety Code, to ensure that water quality is adequately protected during closure and the post-closure maintenance period.

(b) The regional board shall approve the facility closure and postclosure plans if it finds that the plans comply with applicable state and federal laws and regulations relating to water quality protection and monitoring.

(c) The regional board may condition its approval of the plans in accordance with the requirements of this section.

SEC. 47. Section 36 of this bill incorporates amendments to Section 25199.6 of the Health and Safety Code proposed by this bill and AB 3206. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1989, (2) each bill amends Section 25199.6 of the Health and Safety Code, and (3) this bill is enacted after AB 3206, in which case Section 25199.6 of the Health and Safety Code, as amended by AB 3206, shall remain operative only until the operative date of this bill, at which time Section 36 of this bill shall become operative, and Section 35 of this bill shall not become operative.

SEC. 48. Section 44 of this bill incorporates amendments to Section 25250.1 of the Health and Safety Code proposed by both this bill and AB 379. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1989, (2) each bill amends Section 25250.1 of the Health and Safety Code, and (3) this bill is enacted after AB 379, in which case Section 43 of this bill shall not become operative.

SEC. 49. 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.

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## CHAPTER 1632

An act to amend Sections 18909, 25110, 25113, 25117.1, 25117.2, 25118, 25123, 25123.3, 25123.5, 25144, 25200, 25200.5, 25200.7, 25200.8, 25201, 25203, 25209.1, 25209.2, 25209.3, 25209.4, 25209.5, 25209.6, and 25503.7 of, and to add Sections 25110.02, 25117.9, 25153.6, and 25200.10 to, the Health and Safety Code, relating to hazardous waste.

[Approved by Governor September 30, 1988. Filed with Secretary of State September 30, 1988.]

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

SECTION 1. Section 18909 of the Health and Safety Code is amended to read:

18909. (a) "Building standard" means any rule, regulation, order, or other requirement, including any amendment or repeal of such a requirement, which specifically regulates, requires, or forbids the method of use, properties, performance, or types of materials used in the construction, alteration, improvement, repair, or rehabilitation of a building, structure, factory-built housing, or other improvement to real property, including fixtures therein, and as

determined by the commission.

(b) Except as provided in subdivision (d), "building standard" includes architectural and design functions of a building or structure, including, but not limited to, number and location of doors, windows, and other openings, stress or loading characteristics of materials, and methods of fabrication, clearances, and other functions.

(c) "Building standard" does not include a regulation, rule, or order relating to the enforcement of a building standard, including the penalties for failure to comply with a building standard.

(d) "Building standard" does not include any safety regulations which any state agency is authorized to adopt relating to the operation of machinery and equipment used in manufacturing, processing, or fabricating, including, but not limited to, warehousing and food processing operations, but not including safety regulations relating to permanent appendages, accessories, apparatus, appliances, and equipment attached to the building as a part thereof, as determined by the commission.

(e) "Building standard" does not include temporary scaffoldings and similar temporary safety devices and procedures, which are used in the erection, demolition, moving, or alteration of buildings.

(f) "Building standard" does not include any regulation relating to operations or procedures established for the administration of a program of a state agency or for the internal management of a state agency.

(g) "Building standard" does not include any regulation, rule, order, or standard which pertains to mobilehomes, manufactured homes, commercial coaches, special purpose commercial coaches, or recreational vehicles.

(h) "Building standard" does not include any regulation, rule, or order or standard which pertains to a mobilehome park, recreational vehicle park, temporary recreational vehicle park, or travel trailer park, except that "building standard" includes the construction of permanent buildings and plumbing, electrical, and fuel gas equipment and installations within permanent buildings in mobilehome parks, recreational vehicle parks, temporary recreational vehicle parks, or travel trailer parks. For purposes of this subdivision, "permanent building" means any permanent structure constructed in the mobilehome park, recreational vehicle park, temporary recreational vehicle park, or travel trailer park which is a permanent facility under the control and ownership of the park operator.

(i) "Building standard" does not include any regulation, rule, order, or standard which pertains to mausoleums regulated under Part 5 (commencing with Section 9501) of Division 8.

(j) "Building standard" does not include any regulation adopted by the State Department of Health Services or the State Water Resources Control Board concerning hazardous waste facilities, as defined in Section 25117.1, or concerning the discharge of waste to land.

SEC. 2. Section 25110 of the Health and Safety Code is amended to read:

25110. Unless the context indicates otherwise, the definitions in this article govern the construction of this chapter. Until the other terms used in this chapter are defined in either this chapter or in regulations adopted to implement this chapter, the definitions found in the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Sec. 6901 et seq.) and the regulations adopted pursuant to that act, shall apply to the terms used in this chapter.

SEC. 3. Section 25110.02 is added to the Health and Safety Code, to read:

25110.02. "Acutely hazardous waste" means any hazardous waste classified as an acutely hazardous waste in regulations adopted by the department.

SEC. 4. Section 25113 of the Health and Safety Code is amended to read:

25113. "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any waste into or on any land or water so that the waste or any constituent of the waste, may enter the environment or be emitted into the air or discharged into any waters, including groundwaters.

SEC. 5. Section 25117.1 of the Health and Safety Code is amended to read:

25117.1. "Hazardous waste facility" or "facility" means all contiguous land and structures, other appurtenances, and improvements on the land used for the treatment, transfer, storage, resource recovery, disposal, or recycling of hazardous waste. A hazardous waste facility may consist of one or more treatment, transfer, storage, resource recovery, disposal, or recycling hazardous waste management units, or combinations of these units.

SEC. 6. Section 25117.2 of the Health and Safety Code is amended to read:

25117.2. "Hazardous waste management" or "management" means the transportation, transfer, recycling, recovery, disposal, handling, processing, storage, and treatment of hazardous waste.

SEC. 7. Section 25117.9 is added to the Health and Safety Code, to read:

25117.9. "Non-RCRA hazardous waste" means all hazardous waste regulated in the state other than that hazardous waste which is subject to regulation by the Environmental Protection Agency pursuant to the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Sec. 6901 et seq.), in states that are not authorized pursuant to Section 6926 of Title 42 of the United States Code. A hazardous waste is presumed to be regulated pursuant to the Resource Conservation and Recovery Act of 1976, unless it is determined, pursuant to regulations adopted by the department, that the hazardous waste is a non-RCRA hazardous waste. Until the department adopts regulations to implement this section, a hazardous waste is presumed to be regulated pursuant to the

Resource Conservation and Recovery Act of 1976, as amended, (42 U.S.C. Sec. 6901 et seq.), unless the generator of the waste determines that the hazardous waste is not a hazardous waste pursuant to the standards specified in Part 261 (commencing with Section 261.1) of Subchapter I of Chapter 1 of Title 40 of the Code of Federal Regulations.

SEC. 8. Section 25118 of the Health and Safety Code is amended to read:

25118. "Person" means an individual, trust, firm, joint stock company, business concern, corporation, including, but not limited to, a government corporation, partnership, and association. "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. 9. Section 25123 of the Health and Safety Code is amended to read:

25123. "Storage" means the holding of hazardous wastes, for a temporary period.

SEC. 10. Section 25123.3 of the Health and Safety Code is amended to read:

25123.3. (a) "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) The hazardous waste is held at an onsite facility in tanks for any period of time and the quantities of the hazardous waste exceed 5,000 gallons or 45,000 pounds, whichever is greater. For purposes of this paragraph, these quantities do not include hazardous waste stored in a portable tank used for a period of not more than 60 calendar days at an onsite facility or hazardous waste accumulated onsite which has been generated from onsite maintenance operations which occur less frequently than annually.

(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) The hazardous waste is held in containers or tanks at a transfer facility for periods greater than 144 hours.

(b) The time period for calculating the 90-day period for purposes of paragraph (1) of subdivision (a) begins when the facility has accumulated 100 kilograms of hazardous waste or one kilogram of extremely hazardous waste or acutely hazardous waste, except that, 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.

(c) For purposes of this section, "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.

(d) Notwithstanding paragraph (1) of subdivision (a), 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 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) of this subdivision, the generator labels the container holding the accumulated hazardous waste with the date the quantity limitation was reached and either transfers the waste offsite or 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. 11. Section 25123.5 of the Health and Safety Code is amended to read:

25123.5. "Treatment" means any method, technique, or process which changes or is designed to change the physical, chemical, or biological character or composition of any hazardous waste or any material contained therein, or removes or reduces its harmful properties or characteristics for any purpose.

SEC. 12. Section 25144 of the Health and Safety Code is amended to read:

25144. 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 producing an effluent which 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. However, residues produced in the treatment process and subsequently removed that conform to any criterion adopted pursuant to Section 25141 are not exempt.

SEC. 13. Section 25153.6 is added to the Health and Safety Code, to read:

25153.6. (a) Except as provided in subdivision (b), any person generating or managing hazardous waste shall comply with subsection (a) of Section 3010 of the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Sec. 6930(a)).

(b) Any person generating or managing a non-RCRA hazardous waste shall comply with any notification requirements for non-RCRA hazardous waste which the department adopts by regulation.

SEC. 14. Section 25200 of the Health and Safety Code is amended to read:

25200. (a) The department shall issue hazardous waste facilities permits to use and operate one or more hazardous waste management units at a facility which in the judgment of the department meet the building standards published in the State Building Standards Code relating to hazardous waste facilities and the other standards and requirements adopted pursuant to this chapter. The department may impose, as a condition of the permit, the requirement that the operator of a hazardous waste facility which receives hazardous waste from more than one producer shall comply with any order of the director which prohibits the facility operator from refusing to accept a hazardous waste based on geographical origin which is authorized to be accepted and may be accepted by the facility without extraordinary hazard.

(b) Any hazardous waste facilities permit issued by the department shall be for a fixed term, which shall not exceed 10 years for any land disposal facility, storage facility, incinerator, or other treatment facility. The department shall review each hazardous waste facilities permit for a land disposal facility five years after the date of issuance or reissuance, and shall modify the permit, as necessary, to assure that the facility continues to comply with the currently applicable requirements of this chapter and the regulations adopted pursuant to this chapter. This subdivision does not prohibit the department from reviewing and modifying a permit at any time during its term. When reviewing any application for a permit renewal, the department shall consider improvements in the state of control and measurement technology as well as changes in applicable regulations. Each permit issued under this section shall contain the terms and conditions which the department determines necessary to protect human health and the environment.

SEC. 15. Section 25200.5 of the Health and Safety Code is amended to read:

25200.5. (a) Except as provided in Section 25200.7, any person who desires to continue the use or operation of a hazardous waste facility which was in existence on November 19, 1980, or which was

in existence on the effective date of any statute or regulation which subjected that facility to hazardous waste facilities permit requirements under this chapter, pending the review and decision of the department on the permit application, may be granted interim status by the department if the person has made application for a permit pursuant to Section 25200 and complied with the requirements of subsection (a) of Section 6930 of Title 42 of the United States Code.

(b) The person operating under an interim status pursuant to this section shall not do any of the following acts:

(1) Treat, store, transfer, or dispose of hazardous wastes which are not specified in Part A of the permit application.

(2) Employ processes not described in Part A of the permit application.

(3) Exceed the design capacities specified in Part A of the permit application.

(c) A facility operating under interim status is not subject to civil or criminal penalties for operating without a permit, but is otherwise subject to this chapter and the rules, regulations, standards, and requirements issued or adopted pursuant to this chapter. Interim status may be granted subject to any conditions which the department deems necessary to protect public health or the environment. Interim status shall not be valid beyond the date of the decision of the department on the permit application.

(d) The department shall not grant interim status to any person to operate a hazardous waste facility if the facility has been subject to any of the following actions:

(1) Denial of a hazardous waste facilities permit.

(2) Suspension, revocation, or termination of a hazardous waste facilities permit.

(3) Termination of a grant of interim status.

(e) For purposes of this section, "Part A of the permit application" has the same meaning as defined in Section 66151 of Title 22 of the California Code of Regulations, as that section read on January 1, 1988.

(f) Any land disposal facility, as defined in subdivision (h) of Section 25179.3, which lost interim status pursuant to paragraph (2) or (3) of subsection (e) of Section 6925 of Title 42 of the United States Code is deemed to have lost interim status granted under this section to operate a facility managing hazardous waste regulated pursuant to the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Sec. 6901 et seq.).

(g) The termination date for interim status for any land disposal facility, as defined in subdivision (h) of Section 25179.3, which is in existence on the effective date of any statute or the regulation adopted pursuant to that statute which subjects the facility to hazardous waste facilities permit requirements under this chapter, and which is granted interim status under this section, is the date 12 months after the date on which the facility first becomes subject to

the hazardous waste facilities permit requirements, unless one of the following applies:

(1) Part A of the facility's permit application specifies that only non-RCRA hazardous waste will be disposed of at the facility.

(2) The owner or operator of the facility does both of the following:

(A) Applies for a final determination regarding the issuance of a hazardous waste facilities permit under Section 25200 for the facility before the date 12 months after the date on which the facility first becomes subject to the hazardous waste facilities permit requirements.

(B) Certifies that the facility is in compliance with all applicable groundwater monitoring and financial responsibility requirements.

(h) The termination date for interim status for any incinerator facility which submitted an application for a hazardous waste facilities permit before November 8, 1984, is November 8, 1989, unless one of the following applies:

(1) Part A of the facility's permit application specifies that only non-RCRA hazardous waste will be disposed of at the facility.

(2) The owner or operator of the facility applied for a final determination regarding the issuance of a hazardous waste facilities permit under Section 25200 for the facility on or before November 8, 1986.

(i) The termination date for interim status for any facility, other than a facility specified in subdivision (g) or (h), which submitted an application for a hazardous waste facilities permit before November 8, 1984, is November 8, 1992, unless one of the following applies:

(1) Part A of the facility's permit application specifies that only non-RCRA hazardous waste will be disposed of at the facility.

(2) The owner or operator of the facility applied for a final determination regarding the issuance of a hazardous waste facilities permit under Section 25200 for the facility on or before November 8, 1988.

SEC. 16. Section 25200.7 of the Health and Safety Code is amended to read:

25200.7. (a) On or before November 8, 1988, the department shall take final action on each application for a hazardous waste facilities permit submitted to the department before January 1, 1988, by either issuing a final permit pursuant to the application or a final denial of the application.

(b) Subdivision (a) applies only to hazardous waste facilities which are operating under a grant of interim status on January 1, 1988, which use a land disposal method, as defined in subdivision (h) of Section 25179.3, and which dispose of wastes regulated as hazardous waste pursuant to the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Sec. 6901 et seq.).

(c) On or before November 8, 1989, the department shall take final action on each application for a hazardous waste facilities

permit to operate an incinerator facility which was submitted before November 8, 1984, by either issuing a final permit pursuant to the application or a final denial of the application.

(d) On or before November 8, 1992, the department shall take final permit action on each application for a hazardous waste facilities permit to operate any facility not otherwise subject to subdivision (a) or (c) which was submitted before November 8, 1984. The department shall issue a final hazardous waste facilities permit pursuant to the application or issue a final denial of the application.

(e) Interim status granted pursuant to Section 25200.5 to any facility subject to subdivision (c) shall terminate on November 8, 1989, unless the owner or operator of the facility applied for a final determination regarding the issuance of a hazardous waste facilities permit by November 8, 1986.

(f) Interim status granted pursuant to Section 25200.5 to any facility subject to subdivision (d) shall terminate on November 8, 1992, unless the owner or operator of the facility applied for a final determination regarding the issuance of a hazardous waste facilities permit by November 8, 1988.

(g) Subdivisions (c), (d), (e) and (f) do not apply to applications for hazardous waste facilities permits to treat, store, or dispose of non-RCRA hazardous wastes.

SEC. 17. 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 or by a later alternative date approved by the department. The department may initiate an enforcement action pursuant to Section 25187 or 25189.3 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 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 Sections 25186 and 25186.1, 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. 18. Section 25200.10 is added to the Health and Safety Code, to read:

25200.10. The department shall require, and any permit issued by the department shall require, corrective action for all releases of hazardous waste or constituents 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. 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.

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.

SEC. 19. Section 25201 of the Health and Safety Code is amended to read:

25201. (a) No operator of a storage facility, treatment facility, waste transfer station, resource recovery facility, or waste disposal site shall accept, treat, store, or dispose of a hazardous waste at the facility, station, area, or site, unless the operator holds a hazardous waste facilities permit or other grant of authorization from the department to use and operate the facility, station, 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 shall obtain a hazardous waste facilities permit or a permit amendment from the department prior to commencing construction.

SEC. 20. Section 25203 of the Health and Safety Code is amended to read:

25203. It is unlawful for any person to dispose of a hazardous waste except at a disposal site or facility of an owner or operator who holds a valid hazardous waste facilities permit or other grant of authorization from the department to use and operate the site or facility.

SEC. 21. Section 25209.1 of the Health and Safety Code is amended to read:

25209.1. For purposes of this article, the following definitions apply:

(a) "Discharge" means to place or dispose hazardous wastes in a land treatment unit.

(b) "Facility" shall have the meaning specified in Section 25117.1.

(c) "Hazardous constituent" has the meaning specified in regulations adopted by the department.

(d) "Hazardous waste" means a hazardous waste, as defined in Section 25117 and "non-RCRA hazardous waste" has the same meaning as defined in Section 25117.9.

(e) "Land treatment unit" means a facility or part of a facility at which hazardous waste is applied onto or incorporated into the soil surface so that hazardous constituents are degraded, transformed, or immobilized within the treatment zone. A land treatment unit is a disposal unit if the waste will remain after closure.

(f) "Pollution" has the same meaning as specified in Section 13050 of the Water Code.

(g) "Potential source of drinking water" shall have the meaning

specified in subdivision (s) of Section 25208.2.

(h) "Treatment zone" means the portion of a land treatment unit including the soil surface, within which hazardous constituents are degraded, transformed, or immobilized. A treatment zone may not extend more than five feet from the initial soil surface and the base of the treatment zone shall be a minimum of five feet above the highest anticipated elevation of the water table.

(i) "Vadose zone" means the unsaturated zone between the land surface and the water table.

(j) "Waste management unit" has the same meaning as "hazardous waste management unit," as defined in Section 25117.3.

SEC. 22. Section 25209.2 of the Health and Safety Code is amended to read:

25209.2. (a) Except as provided in Section 25209.5, unless granted a variance pursuant to subdivision (b), or exempted pursuant to Section 25209.6, no person shall discharge hazardous waste into a new land treatment unit at a new or existing facility, any land treatment unit which replaces an existing land treatment unit, or any laterally expanded portion of an existing land treatment unit that has not been equipped with liners, a leachate collection and removal system, a groundwater monitoring system, and a vadose zone monitoring system which satisfy the requirements of Section 25209.5.

(b) The department may grant a variance from the requirements of subdivision (a) and Section 25209.3, concerning equipping the land treatment unit with liners and a leachate collection and removal system, if the owner or operator demonstrates to the department and the department finds all of the following:

(1) If the land treatment unit is an existing land treatment unit, no hazardous constituents have migrated from the treatment zone of the land treatment unit into the vadose zone or into the waters of the state in concentrations which pollute or threaten to pollute the vadose zone or the waters of the state. In making this demonstration the owner or operator shall take a sufficient number of core samples in, beneath, and surrounding the treatment zone of the land treatment unit to characterize the chemical constituents in the treatment zone, in the immediate area of the vadose zone surrounding the treatment zone, and in the area of the vadose zone beneath the treatment zone and shall submit groundwater monitoring data sufficient in scope to demonstrate that there has been no migration of hazardous constituents into the vadose zone or into the waters of the state in concentrations which pollute or threaten to pollute the vadose zone or the waters of the state. The owner or operator, as an alternative to taking these core samples, may use the data obtained from any land treatment demonstration required by the department before issuing a hazardous waste facilities permit pursuant to Section 25200, if the data were obtained not more than two years prior to the application for the variance and is sufficient in scope to demonstrate that there has been no migration

of hazardous constituents into the vadose zone or into the waters of the state in concentrations which pollute or threaten to pollute the vadose zone or the waters of the state.

(2) Notwithstanding the date that the land treatment unit commences operations, the design and operating practices will prevent the migration of hazardous constituents from the treatment zone of the land treatment unit into the vadose zone or into the waters of the state in concentrations which pollute or threaten to pollute the vadose zone or the waters of this state.

(3) Notwithstanding the date that the land treatment unit commences operations, the design and operating practices provide for rapid detection and removal or remediation of any hazardous constituents that migrate from the treatment zone of the land treatment unit into the vadose zone or into the waters of the state in concentrations which pollute or threaten to pollute the vadose zone or the waters of the state.

(c) (1) The department may renew a variance only in those cases where an owner or operator can demonstrate, and the department finds, both of the following:

(A) No hazardous constituents have migrated from the treatment zone of the land treatment unit into the vadose zone or into the waters of the state in concentrations which pollute or threaten to pollute the vadose zone or the waters of the state.

(B) Continuing the operation of the land treatment unit does not pose a significant potential of hazardous constituents migrating from the land treatment unit into the vadose zone or into the waters of the state in concentrations which pollute or threaten to pollute the vadose zone or the waters of the state.

(2) In making the demonstration for the renewal of a variance pursuant to this subdivision, the owner or operator may use field tests, laboratory analyses, or, operating data.

(d) A variance, or a renewal of a variance, may be issued for a period not to exceed three years.

(e) Except for the exemption from vadose zone monitoring requirements specified in Section 25209.5, neither the requirements of this article nor the variance provisions of subdivision (b) shall relieve the owner or operator from responsibility to comply with all other existing laws and regulations pertinent to land treatment units.

SEC. 23. Section 25209.3 of the Health and Safety Code is amended to read:

25209.3. Except as provided in Section 25209.5, after January 1, 1990, unless granted a variance pursuant to subdivision (b) of Section 25209.2, or exempted pursuant to Section 25209.6, no person shall discharge hazardous waste into a land treatment unit which has not been equipped with liners, a leachate collection and removal system, a groundwater monitoring system, and a vadose zone monitoring system which satisfy the requirements of Section 25209.5.

SEC. 24. Section 25209.4 of the Health and Safety Code is amended to read:

25209.4. (a) Except as provided in Section 25209.6, no person shall place or dispose of hazardous waste in a land treatment unit if any of the following conditions exist:

(1) Hazardous constituents have migrated from the land treatment unit into the vadose zone beneath or surrounding the treatment zone or into the waters beneath or surrounding the treatment zone.

(2) There is evidence that a hazardous constituent in the waste discharged to the land treatment unit has not been or will not be completely degraded, transformed, or immobilized in the treatment zone.

(3) There is a significant potential for hazardous constituents to migrate from the land treatment unit into a potential source of drinking water.

(b) The owner or operator of a land treatment unit shall do all of the following:

(1) Periodically, at the request of the department, and at least annually, submit information the department may require to assure that the conditions set forth in paragraph (1) or (2) of subdivision (a) are not present. The information to be submitted to the department shall include, but is not limited to, a sufficient number of soil core samples in, beneath, and surrounding the treatment zone of the land treatment unit to detect any hazardous constituents which may have migrated from the treatment zone. The department may adopt regulations requiring additional or more frequent testing.

(2) Within 72 hours of detecting and confirming the existence of either of the conditions identified in paragraph (1) or (2) of subdivision (a), or the presence of factors that render the owner or operator unable to continue satisfying the variance requirements of subdivision (b) of Section 25209.2, report to the department describing the full extent of the owner's or operator's findings.

(c) Upon receiving notice pursuant to paragraph (2) of subdivision (b), or upon the independent confirmation by the department, the department shall order the owner or operator to cease operating the land treatment unit. The owner or operator shall not resume operating the land treatment unit and shall close the land treatment unit unless one of the following actions is taken:

(1) The owner or operator completes appropriate removal or remedial actions to the satisfaction of the department and the owner or operator submits to the department, and the department approves, an application for a permit or variance modification to modify the operating practices at the facility to maximize the success of degradation, immobilization, or transformation processes in the treatment zone, if the owner or operator has not previously submitted an application for a permit or variance modification pursuant to this paragraph.

(2) The owner or operator completes appropriate removal or remedial actions and equips the land treatment unit with liners, leachate collection and removal systems, a groundwater monitoring

system, and a vadose zone monitoring system that satisfy the requirements of Section 25209.5, if the land treatment unit has not already been equipped with these systems.

(d) All actions taken by an owner or operator pursuant to paragraph (1) or (2) of subdivision (c) shall be completed within a time period specified by the department, which shall not exceed 18 months after the department receives notice pursuant to subdivision (c). If the actions are not completed within this time period, the land treatment unit shall be closed, unless granted an extension by the department due to exceptional circumstances beyond the control of the owner and operator.

SEC. 25. Section 25209.5 of the Health and Safety Code is amended to read:

25209.5. The liner, leachate collection and removal, groundwater monitoring, and vadose zone monitoring systems required by Sections 25209.2, 25209.3, and 25209.4 shall be designed, constructed, and operated according to regulations adopted by the department and State Water Resources Control Board regulations and standards for liner, leachate collection and removal, groundwater monitoring, and vadose zone monitoring systems for class I hazardous waste landfills, to the extent those regulations and standards are not less stringent than the regulations and standards of the department. Owners or operators of land treatment units which have treated and will treat solely non-RCRA hazardous waste and which are equipped with liners, leachate collection and removal systems, and a groundwater monitoring system that satisfy the requirements of this section shall not be required to perform vadose zone monitoring.

SEC. 26. Section 25209.6 of the Health and Safety Code is amended to read:

25209.6. Land treatment of soil contaminated only with non-RCRA hazardous waste which has been excavated as part of a removal or remedial action at any hazardous substance release site is exempt from the requirements of Sections 25209.2, 25209.3, and 25209.4, if all of the following apply:

(a) The department determines that the land treatment does not pose a threat to public health or safety or the environment.

(b) The land treatment is conducted pursuant to a plan approved by the department or a cleanup and abatement order issued by a regional water quality control board.

(c) The land treatment is not conducted at an offsite commercial hazardous waste facility.

(d) The land treatment is used only for purposes of removal or remedial action and, upon completion of the land treatment portion of the removal or remedial action, the land treatment unit is closed.

SEC. 27. Section 25503.7 of the Health and Safety Code is amended to read:

25503.7. (a) When any railroad car containing any hazardous material or hazardous substance remains within the same railroad facility or business facility for more than 30 days, or a business knows

or has reason to know that any railroad car containing any hazardous material or hazardous substance will remain at the same railroad facility or business facility for more than 30 days, the hazardous material or hazardous substance is deemed stored at that location for purposes of this chapter and subject to the requirements of this chapter.

(b) Notwithstanding Section 25510, a business handling hazardous materials or hazardous substances which are stored in a manner subject to subdivision (a) shall immediately notify the administering agency whenever a hazardous material or hazardous substance is stored in a railroad car.

SEC. 28. Section 3 of this act shall not become operative if Assembly Bill 4636 is enacted and becomes effective on or before January 1, 1989, and adds Section 25110.02 to the Health and Safety Code.

SEC. 29. Section 7 of this act shall not become operative if Assembly Bill No. 4636 is enacted and becomes effective on or before January 1, 1989, and adds Section 25117.9 to the Health and Safety Code.

SEC. 30. 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.

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## CHAPTER 1633

An act to amend and supplement the Budget Act of 1988 by adding Items 3680-102-036, 3760-302-140, 3790-103-036, 3790-102-140, 3790-103-733, 3790-102-742, 3790-302-742, and 3790-303-721 to Section 2.00 thereof, relating to parks and recreation, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Became law without Governor's signature. Filed with Secretary of State September 30, 1988 ]

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

SECTION 1. Item 3680-102-036 is added to Section 2.00 of the Budget Act of 1988, to read:

| | | |
|---|---|---|
| 3680-102-036—For local assistance, Department of Boating and Waterways, payable from the Special Account for Capital Outlay | | 2,000,000 |
| Schedule: | | |
| (a) San Francisco Seawall, Phase II | 2,000,000 | |

SEC. 2. Item 3760-302-140 is added to Section 2.00 of the Budget Act of 1988, to read:

3760-302-140--For capital outlay, State Coastal Conservancy, for transfer to Item 3760-301-565, payable from the California Environmental License Plate Fund ..... 250,000

Provisions:

1. This item shall become operative when the Department of General Services transfers, at the request of the State Coastal Conservancy, the Tsurai Village site in the City of Trinidad to the City of Trinidad or another appropriate manager.
2. It is the intent of the Legislature that the appropriation in this item provide a mechanism for acquisition of the Tsurai Village from the State Coastal Conservancy in accordance with Section 31354 of the Public Resources Code.

SEC. 3. Item 3790-103-036 is added to Section 2.00 of the Budget Act of 1988, to read:

3790-103-036—For local assistance, Department of Parks and Recreation, payable from the Special Account for Capital Outlay ..... 1,206,000

Schedule:

| | |
|---|---|
| (1) Solano Farmlands and Open Space Foundation—Acquisition and restoration, Suisun Ranch, Solano county ..... | 640,000 |
| (2) California Academy of Sciences—continuing restoration of facilities | 500,000 |
| (3) County of Yolo, Old Helvetia Park, acquisition ..... | 66,000 |

SEC. 4. Item 3790-102-140 is added to Section 2.00 of the Budget Act of 1988, to read:

3790-102-140—For local assistance, Deparment of Parks and Recreation, payable from the California Environmental License Plate Fund ..... 1,080,000

Schedule:

| | |
|---|---|
| (1) City of San Diego, acquisition, Famosa Slough ..... | 500,000 |
| (2) City of San Diego, Mission Bay Park shoreline protection and water quality improvement ..... | 500,000 |
| (3) County of Sacramento, local assist- | |

ance grant for a riparian habitat restoration, Rio Linda Creek ..... 50,000
(4) County of Sonoma, local assistance grant for stream bed restoration and wildlife enhancement, Maxwell Farms Regional Park and Sonoma Creek ..... 30,000

SEC. 5. Item 3790-103-733 is added to Section 2.00 of the Budget Act of 1988, to read:

3790-103-733—For local assistance, Department of Parks and Recreation, payable from the State Beach, Park, Recreational, and Historical Facilities Fund of 1974 ..... 175,000
Schedule:
(1) 50.50.733.808-City of Selma-Baseball Field Lights ..... 75,000
(2) 50.20.733.806-City of Pasadena-Jackie Robinson Baseball Field .... 100,000

SEC. 6. Item 3790-102-742 is added to Section 2.00 of the Budget Act of 1988, to read:

NEJEDLY-HART STATE, URBAN, AND COASTAL PARK BOND ACT PROGRAM

3790-102-742—For local assistance, Department of Parks and Recreation, payable from the State, Urban, and Coastal Park Fund ..... 538,300
Schedule:
(1) 50.220.742.801 City of Oxnard, Colonia Park Gymnasium ..... 450,000
(2) 50.20.742.802 Southgate Regional Park District, Countryside Park Project ..... 88,300

SEC. 7. Item 3790-302-742 is added to Section 2.00 of the Budget Act of 1988, to read:

3790-302-742—For capital outlay, Department of Parks and Recreation, payable from the State, Urban, and Coastal Park Fund ..... 110,000
Schedule:
(1.5) 90.CN.105.880—Monterey State Historic Park: Rehabilitation of the Custom House Plaza and Causeway—Preliminary Plans and working drawings ..... 110,000

SEC. 8. Item 3790-303-721 is added to Section 2.00 of the Budget Act of 1988, to read:

| | |
|---|---|
| 3790-303-721—For capital outlay, Department of Parks and Recreation, payable from the Parklands Fund of 1980 | 65,000 |
| Schedule: | |
| (1) 90.CN.101—Monterey SHP: First Brick House—Items to complete | 65,000 |

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 that funds will be available for the San Francisco seawall project, transfer of the Tsurai Village site in the City of Trinidad, various open-space and park and recreation projects, including restoration of the First Brick House in Monterey State Historical Park, and for a long-standing project at the Monterey State Historic Park so that a coordinated effort can commence with the City of Monterey, which is now in the process of a design and development effort for city lands adjacent to Monterey State Historic Park, it is necessary that this act take effect immediately.

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## CHAPTER 1634

An act to add Chapter 13.6 (commencing with Section 26290) to Part 2 of Division 2 of Title 3 of, and to add Section 53721.5 to, the Government Code, and to add Section 7252.12 to the Revenue and Taxation Code, relating to San Joaquin County.

[Became law without Governor's signature. Filed with Secretary of State October 1, 1988.]

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

SECTION 1. Chapter 13.6 (commencing with Section 26290) is added to Part 2 of Division 2 of Title 3 of the Government Code, to read:

### CHAPTER 13.6. SAN JOAQUIN COUNTY REGIONAL JUSTICE FACILITY FINANCING ACT

#### Article 1. General Provisions, Findings, and Definitions

26290. This chapter shall be known and may be cited as the San

Joaquin County Regional Justice Facility Financing Act.

26290.1. The Legislature hereby finds and declares that the existing state of overcrowding in the jails, sheriff, and court facilities in San Joaquin County is so great as to significantly impede the administration of justice and create a situation wherein persons who are a danger to society are required to be released into that society for lack of adequate facilities to house them. The Legislature further finds and declares that it is in the public interest to create the San Joaquin County Regional Justice Facility Financing Agency so that regional justice facility and prevention program needs may be addressed in an expeditious and appropriate fashion. The Legislature further finds and declares that it is in the public interest to allow the voters to approve a general tax for the general governmental purposes of the San Joaquin County Regional Justice Facility Financing Agency.

26290.2. "Bonds" means indebtedness and securities of any kind or class, including bonds, notes, bond anticipation notes, and commercial paper.

26290.3. "Agency" means the San Joaquin County Regional Justice Facility Financing Agency.

26290.4. "County" means the County of San Joaquin.

26290.5. "Board of supervisors" means the Board of Supervisors of the County of San Joaquin.

26290.6. "Master plan" means the plan for construction and acquisition of adult detention facilities, sheriff facilities, functionally related court facilities, and structures necessary or convenient thereto. The plan shall be developed and approved, and may be amended from time to time, by the board of supervisors. The master plan may include, but is not limited to, the following:

(a) The number of adult detention facilities, sheriff facilities, functionally related court facilities, to be constructed, furnished, or acquired.

(b) The geographic location at which the facilities referenced in subdivision (a) shall be sited.

(c) The time schedule according to which the facilities referenced in subdivision (a) shall be constructed, furnished, or acquired.

(d) Construction standards which shall apply to facilities constructed, furnished, or acquired pursuant to this chapter.

(e) Design standards which shall apply to facilities constructed, furnished, or acquired pursuant to this chapter.

(f) Those other requirements as the board of supervisors, in carrying out its responsibility for the provision of regional detention services, deems necessary and appropriate.

26290.7. "Prevention program" means a program, administered by the county, designed to decrease the number of inmates incarcerated in county adult detention facilities by providing alternatives to incarceration, or by providing counseling, diversion, or intervention programs, or by providing both. Alternatives to incarceration, include, but are not limited to, alternative work

programs, work furlough programs, half-way houses, and own recognizance services. Counseling, diversion, or intervention programs, include, but are not limited to, drug and alcohol counseling, parole counseling, and pretrial screening.

26290.8. "Functionally related court facility" means a court facility that is used solely for criminal prosecutions and handling inmates.

## Article 2. Creation of the Agency, Powers and Duties, Membership

26291. There is hereby created the San Joaquin County Regional Justice Facility Financing Agency in the county.

26291.1. (a) The board of directors of the agency shall be comprised of five members, as follows:

(1) Two members of the board of supervisors who shall be appointed by, and serve at the pleasure of, the board of supervisors.

(2) Two public members who shall be appointed by, and serve at the pleasure of, the board of supervisors.

(3) The Sheriff of San Joaquin County.

(b) The senior member of the two appointed members of the board of supervisors shall serve as the chairperson of the board of directors of the agency through December 31, 1990. Thereafter, the chairperson of the board of directors of the agency shall be elected by vote of a majority of the members of the board of directors of the agency and shall serve for a period of one calendar year.

(c) The board of directors shall adopt those rules and procedures as it deems necessary to conduct its business.

26291.2. The agency may adopt a seal and alter it at its pleasure.

26291.3. The agency may sue and be sued, except as otherwise provided by law, in all actions and proceedings, in all courts and tribunals of competent jurisdiction.

All claims for money or damages against the agency are governed by Division 3.6 (commencing with Section 810) of Title 1, except as provided therein, or by other statutes or regulations expressly applicable thereto.

26291.4. The agency may compensate the members of its board of directors for all reasonable and necessary expenses incurred in the course of performing their duties.

26291.5. All reasonably necessary staff shall be provided by the county or hired by the agency. The county shall be reimbursed by the agency for the costs of any staff services provided to the agency by the county in accordance with an agreement entered into between the agency and county.

26291.6. The agency may enter into contracts. The agency may employ attorneys and consultants as necessary or convenient to carrying out its purposes and powers.

26291.7. (a) The agency shall have the power to do all of the following:

(1) Administer this chapter.

(2) Finance the construction, acquisition, and furnishing of adult detention facilities, sheriff facilities, functionally related court facilities, and structures necessary or convenient thereto, in compliance with a master plan.

(3) Exercise the power of eminent domain for acquisition, and finance the acquisition of, the lands, easements, and rights-of-way necessary for the general governmental purposes of the agency set forth in this section.

(4) Hold title as necessary to land or facilities and convey title to such land or facilities to the county.

(5) Retire all or a portion of any capital debt previously incurred for any adult detention facilities, sheriff facilities, or functionally related court facilities which exists on the date the election is held for voter approval of the retail transactions and use tax ordinance authorized by this chapter.

(6) Finance all or part of the cost of any prevention program.

(7) Reimburse costs incurred by the county in the operation of any facility constructed or acquired pursuant to this chapter or costs incurred by prevention programs provided the board of supervisors certifies to the agency that progress toward completion of adult detention facilities, sheriff facilities, and functionally related court facilities has progressed substantially in accordance with the master plan.

(8) Construct, furnish, and acquire adult detention facilities, sheriff facilities, functionally related court facilities, and structures necessary or convenient thereto, in accordance with the master plan.

26291.8. The agency may do all things necessary or convenient to carry out the purposes of this chapter.

26291.9. The initial meeting of the agency shall be held in the county when called by the board of supervisors. At that meeting, or at any subsequent meeting of the agency called by the board of supervisors for the purposes of approving the transactions and use tax ordinance and ballot proposition, the agency may approve a transactions and use tax ordinance and may call an election in accordance with Article 3 (commencing with Section 26292) which election, notwithstanding any other provision of law, may be held within 60 days of the calling of the election. The board of supervisors or the agency may file written arguments, including rebuttal arguments, in favor of the ballot proposition. No arguments shall exceed 500 words in length.

## Article 3. Transactions and Use Tax

26292. The Legislature, by the enactment of this article, intends the additional funds provided by this article to supplement existing local revenues being used for the development of regional justice facilities. Government agencies are encouraged to maintain their existing commitment of local funds for regional justice facility

purposes.

26292.1. A retail transactions and use tax ordinance applicable in the incorporated and unincorporated territory of the county may be adopted by the agency in accordance with Section 26292.5 and Part 1.6 (commencing with Section 7251) of Division 2 of the Revenue and Taxation Code, if the ordinance is adopted by a two-thirds vote of the board of directors of the agency and if a majority of the electors voting on the measure vote to approve its imposition at a special election called for that purpose by the agency. The tax ordinance shall take effect at the close of the polls on the day of the election at which the proposition is adopted. The initial collection of the transactions and use tax shall take place in accordance with Section 26292.4.

26292.2. The ordinance shall state the tax rate and may state a term during which the tax will be imposed. The purposes for which the tax may be imposed are the general governmental purposes of the agency as set forth in Section 26291.7.

26292.3. (a) The county shall conduct an election called by the agency. The election shall be held within the incorporated and unincorporated areas of the county.

(b) The election shall be called and conducted in the same manner as provided by law for the conduct of elections by a county.

(c) The cost incurred by the county in conducting the election shall be reimbursed by the agency from proceeds of the transactions and use tax.

26292.4. (a) Any transactions and use tax ordinance adopted pursuant to this article shall become operative on the first day of the first calendar quarter commencing more than 120 days after adoption of the ordinance.

(b) Prior to the operative date of the ordinance, the agency shall contract with the State Board of Equalization to perform all functions incident to the administration and operation of the ordinance.

26292.5. The agency, subject to the approval of the voters, may impose a tax rate of one-half of 1 percent under this chapter and Part 1.6 (commencing with Section 7251) of Division 2 of the Revenue and Taxation Code. Neither this chapter nor the ordinance shall affect any tax otherwise authorized.

26292.6. The combined rate of tax imposed in San Joaquin County by any entity pursuant to Part 1.5 (commencing with Section 7200) or Part 1.6 (commencing with Section 7251) of Division 2 of the Revenue and Taxation Code, this chapter, and any other provision of law authorizing the imposition of local sales or transactions and use taxes shall not exceed 2.25 percent. Neither this chapter nor any ordinance or resolution approved pursuant to this chapter shall affect any tax otherwise authorized.

26292.7. (a) The agency, as part of the ballot proposition to approve the imposition of a retail transactions and use tax, may seek authorization to issue bonds payable from the proceeds of the tax and

establish the appropriation limit of the agency for purposes of Article XIII B of the California Constitution.

(b) The maximum bonded indebtedness which may be outstanding at any one time shall be an amount equal to the sum of the principal of, and interest on, the bonds, but not to exceed the estimated proceeds of the transactions and use tax for a period of not more than the number of years for which the transactions and use tax authorized by this article is to be imposed.

26292.8. (a) The bonds authorized by the voters concurrently with the approval of the retail transactions and use tax may be issued by the agency at any time, and from time to time, payable from the proceeds of the tax. The bonds shall be referred to as "limited tax bonds." The bonds may be secured by a pledge of revenues from the proceeds of the tax.

(b) The pledge of the transactions and use tax revenues for the limited tax bonds authorized under this article shall have priority over the use of any of the revenues for other purposes except to the extent that the priority is expressly restricted in the resolution authorizing the issuance of the bonds.

(c) The proceeds of the bonds may be used for the following purposes:

(1) To finance the activities set forth in paragraphs (2), (3), (5), and (8) of subdivision (a) of Section 26291.7.

(2) To pay the costs incurred for the issuance of the bonds.

(3) To fund a reserve fund for the bonds.

26292.9. The agency may provide for the bonds to bear a variable or fixed interest rate, for the manner and intervals in which the rate shall vary, and for the dates on which the interest shall be payable.

26293. Limited tax bonds shall be issued pursuant to a resolution adopted at any time, and from time to time, by vote of the board of directors of the agency.

26293.1. Any bonds issued pursuant to this article are a legal investment for all trust funds; for the funds of insurance companies, commerical savings banks, and trust companies; and for state school funds. Whenever any money or funds may, by any law now or hereafter enacted, be invested in bonds of cities, counties, school districts, or other districts within the state, those funds may be invested in the bonds issued pursuant to this article, and whenever bonds of cities, counties, school districts, or other districts within this state may, by any law now or hereafter enacted, be used as security for the performance of any act or the deposit of any public money, the bonds issued pursuant to this article may be so used. The provisions of this article are in addition to all other laws relating to legal investments and shall be controlling as the latest expression of the Legislature with respect thereto.

26293.2. Any action or proceeding wherein the validity of the adoption of the retail transactions and use tax ordinance provided for in this article or the issuance of any bonds thereunder or any of the proceedings in relation thereto is contested, questioned, or denied,

shall be commenced pursuant to Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure. Otherwise, the bonds and all proceedings in relation thereto, including the adoption and approval of the ordinance, shall be held to be valid and in every respect legal and incontestable.

26293.3. The agency has no power to impose any tax other than the transactions and use tax imposed upon approval of the voters in accordance with this chapter.

26293.4. If any provision of this chapter or the application thereof to any person or circumstance is held invalid, that invalidity shall not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

SEC. 2. Section 53721.5 is added to the Government Code, to read:

53721.5. A transactions and use tax imposed by an ordinance adopted pursuant to Chapter 13.6 (commencing with Section 26290) of Part 2 of Division 2 of Title 3 shall be deemed to be a general tax for the purposes of this article, unless the transactions and use tax ordinance, or an amendment thereto, either declares the tax to be a special tax or requires the proceeds of the tax to be placed in a fund other than the general fund of the San Joaquin County Regional Justice Facilities Financing Agency, or a similar fund, and irrevocably restricts the use of the proceeds to specific purposes of more limited scope and type than the general governmental purposes of the San Joaquin County Regional Justice Facilities Financing Agency set forth in Section 26291.7. The receipt or retention of the proceeds of the transactions and use tax, imposed by an ordinance adopted pursuant to Chapter 13.6 (commencing with Section 26290) of Part 2 of Division 2 of Title 3 by a bond trustee for bonds secured by the proceeds of the tax shall not cause a general tax to become a special tax.

SEC. 3. Section 7252.12 is added to the Revenue and Taxation Code, to read:

7252.12. "District," as used in this part, also means the San Joaquin County Regional Justice Facility Financing Agency, if authorized to impose transactions and use taxes pursuant to this part.

SEC. 4. No appropriation is made by this act pursuant to Section 6 of Article XIII B of the California Constitution because (1) this act is in accordance with the request of a local agency which desired legislative authority to carry out the program specified in this act, and (2) self-financing authority is provided to cover any costs that may be incurred in carrying on any program or performing any service required to be carried on or performed by this act.

## CHAPTER 1635

An act to amend Section 436.8 of the Health and Safety Code, and to add Section 14085.5 to the Welfare and Institutions Code, relating to health.

[Became law without Governor's signature. Filed with Secretary of State October 1, 1988.]

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

SECTION 1. Section 436.8 of the Health and Safety Code is amended to read:

436.8. A loan shall be eligible for insurance under this chapter if all of the following conditions are met:

(a) When the borrower is a nonprofit corporation, such loan shall be secured by a mortgage, first lien, trust indenture, or such other security agreement as the office may require subject only to such conditions, covenants and restrictions, easements, taxes, and assessments of record approved by the office. When the borrower is a political subdivision, such loan may be evidenced by a duly authorized bond issue. A loan to a local hospital district or county may meet the requirement of this subdivision by either method.

(b) The borrower obtains an American Land Title Association title insurance policy with the office designated as beneficiary, with liability equal to the amount of the loan insured under this chapter, and with such additional endorsements as the office may reasonably require.

(c) The proceeds of the loan shall be used exclusively for the construction, improvement, or expansion of the health facility, as approved by the office under Section 436.4. However, loans insured pursuant to this chapter may include loans to refinance another prior loan, whether or not state insured and without regard to the date of the prior loan, if the office determines that the prior loan would have been eligible for insurance under this chapter at the time it was made. The office may not insure a loan for a health facility which is not needed as determined by the state plan developed under the authorization of Section 436.4.

(d) The loan shall have a maturity date not exceeding 30 years from the date of the beginning of amortization of the loan, except as authorized by subdivision (e), or 75 percent of the office's estimate of the economic life of the health facility, whichever is the lesser.

(e) The loan shall contain complete amortization provisions requiring periodic payments by the borrower not in excess of its reasonable ability to pay as determined by the office. The office shall permit a reasonable period of time during which the first payment to amortization may be waived on agreement by the lender and borrower. The office may, however, waive the amortization requirements of this subdivision and of subdivision (g) of this section

when a term loan would be in the borrower's best interest.

(f) The loan shall bear interest on the amount of the principal obligation outstanding at any time at a rate, as negotiated by the borrower and lender, as the office finds necessary to meet the loan money market. As used in this chapter, "interest" does not include premium charges for insurance and service charges if any. Where a loan is evidenced by a bond issue of a political subdivision, the interest thereon may be at any rate which such bonds may legally bear.

(g) The loan shall provide for the application of the borrower's periodic payments to amortization of the principal of the loan.

(h) The loan shall contain such terms and provisions with respect to insurance, repairs, alterations, payment of taxes and assessments, foreclosure proceedings, anticipation of maturity, additional and secondary liens, and other matters as the office may in its discretion prescribe.

(i) The loan shall have a principal obligation not in excess of an amount equal to 90 percent of the total construction cost. Where the borrower is a political subdivision, the office may fully insure loans equal to the total construction cost.

(j) The borrower shall offer reasonable assurance that the services of the health facility will be made available to all persons residing or employed in the area served by the facility.

(k) A certificate of need or certificate of exemption has been issued for the project to be financed pursuant to Part 1.5 (commencing with Section 437) of this division, unless the project is not subject to such requirement.

(*l*) In the case of acquisitions, a project loan shall be guaranteed only for transactions not in excess of the fair market value of the acquisition.

Fair market value shall be determined, for purposes of this subdivision, pursuant to the following procedure, which shall be utilized during the state review of a loan guarantee application:

(1) Completion of a property appraisal by an appraisal firm qualified to make appraisals, as determined by the office, before closing a loan on the project.

(2) Evaluation of the appraisal in conjunction with the book value of the acquisition by the office. When acquisitions involve additional construction, the office shall evaluate the proposed construction to determine that the costs are reasonable for the type of construction proposed. In those cases where this procedure reveals that the cost of acquisition exceeds the current value of a facility, including improvements, then the acquisition cost shall be deemed in excess of fair market value.

In determining financial feasibility of projects of counties pursuant to this section, the office shall take into consideration any assistance for the project to be provided under Sections 14085.5 and 16715 of the Welfare and Institutions Code or from other sources. It is the intent of the Legislature that the office endeavor to assist counties in

whatever ways are possible to arrange loans which will meet the requirements for insurance prescribed by this section.

SEC. 2. Section 14085.5 is added to the Welfare and Institutions Code, to read:

14085.5. (a) Each disproportionate share hospital contracting to provide services under this article or contracting with a county organized health system, and which has or would have met the state criteria developed pursuant to the federal Medicaid requirements regarding disproportionate hospitals for the three most recent years, may, in addition to the rate of payment provided for in the contract entered into under this article, receive supplemental reimbursement to the extent provided for in this section.

(b) A hospital qualifying pursuant to subdivision (a) shall submit documentation regarding debt service on revenue bonds used for financing the construction, renovation, or replacement of hospital facilities, including buildings and fixed equipment. Qualified hospitals may submit debt service instruments to the department and to the commission regarding debt issued for new capital projects. Eligible projects shall include those new capital projects funded by new debt for which final plans have been submitted to the Office of the State Architect and the Office of Statewide Health Planning and Development after July 1, 1989, and prior to June 30, 1994. Capital projects receiving partial financing under this section shall finance the upgrading or construction of buildings and equipment to a level required by currently accepted medical practice standards, including projects designed to correct Joint Commission on Accreditation of Hospitals and Health Systems fire and life safety, seismic, or other related regulatory standards.

Projects may also expand service capacity as needed to maintain current or reasonably foreseeable necessary bed capacity to meet the needs of Medi-Cal beneficiaries after giving consideration to bed capacity needed for other patients, including unsponsored patients.

Debt service shall only be paid for projects, or for that portion of projects, that are available and accessible to patients treated under this article or by successor programs. Each project shall cost at least five million dollars ($5,000,000) or, if less than five million dollars ($5,000,000), the project shall be necessary for retention of federal and state licensing and certification and for meeting fire and life safety, seismic, or other related regulatory standards.

Supplemental reimbursement payments shall commence no later than 30 days after receipt of the certificate of occupancy by the hospital.

The state shall pledge to, and agree with, the holders of any revenue bonds issued to finance projects qualifying under this section that until debt service on the revenue bonds is fully paid or until the supplemental rate is no longer required as provided in this section, the state will not limit or alter the rights vested in the hospital to receive supplemental reimbursement pursuant to this section. The state shall pledge, and the hospital shall, as a condition

of encumbering supplemental reimbursement payments received pursuant to this section, pledge that supplemental reimbursement payments shall be used for the payment of debt service on the revenue bonds. The hospital shall include its pledge and the agreement with the state in any agreement with the holders of the revenue bonds.

(c) The hospital's supplemental reimbursement for a project qualifying pursuant to subdivisions (a) and (b) shall be calculated as follows:

(1) For any fiscal year for which the hospital is eligible to receive reimbursement, the hospital shall report to the department the amount of debt service on the revenue bonds issued to finance the project.

(2) The department shall use the Medicaid inpatient utilization rate as determined pursuant to Section 4112 of the Omnibus Budget Reconciliation Act of 1987 to determine the ratio of the hospitals total paid Medi-Cal patient days to total patient days.

(3) The supplemental Medi-Cal reimbursement to the hospital for each fiscal year shall equal the amount determined annually in paragraph (1) multiplied by the percentage figure determined in paragraph (2). In no instance shall the percentage figure determined pursuant to the ratio derived under paragraph (2) be decreased by more than 10 percent of the initial ratio determined pursuant to paragraph (2) prior to the retirement of the debt. In no instance shall the total amount of reimbursement received under this section combined with that received from all other sources dedicated exclusively to debt service exceed 100 percent of the debt service over the life of the loan. A hospital qualifying for and receiving supplemental Medi-Cal reimbursement shall continue to receive the reimbursement until the qualifying loan is paid off, or the hospital is terminated as a Medi-Cal selective contractor and the hospital does not contract with a county organized health system. It is the intent of the Legislature that the state and the qualifying hospital shall negotiate in good faith for rates sufficient to ensure continued hospital participation in the program and to ensure adequate access to services for Medi-Cal beneficiaries. The state shall not terminate a contract with a qualified provider for the purpose of terminating the capital supplement. If negotiations fail to permit continuation of a contract of a hospital qualifying for the supplemental Medi-Cal reimbursement, the supplemental Medi-Cal reimbursement shall cease as of the date of discontinuance of the selective provider contract.

(4) In order to ensure provision of qualified supplemental payments to disproportionate share hospitals contracting with county organized health systems, the department shall make the qualified supplemental payments directly to these hospitals.

(5) Funding for these supplemental payments shall be separately appropriated as a line item in the Budget Act for each fiscal year.

(6) The commission shall provide the Department of Finance, the

Legislative Analyst, and the Joint Legislative Budget Committee with its estimate of the budget year costs of the supplemental reimbursement program, on January 10 and May 15 of each year.

(d) All reimbursement received by a hospital pursuant to this section shall be placed in a special account, the funds in which shall be used exclusively for the payment of debt service on the revenue bonds issued to finance the project.

(e) If contracting under this section is superceded by other arrangements for payment of inpatient hospital services, the successor program shall include separate reimbursement, as determined pursuant to paragraph (3) of subdivision (c).

(f) For purposes of this section, "revenue bonds" are defined as that term is defined in subdivision (c) of Section 15459 of the Government Code.

(g) A hospital receiving supplemental reimbursement pursuant to this section shall be liable for any reduced federal financial participation resulting from the implementation of this section.

SEC. 3. It is the intent of the Legislature that funds be appropriated in the Budget Act for additional costs the California Medical Assistance Commission, the Office of Statewide Health Planning and Development, and the State Department of Health Services will incur for the administration of this act. So far as possible, these agencies shall implement this bill within existing administrative procedures.

SEC. 4. The Legislature finds and declares that all supplemental reimbursements made pursuant to this act are subventions to local governmental entities and are not appropriation subject to limitation of the state under the provisions of Article XIII B of the State Constitution.

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## CHAPTER 1636

An act to add Article 1.5 (commencing with Section 33320) to Chapter 3 of Part 20 of the Education Code, relating to education.

[Became law without Governor's signature. Filed with Secretary of State October 1, 1988.]

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

SECTION 1. (a) The Legislature finds that the development and school-level adoption of programs and practices that have been systematically evaluated and that meet critical education needs will provide long-term benefits to the pupils of this state. This finding is based on the following:

(1) The study entitled "The Recommendations to the California Business Roundtable for Restructuring California Education" recommends that staff development be redirected to advance

implementation of effective practices. The study further recommends long-term research for the development and demonstration of computer-based curricula.

(2) A study commissioned by the Governor and the Legislature has concluded that the current array of staff development programs has grown by accretion, without a clear vision, remains largely unevaluated, and is unlikely to yield substantial improvement. This study also found that selected staff development activities, which have been validated previously, have sound prospects for improving pupil performance and the quality of school programs.

(3) A significant number of educational programs, pilot projects, and practices have been funded for extended periods of time without evaluation of the impact on pupil performance and program quality.

(4) Teachers and administrators do not have ready access to the information and staff development on effective programs needed to adopt or adapt effective programs.

(5) There is a lack of programs and practices that have documented effectiveness and are designed to meet the current and emerging educational needs of California's rapidly changing pupil population.

(6) It is documented that schools in California have expended over 300 million dollars ($300,000,000) in one year to develop practices and programs that have already been developed, and in many cases validated, in other locations.

(7) The current structure makes it necessary for the State Department of Education to duplicate, among departmental offices and units, procedures and strategies for the development, dissemination, and evaluation of state-recommended programs and practices.

(8) A process and an incentive are needed for educators to identify, package, and disseminate effective practices initiated by existing programs, to include, but not be limited to, mentor teacher projects and education technology local assistance grants.

(b) The Legislature intends to foster, by this act, a coordinated cost-effective process that can redirect existing funds to facilitate the development, evaluation, and adoption of programs and practices that meet the current educational needs of elementary and secondary school pupils. This act provides the necessary provisions for the State Department of Education, in contact with school districts, institutions of higher education, and nonprofit public educational agencies, to do the following:

(1) Develop, evaluate, disseminate, and encourage the local adoption of, effective programs and practices with flexibility to meet the diversity of pupil needs, learning styles, talents, levels of development, and cultural backgrounds.

(2) Implement a coordinated and uniform process for program development, evaluation, and dissemination.

(3) Ensure that all schools have equal and ready access to information and assistance to adopt or adapt needed programs and

practices.

(4) Establish a process for careful evaluation and pilot testing of programs before school districts are advised to adopt them.

(5) Provide a vehicle for applied research and development needed to make important educational policy decisions.

SEC. 1.5. Article 1.5 (commencing with Section 33320) is added to Chapter 3 of Part 20 of the Education Code, to read:

Article 1.5. Effective Educational Programs and Practices

33320. (a) The purpose of this article is to identify, develop, validate, and disseminate effective educational programs and practices operated by state and local educational entities, in order to improve the educational services provided through public elementary and secondary schools to persons between 3 and 21 years of age.

(b) It is the intent of the Legislature that any state funding under this article not supplant any educational program funding that would otherwise be allocated to any school district, county office of education, or public postsecondary education institution.

33321. The Superintendent of Public Instruction shall establish procedures within the State Department of Education to accomplish all of the following:

(a) Annually identify the critical needs for which effective educational programs and practices are to be identified, developed, and disseminated to public schools.

(b) Coordinate the identification and development of effective programs and practices with appropriate offices in the State Department of Education, schools, school districts, county offices of education, institutions of higher education, the Legislature, business and industry, and the community.

(c) Ensure that all programs developed under this article are objectively evaluated for impact on pupil learning, cost effectiveness, and the overall instructional program.

(d) Develop and implement procedures to ensure that educators throughout the state are made aware of the effective programs and practices identified under this article.

(e) Periodically prepare and report information about project results to the Legislative Analyst.

(f) Identify and coordinate appropriate federal and private funding to support the development and dissemination of projects and programs identified under this article.

(g) Establish, where appropriate, project partnerships with other public and private agencies, including business and industry, for the purposes of this article.

33321.5. In performing the responsibilities set forth in Section 33321, the Superintendent of Public Instruction shall consult with high school and elementary school teachers, high school and junior high school principals, school district administrators, members of

school district governing boards, county superintendents of schools and other county office of education administrators, and representatives of public postsecondary educational institutions, the California State Facilitator Project of the National Diffusion Network, and business and industry.

33322. The State Board of Education may authorize the funding of any proposal of a school district, county office of education, public postsecondary educational institution, or other public educational agency for the development of an educational program, where the board determines that the proposal does all of the following:

(a) Provides an effective, cost-effective solution to a current or anticipated statewide educational need in public elementary or secondary schools.

(b) Demonstrates that teachers, and experts in the subject matter of the proposal, collaborated in the development of the proposal.

(c) Contains a professional development component that maximizes teacher commitment and integration of the program into the existing instructional program.

(d) Contains a method of evaluating resulting changes in teaching, pupil performance, and the instructional program, as appropriate.

(e) Provides for development and evaluation of the proposal in collaboration with postsecondary educational institutions and other educational agency resources.

33323. The State Board of Education, upon review of the recommendation of the Superintendent of Public Instruction, shall validate, as an exemplary educational project, each project developed by the State Department of Education, a school district, county office of education, or public postsecondary educational institution that it determines to meet the following criteria, whether or not the project was developed pursuant to state funding provided under Section 33322:

(a) The project accomplishes the objectives set forth in Section 33322.

(b) The project contains a plan for the statewide dissemination of the program, to be coordinated with state, regional, and school district staff and program service providers, including, but not limited to, postsecondary educational institutions.

(c) Without any increase in state costs, the project may be adopted by other school districts or county offices of education, as appropriate, with a reasonable probability of accomplishing the objectives realized in the original educational setting.

33324. (a) The State Department of Education shall annually disseminate to each school district, county office of education, resource agency or consortium as described in Article 2 (commencing with Section 44680) of Chapter 3.1 of Part 25, and other public educational entity, as appropriate, information regarding effective educational projects and programs developed and validated pursuant to this article, in addition to projects included

in the National Diffusion Network.

(b) The California State Facilitator Project, county offices of education, and other regional educational agencies are encouraged to assist in the dissemination of information regarding effective educational programs.

(c) The State Board of Education, upon review of the recommendation of the Superintendent of Public Instruction, may authorize fund for any proposal of a school district or county office of education for the adoption of an effective educational project, in an amount not exceeding the initial startup costs of the project, where the board determines that the proposal does all of the following:

(1) Establishes a local need for the adoption or adaptation of the project.

(2) Contains a plan that evidences the commitment of resources necessary to implement the adoption of the project and that coordinates the project with existing educational programs. In the case of a school, that plan should be articulated with the school district plan.

(3) Contains a method of evaluating resulting changes in teaching, pupil performance, and the instructional program.

(4) Has been validated pursuant to Section 33323.

(d) The Superintendent of Public Instruction may assist in the implementation of projects adopted pursuant to subdivision (b), either by the department or pursuant to Section 33326.

33325. All proposals submitted to the State Board of Education for funding pursuant to Section 33322 or 33324, or for validation pursuant to Section 33323, shall be evaluated by the State Department of Education, in consultation with school districts, county offices of education, and other appropriate public and private nonprofit educational agencies. Based on those evaluations, the department shall submit its recommendations to the board concerning the funding or, as appropriate, the validation of each proposal.

33326. The State Board of Education, upon review of the recommendation of the Superintendent of Public Instruction, may authorize funding for any proposal of a county office of education, postsecondary educational institution, consortium of local educational agencies, the National Diffusion Network State Facilitator, the State Department of Education, or other appropriate educational entity to provide assistance, pursuant to this article, in the development, implementation, evaluation, dissemination, or adoption of an exemplary educational project. This assistance may include, but is not limited to, the implementation of professional development activities and the coordination of services with other educational agencies, programs, resources, and professional development providers.

33327. (a) The State Department of Education, in performing the identification, development, evaluation, dissemination, or

adoption of projects and practices under any state or federal categorical education program, shall perform those functions in accordance with the procedure set forth in this article, as feasible and to the extent authorized by law.

(b) To the extent authorized by law, the department shall apply the funding made available under each of those categorical education programs for the functions described in subdivision (a) to the costs of performing those functions in the manner directed by that subdivision.

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## CHAPTER 1637

An act to add Section 11462.61 to the Welfare and Institutions Code, relating to public assistance.

[Became law without Governor's signature. Filed with Secretary of State October 1, 1988.]

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

SECTION 1. Section 11462.61 is added to the Welfare and Institutions Code, to read:

11462.61. (a) For audits performed prior to June 30, 1988, on group homes which received funds on behalf of children receiving assistance under the AFDC-FC program, the department shall not offset or adjust current payments made pursuant to Section 11462 unless the department determines both the following facts exist:

(1) The proposed adjusted allowable costs, as defined in paragraph (1) of subdivision (b) of Section 11462, per child per month, for the current year are less than the current paid rate.

(2) The same facts or conditions exist in the current year which resulted in the audit adjustment, for each of the audit adjustments, during the year which was the subject of the prior audit.

(b) The department is not required to perform a field audit to make the determination specified in paragraphs (1) and (2) of subdivision (a).

(c) Nothing in this section restricts or limits the department's authority to recover a final audit overpayment for any year which was the subject of an audit.

## CHAPTER 1638

An act to add and repeal Section 31751.5 of the Government Code, relating to the County Employees' Retirement Law of 1937.

[Became law without Governor's signature. Filed with Secretary of State October 1, 1988.]

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

SECTION 1. Section 31751.5 is added to the Government Code, to read:

31751.5. Notwithstanding Sections 31562 and 31751, an elective officer of a county which has adopted Section 31751 who was an elective officer of the county on the date on which Section 31751 became operative in the county but has not declared his or her intention to become a member of the retirement association may declare his or her intention in writing to become covered under Tier One or Tier Two and thereby become a member of the retirement association pursuant to Section 31553. The elective officer shall exercise his or her election on or before December 31, 1989. Any elective officer who exercises his or her election shall have the same rights as any other member to purchase prior public service credit.

This section shall not become operative in any county unless and until such time as the board of supervisors shall, by resolution adopted by a majority vote, make this section applicable in the county.

This section shall remain operative only until June 1, 1990, and as of January 1, 1991, is repealed unless a later enacted statute which is chaptered before January 1, 1991, deletes or extends that date.

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## CHAPTER 1639

An act to add and repeal Article 10 (commencing with Section 1861) to Chapter 9 of Part 2 of Division 1 of the Insurance Code, relating to insurance.

[Became law without Governor's signature Filed with Secretary of State October 1, 1988 ]

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

SECTION 1. Article 10 (commencing with Section 1861) is added to Chapter 9 of Part 2 of Division 1 of the Insurance Code, to read:

## Article 10. California Private Passenger Automobile Insurance Refund of Excess Profits

1861. Each insurer licensed to write automobile insurance in the State of California shall file its profitability data with the department prior to July 1 of each year. Profitability data shall consist of information identical to that included in the National Association of Insurance Commissioners Report on Profitability by Line and by State for the line of business designated as "private passenger total" for the State of California, which is the sum of the lines of business designated as private passenger auto liability and private passenger auto physical damage. Within 180 days of the effective date of this article, each insurer shall file profitability data separately for four preceding calendar years.

1861.02. Given the economic conditions prevalent in 1988, the Legislature has determined that the prima facie reasonable rate of return for underwriting of private passenger automobile insurance is an after-tax profit of 5 percent of earned premium as calculated using methodology identical to that used in the National Association of Insurance Commissioners Report on Profitability by Line by State.

1861.04. Commencing after the July 1, 1991, filing of profitability data, the commissioner shall annually determine the average after-tax underwriting profit of each insurer pursuant to the profitability data filed under Section 1861 for the preceding six calendar years. If the average after-tax underwriting profit so determined for the six-year period exceeds by more than 5 percent of the earned premium as a calculated using methodology identical to that used in the National Association of Insurance Commissioners Report on Profitability by Line by State, the commissioner shall issue an order requiring the insurer to show cause why excess profits should not be returned to California policyholders.

In the case of an insurer that is affiliated with another insurer pursuant to the definition contained in Section 1215, all calculations pursuant to this article shall be made on the basis of combined data from all affiliated insurers.

1861.06. Upon request of any insurer receiving a show cause order pursuant to Section 1861.04 the commissioner shall hold a hearing pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, applicable to contested cases, to allow the insurer an opportunity to establish that excess profits have not been earned. In determining whether an excess profit has been earned, the commissioner shall give due consideration to competitive conditions in the private passenger automobile insurance market, the rate of inflation, effects of the residual market, the amount of California private passenger automobile business written by the insurer, the marketshare of the insurer group and its rate of growth, leverage and capitalization, the insurer's exposure to risk and investment policy, and the insurer's actual expenses as well as all other relevant factors. Pursuant to the

evidence introduced at the hearing, the commissioner shall issue an order including specific findings as to the amount of excess profits earned, if any, but in no event shall the commissioner order the return of excess profits in an amount that would reduce the insurer's earnings below prima facie reasonable rate of return.

1861.08. Any excess profits that an insurer is ordered to return by the commissioner shall be allocated among its current California private passenger automobile insurance policyholders in proportion to the number of cars specifically designated as insured under policies as of the date of the order to return excess profits becomes final and not subject to further judicial review, or if that information is not readily determinable from the usual business records of the insurer as of that date, then as of the most recent previous date for which that information is readily determinable from those records. The amount allocated to each policyholder shall be returned to the policyholder by one of the following methods:

(a) By means of a credit applicable against premiums for any renewal extension or continuation of the policy or portions thereof.

(b) By means of a direct refund within 90 days after the order becomes final.

(c) By means of applying a credit against unpaid premiums with respect to policies previously issued to that policyholder within 90 days after the order becomes final.

The commissioner shall elect the manner in which the amount allocated to any policyholder shall be returned to that policyholder. The commissioner shall prescribe a procedure for any insurer group ordered to return excess profits to report on the implementation of the return.

Any refund or credit made pursuant to this section shall be treated as a policyholder dividend, applicable to the year in which it is incurred, for the purposes of reporting under this section for subsequent years.

SEC. 2. Article 10 (commencing with Section 1861) of Chapter 9 of Part 2 of Division 1 of the Insurance Code shall remain in effect only until July 1, 1996, and as of that date is repealed, unless a later enacted statute, which is enacted before July 1, 1996, deletes or extends that date.

# CHAPTER 1640

An act to amend Sections 13897, 13897.1, and 13897.2 of the Penal Code, relating to victims of crime.

[Became law without Governor's signature. Filed with Secretary of State October 1, 1988.]

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

SECTION 1. Section 13897 of the Penal Code is amended to read:

13897. The Legislature finds and declares each of the following:

(a) The citizens of California have expressed great concern for the plight of crime victims.

(b) It is in the best interest, not only of the victims and their families, but also of all the citizens of California to ensure that crime victims receive comprehensive assistance in overcoming the effects of victimization.

(c) While many options and rights exist for the crime victim, including providing financial assistance pursuant to Chapter 5 (commencing with Section 13959) of Part 4 of Division 3 of Title 2 of the Government Code, participation in sentencing and parole eligibility hearings of criminal perpetrators, civil litigation against the perpetrator and third parties, assistance from victim-witness programs, and private support and counseling services, research indicates that many crime victims suffer needlessly because they are not aware of these options and rights, or are apprehensive or uncertain about where to go for assistance or how to exercise their rights.

(d) It is thus necessary to provide a resource center, statewide in scope, where victims of crime, their families, and providers of services to victims of crime can receive referral information, assistance, and legal guidance in order to deal effectively with the needs of victims of crime and minimize the continuing victimization process, which often results from a complex justice system. This resource center shall be independent, offer victims assistance in understanding and effectively exercising their legal rights, provide information about their rights and the workings of the criminal justice system, and direct them to appropriate local resources and agencies which can offer further assistance. The resource center shall provide, on a statewide basis, information assistance for all crime victims without charge and shall complement the efforts of various local programs, including victim-witness programs, rape crisis units, domestic violence projects, and child abuse centers.

SEC. 2. Section 13897.1 of the Penal Code is amended to read:

13897.1. There shall be established a resource center which shall operate a statewide, toll-free information service, consisting of legal and other information, for crime victims and providers of services to crime victims. The center shall provide information and educational

materials discussing victims' legal rights. The center shall distribute these materials to administrative agencies, law enforcement agencies, victim-service programs, local, regional, and statewide education systems, appropriate human service agencies, and political, social, civic, and religious leaders and organizations.

As used in this chapter, "provider of services to crime victims" means any hospital, doctor, attorney, local or statewide rape crisis center, domestic violence center, child abuse counseling center, or victims' witness center that seeks to assist crime victims in understanding and exercising their legal rights, including those under Chapter 5 (commencing with Section 13959) of Part 4 of Division 3 of Title 2 of the Government Code.

SEC. 3. Section 13897.2 of the Penal Code is amended to read:

13897.2. (a) The Office of Criminal Justice Planning shall grant an award to an appropriate private, nonprofit organization, to provide a statewide resource center, as described in Section 13897.1.

(b) The center shall:

(1) Provide callers with information about victims' legal rights to compensation pursuant to Chapter 5 (commencing with Section 13959) of Part 4 of Division 3 of Title 2 of the Government Code and, where appropriate, provide victims with guidance in exercising these rights.

(2) Provide callers who provide services to victims of crime with legal information regarding the legal rights of victims of crime.

(3) Advise callers about any potential civil causes of action, and where appropriate, provide callers with references to local legal aid and lawyer referral services.

(4) Advise and assist callers in understanding and implementing their rights to participate in sentencing and parole eligibility hearings as provided by statute.

(5) Advise callers about victims' rights in the criminal justice system, assist them in overcoming problems, including the return of property, and inform them of any procedures protecting witnesses.

(6) Refer callers, as appropriate, to local programs, which include victim-witness programs, rape crisis units, domestic violence projects, and child sexual abuse centers.

(7) Refer callers to local resources for information about appropriate public and private benefits and the means of obtaining aid.

(8) Publicize the existence of the toll-free service through the print and electronic media, including public service announcements, brochures, press announcements, various other educational materials, and agreements for the provision of publicity, by private entities.

(9) Compile comprehensive referral lists of local resources that include the following: victims' assistance resources, including legal and medical services, financial assistance, personal counseling and support services, and victims' support groups.

(10) Produce promotional materials for distribution to law

enforcement agencies, state and local agencies, print, radio, and television media outlets, and the general public. These materials shall include placards, video and audio training materials, written handbooks, and brochures for public distribution. Distribution of these materials shall be coordinated with the local victims' service programs.

(11) Research, compile, and maintain a library of legal information concerning crime victims and their rights.

(12) Provide a 20-percent minimum cash match for all funds appropriated pursuant to this chapter which match may include federal and private funds in order to supplement any funds appropriated by the Legislature.

(c) The resource center shall be located so as to assure convenient and regular access between the center and those state agencies most concerned with crime victims. The entity receiving the grant shall be a private, nonprofit organization, independent of law enforcement agencies, and have qualified staff knowledgeable in the legal rights of crime victims and the programs and services available to victims throughout the state. The subgrantee shall have an existing statewide, toll-free information service and have demonstrated substantial capacity and experience serving crime victims in areas required by this act.

(d) The services of the resource center shall not duplicate the victim service activities of the Office of Criminal Justice Planning or those activities of local victim programs funded through the office.

(e) The subgrantee shall be compensated at its federally approved indirect cost rate, if any. For the purposes of this section, "federally approved indirect cost rate" means that rate established by the federal Department of Health and Human Services or other federal agency for the subgrantee. Nothing in this section shall be construed as requiring the Office of Criminal Justice Planning to permit the use of federally approved indirect cost rates for other subgrantees of other grants administered by the office.

(f) All information and records retained by the center in the course of providing services under this chapter shall be confidential and privileged pursuant to Article 3 (commencing with Section 950) of Chapter 4 of Division 8 of the Evidence Code and Article 4 (commencing with Section 6068) of Chapter 4 of Division 3 of the Business and Professions Code. Nothing in this subdivision shall prohibit compilation and distribution of statistical data by the center.

## CHAPTER 1641

An act to amend Sections 14021 and 14022 of, and to add Section 14022.1 to, the Corporations Code, relating to the Small Business Development Board, and declaring the urgency thereof, to take effect immediately.

[Became law without Governor's signature. Filed with Secretary of State October 1, 1988 ]

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

SECTION 1. Section 14021 of the Corporations Code is amended to read:

14021. The board consists of the following membership:

(a) Superintendent of Banks or his or her designee.

(b) Director of Commerce or his or her designee.

(c) Director of the Department of Food and Agriculture or his or her designee.

(d) Director of Employment Development Department or his or her designee.

(e) The President of the State Assistance Fund for Energy, California Business and Industrial Development Corporation (SAFE BIDCO) shall serve as an ex officio nonvoting member.

(f) The Director of the California Export Finance Office, California State World Trade Commission shall serve as an ex officio nonvoting member.

(g) The Chief of the Office of Small and Minority Business, Department of General Services shall serve as an ex officio nonvoting member.

(h) The California Small Business Advocate shall serve as an ex officio nonvoting member.

(i) The Chairperson of the Coalition of California Small Business Development Centers shall serve as an ex officio nonvoting member.

(j) Thirteen members appointed by the Governor, including:

(1) Two persons residing in economically disadvantaged areas who are actively engaged in providing leadership and assistance for persons residing in these areas; one each from an urban and rural area.

(2) Two persons to be recommended by the financial institutions participating in the program as of January 1 of each year.

(3) Two persons actively engaged in a commercial, agricultural, or industrial business and who are members of a small, agricultural, minority or women's business association.

(4) One person who is an officer of an urban labor organization.

(5) One person experienced in financial matters or actively engaged in the banking, savings and loan or insurance business.

(k) Two Members of the Legislature or their designees, one of whom shall be appointed by the Speaker of the Assembly, and one

by the Senate Rules Committee, shall advise with the board insofar as it does not conflict with the duties of the legislators. For purposes of this part, such two Members of the Legislature shall constitute a joint interim legislative committee on the subject of this part and shall have all the powers and duties imposed upon such committees by the Joint Rules of the Senate and Assembly.

(*l*) Four persons actively involved in the business or agricultural community, two of whom shall be appointed by the Speaker of the Assembly, and two by the Senate Rules Committee, each of whom shall serve for a term of one year, subject to removal at the pleasure of the appointing authority.

(m) One person from each small business development corporation, who shall be selected by the board of directors or members of each corporation in accordance with its bylaws, each of whom shall serve as nonvoting members of the board.

(n) The Chairperson of the Development Board shall be designated by the Governor from the members he or she appoints.

SEC. 2. Section 14022 of the Corporations Code is amended to read:

14022. The board shall:

(a) Advise the executive director on matters regarding this part.

(b) Adopt regulations for the purposes of this part as proposed by the executive director, including regulations for the supervision and suspension of the corporations created herein.

(c) Select a vice chairman of the board from among the members and adopt subsequent bylaws as are required to govern the conduct and operation of the board.

(d) Review the articles of incorporation and any subsequent amendments to the articles of incorporation of all corporations formed under this chapter in the following manner:

(1) Examine the articles to determine whether they contain the provisions required by this chapter and conform with the regulations adopted pursuant to this part.

(2) Determine whether the legislative intent expressed in Section 14002 shall be served by the proposed corporation.

(3) Determine if the economically disadvantaged area or areas the incorporators propose to serve meets the requirements of subdivision (c) of Section 14010.

(4) Determine if the region is sufficient and complete and meets the population requirements of subdivision (e) of Section 14010.

(5) Determine whether the responsibility, character, and general fitness of the incorporators and directors named in the articles are such as to command the confidence of the region and to warrant the belief that the business of the proposed corporation will be honestly and efficiently conducted in accordance with the intent and purpose of this chapter and that they include representatives of the financial and business community, as well as local government and the economically disadvantaged.

(6) Recommend to the executive director the approval or

disapproval of the articles and any subsequent amendments to the articles expeditiously, including changes in articles of incorporation or directors.

(e) Review each urban and rural development corporation's four-year written plan of operation, to insure that all areas of responsibilities as required herein are duly addressed and recommend to the executive director acceptance of such.

(f) Recommend to the executive director the appointment of such advisory groups as may be necessary to carry out the powers and duties of the department.

(g) Hold public hearings in order to carry out the objectives of the department in regards to its responsibilities as legislative advocate and ombudsman for the state's small business community.

(h) Solicit nominees and recommend to the Governor candidates for the position of executive director.

(i) Issue an annual report critiquing the program, its needs and recommended changes.

(j) Advise the Governor, the executive director, and the Small Business Advocate, regarding issues and programs affecting California's small business community, including, but not limited to, business innovation and expansion, export financing, state procurement, management and technical assistance, venture capital, and financial assistance.

SEC. 3. Section 14022.1 is added to the Corporations Code, to read:

14022.1. The public members of the board may, at the discretion of the department, be reimbursed per diem and travel expenses pursuant to state law.

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 for the Small Business Development Board to promptly proceed with its responsibility to promote the economic development of small businesses for the purpose of retaining jobs, creating new job opportunities, and stimulating entrepreneurship in California, it is necessary that this act take effect immediately.

# CHAPTER 1642

An act to amend Sections 14005, 14010, 14022, 14023, 14023.5, 14025, 14029.1, 14029.2, 14029.3, 14029.7, 14029.8, 14029.9, 14029.91, 14029.95, 14029.96, 14030, 14032, 14035, 14035.5, 14040, 14041, 14043, 14044, 14044.1, 14045, 14048, 14049, 14060, 14062, 14066, 14081, 14081.2, 14082, 14083, 14083.5, 14083.6, 14084, 14085, 14090, 14100, 14110, 14111, 14115, 14125, 14127, 14129, 14130, and 14131 of, to amend the heading of Article 14 (commencing with Section 14125) of, to amend and repeal Section 14046 of, to repeal and add Section 14126 to, and to repeal Sections 14024, 14025.2, 14028.4, 14036, 14044.5, 14047, 14061, 14081.1, 14120, and 14128 of, the Corporations Code, relating to business development.

[Became law without Governor's signature. Filed with Secretary of State October 1, 1988.]

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

SECTION 1. Section 14005 of the Corporations Code is amended to read:

14005. The department shall enter into an agreement with the California Energy Extension service of the Office of Planning and Research to assist small business owners in reducing their energy costs through low interest loans and by providing assistance and information through small business development corporations.

SEC. 2. Section 14010 of the Corporations Code, as amended by Section 1 of Chapter 750 of the Statutes of 1987, is amended to read:

14010. Unless the context otherwise requires, the definitions in this section govern the construction of this part.

(a) "Corporation" or "the corporation" means any nonprofit California small business development corporation created pursuant to this part.

(b) "Financial institution" means banking organizations including national banking associations and state-chartered commercial banks and trust companies, and savings and loan associations.

(c) "Financial company" means banking organizations including national banks and trust companies, savings and loan associations, state insurance companies, mutual insurance companies, and other banking, lending, retirement, and insurance organizations.

(d) "Expansion Fund" means the Small Business Expansion Fund.

(e) "Corporate Fund" means the Small Business Development Corporation Loan Guarantee Fund.

(f) "Loan Account" means the Small Business Development Loan Guarantee Account.

(g) (1) Unless otherwise defined by the board by regulation, "small business loan" means a loan to a business defined as an eligible small business as set forth in Section 121.3-10 of Part 121, Chapter 1,

Title 13 of the Code of Federal Regulations and amendments, including those businesses organized for agricultural purposes that create or retain employment as a result of the loan.

(2) From time to time, the executive director, in consultation with the board shall provide guidelines as to the preferred ratio of jobs created or retained to total funds borrowed for guidance to the corporations.

(h) "Employment incentive loan" means a loan to a qualified business, as defined in subdivision (h) of Section 7082 of the Government Code, or to a business located within an enterprise zone, as defined in subdivision (b) of Section 7072 of the Government Code.

(i) "Loan committee" means a committee appointed by the board of directors of a corporation to determine the course of action on every loan application pursuant to Article 7.5 (commencing with Section 14066).

(j) "Board of directors" means the board of directors of the corporation.

(k) "OSB" and "office" mean the Office of Small Business.

(*l*) "Board" means the Small Business Development Board.

(m) "Department" means the Department of Commerce.

(n) "Executive director" means the Executive Director of the Office of Small Business.

(o) "Director" means the Director of Commerce.

(p) "Financial aid" means the infusion of risk capital to small businesses for use in the development and exploitation of specific inventions and products.

(q) "Invention" means any new process or new technique without regard to whether a patent has or could be granted.

(r) "Product" means any product, device, technique, or process which is or may be exploitable commercially. That term shall not refer to pure research but shall be construed to apply to the products, devices, techniques, or processes which have advanced beyond the theoretic stage and are readily capable of being, or have been, reduced to practice.

(s) "Venture" means, without limitation, any contractual arrangement with any person whereby the corporation obtains rights from or in an invention or product or proceeds therefrom in exchange for granting of financial aid to that person.

This section shall become inoperative on July 1, 1991, and, as of January 1, 1992, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 1992, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 3. Section 14010 of the Corporations Code, as added by Section 2 of Chapter 750 of the Statutes of 1987, is amended to read:

14010. Unless the context otherwise requires, the definitions in this section govern the construction of this part.

(a) "Corporation" or "the corporation" means any nonprofit California small business development corporation created pursuant

to this part.

(b) "Financial institution" means banking organizations including national banking associations and state-chartered commercial banks and trust companies, and savings and loan associations.

(c) "Financial company" means banking organizations including national banks and trust companies, savings and loan associations, state insurance companies, mutual insurance companies, and other banking, lending, retirement, and insurance organizations.

(d) "Expansion Fund" means the Small Business Expansion Fund.

(e) "Corporate Fund" means the Small Business Development Corporation Loan Guarantee Fund.

(f) "Loan Account" means the Small Business Development Loan Guarantee Account.

(g) (1) Unless otherwise defined by the board by regulation, "small business loan" means a loan to a business defined as an eligible small business as set forth in Section 121.3-10 of Part 121 of Chapter 1 of Title 13 of the Code of Federal Regulations and amendments, including those businesses organized for agricultural purposes that create or retain employment as a result of the loan.

(2) From time to time, the executive director, in consultation with the board shall provide guidelines as to the preferred ratio of jobs created or retained to total funds borrowed for guidance to the corporations.

(h) "Employment incentive loan" means a loan to a qualified business, as defined in subdivision (h) of Section 7082 of the Government Code, or to a business located within an enterprise zone, as defined in subdivision (b) of Section 7072 of the Government Code.

(i) "Loan committee" means a committee appointed by the board of directors of a corporation to determine the course of action on every loan application pursuant to Article 7.5 (commencing with Section 14066).

(j) "Board of directors" means the board of directors of the corporation.

(k) "OSB" and "office" mean the Office of Small Business.

(*l*) "Board" means the Small Business Development Board.

(m) "Department" means the Department of Commerce.

(n) "Executive director" means the Executive Director of the Office of Small Business.

(o) "Director" means the Director of Commerce.

This section shall become operative on July 1, 1991.

SEC. 4. Section 14022 of the Corporations Code is amended to read:

14022. The board shall:

(a) Advise the executive director on matters regarding this part.

(b) Adopt regulations for the purposes of this part, as proposed by the executive director, including regulations for the supervision and suspension of the corporations created herein.

(c) Select a vice chairman of the board and adopt subsequent bylaws as are required to govern the conduct and operation of the board.

(d) Review the articles of incorporation and any subsequent amendments to the articles of incorporation of all corporations formed under this chapter in the following manner:

(1) Examine the articles to determine whether they contain the provisions required by this chapter and conform with the regulations adopted pursuant to this part.

(2) Determine whether the legislative intent expressed in Section 14002 shall be served by the proposed corporation.

(3) Determine whether the responsibility, character, and general fitness of the incorporators and directors named in the articles are such as to command the confidence of this state and to warrant the belief that the business of the proposed corporation will be honestly and efficiently conducted in accordance with the intent and purpose of this chapter and that they include representatives of the financial and business community, as well as the economically disadvantaged.

(4) Recommend to the executive director the approval or disapproval of the articles and any subsequent amendments to the articles expeditiously, including changes in articles of incorporation or directors.

(e) Review each corporation's four-year written plan of operation, to ensure that all areas of responsibilities as required herein are duly addressed and recommend to the executive director acceptance of such.

(f) Recommend to the executive director the appointment of advisory groups as are necessary to carry out the powers and duties of the office.

(g) Hold public hearings in order to carry out the objectives of the department in regards to its responsibilities as legislative advocate and ombudsman for the state's small business community.

(h) Solicit nominees and recommend to the Governor candidates for the position of executive director.

(i) Advise the Governor, the executive director, and the Small Business Advocate, regarding issues and programs affecting California's small business community, including, but not limited to, business innovation and expansion, export financing, state procurement, management and technical assistance, venture capital, and financial assistance.

SEC. 5. Section 14023 of the Corporations Code is amended to read:

14023. The executive director, as provided for in Section 15335.07 of the Government Code, shall do all of the following:

(a) Administer this part.

(b) In accordance with program resources, stimulate the formation of corporations and the use of branch offices for the purpose of making this program accessible to all areas of the state.

(c) After consideration by the board, expeditiously approve or

disapprove the articles of incorporation and any subsequent amendments to the articles of incorporation.

(d) Require each corporation to submit a written plan of operation in the form and containing the information as the board may require by regulation or otherwise.

(e) Review reports from the State Banking Department and inform regional corporations as to what corrective action is required.

(f) Examine, or cause to be examined, at any reasonable time all books, records, and documents of every kind, and the physical properties of a corporation. The inspection shall include the right to make copies, extracts, and search records.

SEC. 6. Section 14023.5 of the Corporations Code is amended to read:

14023.5. The executive director, following notification to the director, may do all of the following:

(a) Upon approval by the board, contract for services entered into pursuant to this chapter.

(b) Hold public hearings.

(c) Act as liaison between corporations formed under this part, other state and federal agencies, lenders, and the Legislature.

(d) Process and tabulate on a monthly basis all corporate reports.

(e) Attend monthly board meetings.

(f) Attend and participate at corporation meetings. The executive director, or his or her designee, shall be an ex officio, nonvoting representative on the board of directors and loan committees of each corporation.

(g) Assist corporations in applying for federal grant applications, and in obtaining program support from the business community.

SEC. 7. Section 14024 of the Corporations Code is repealed.

SEC. 8. Section 14025 of the Corporations Code is amended to read:

14025. If the executive director determines that the corporation is not meeting the criteria, rules, and regulations adopted pursuant to this part, its written proposed plan of operation submitted under subdivision (d) of Section 14023, or the purposes expressed in Section 14002, the executive director may take action to suspend the corporate powers. With the approval of the board, the executive director may withdraw state funds allocated to a corporate fund which are not encumbered or obligated by outstanding guarantees, and the state funds may be allocated to other corporate funds.

If the executive director gives notice of the withdrawal of state funds, and the corporation does not return these funds within 15 days after the notice, the corporate powers, rights, and privileges of the corporation shall be suspended. The suspension shall in no way impair the effectiveness of any outstanding loan or guarantee.

State funds shall include those funds allocated to a corporate fund and the return from investment of those funds whether retained in a trust account or paid out to and retained unexpended by the corporation.

The executive director shall transmit the name of the corporation to be suspended to the Secretary of State, and the suspension shall thereupon become effective upon the issuance of a certificate of the Secretary of State which shall be prima facie evidence of suspension.

Funds allocated to a corporation and the return on investment of those funds remain state funds and the corporation's use of those funds is conditional pursuant to this section and Section 14044.1. Each corporation shall enter into a written signed agreement with the state at the beginning of each fiscal year pursuant to this subdivision. In the event the state and corporation do not reach an agreement or the state finds the corporation has violated the terms of an active agreement, the corporation shall have no authority to withdraw or encumber the corporation loan guarantee funds or the return on those funds by issuance of guarantees, by incurring expenses against the fund and its return or in any manner whatsoever, and the state may take action under this section and Section 14044.1 or other action as appropriate. Any guarantee or other encumbrance made by the corporation in violation of this section shall be null and void, and neither the state nor the corporate fund shall be liable therefor absent ratification by the board and the executive director.

SEC. 9. Section 14025.2 of the Corporations Code is repealed.

SEC. 10. Section 14028.4 of the Corporations Code is repealed.

SEC. 11. Section 14029.1 of the Corporations Code is amended to read:

14029.1. The Small Business Expansion Fund is created solely for the purpose of receiving state money to make loans, guarantees, and restricted investments pursuant to this article.

SEC. 12. Section 14029.2 of the Corporations Code is amended to read:

14029.2. All money deposited in the expansion fund is hereby continuously appropriated, without regard to fiscal years, for the purposes of this article.

SEC. 13. Section 14029.3 of the Corporations Code is amended to read:

14029.3. The state shall not be liable or obligated in any way beyond the state money which is allocated in the expansion fund from moneys from the General Fund moneys appropriated for such purposes.

SEC. 14. Section 14029.7 of the Corporations Code is amended to read:

14029.7. The executive director at his or her discretion, with the approval of the Director of Finance, may request the Treasurer to invest those funds in the expansion fund and the corporate fund which are not immediately encumbered by administrative or program costs, in securities issued by the Treasury of the United States government. Returns from these investments shall be deposited in the expansion fund and shall be used to support the programs of this part.

SEC. 15. Section 14029.8 of the Corporations Code is amended to

read:

14029.8. The office may establish a program through which the corporations may assist small farms and rural and agriculture-related businesses with respect to financing and other assistance.

SEC. 16. Section 14029.9 of the Corporations Code is amended to read:

14029.9. The office, in its discretion and after the approval of the Small Business Development Board, may establish a program through which small business development corporations may assist California small businesses by making available financial aid for the development phase of a definable product or process which is new to the business undertaking the development. Projects approved by a corporation shall be eligible for reimbursement on a regular basis up to 60 percent of allowable, documented expenses. Projects approved and the amount invested shall be based upon an analysis of the business plan submitted by the company. Evaluation criteria shall include product feasibility, company ability, marketing availability, job creation, and overall financial condition. Products need not be high technology but should be innovative.

The executive director may appoint a technology marketing advisory committee to review product development applications being considered for funding by corporations. The advisory committee shall include, among others, a product development specialist, a marketing specialist, and a venture capitalist.

This section shall become inoperative on July 1, 1991, and, as of January 1, 1992, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 1992, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 17. Section 14029.91 of the Corporations Code is amended to read:

14029.91. In accordance with subdivision (a) of Section 14023.5, the executive director may provide technical assistance and staff support for the technology marketing advisory committee created pursuant to Section 14029.9 and to the corporations implementing that section.

This section shall become inoperative on July 1, 1991, and, as of January 1, 1992, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 1992, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 18. Section 14029.95 of the Corporations Code is amended to read:

14029.95. If the office establishes the program authorized by Section 14029.9, return on investments authorized by Section 14029.9 for the corporations shall be derived from a royalty based on the sale of the product developed. The royalty shall not exceed 5 percent of the new product sales unless approval is granted by the executive director after notification of the board. The royalty payment shall continue until a specified multiple of the corporation's investment has been returned within a specified period of time. After the

required multiple has been reached, the royalty rate may be reduced and continued for a fixed time period.

This section shall become inoperative on July 1, 1991, and, as of January 1, 1992, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 1992, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 19. Section 14029.96 of the Corporations Code is amended to read:

14029.96. If the office establishes the program authorized by Section 14029.9, the corporations shall charge an application fee in an amount to be determined from time to time by the executive director upon approval by the board.

This section shall become inoperative on July 1, 1991, and, as of January 1, 1992, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 1992, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 20. Section 14030 of the Corporations Code is amended to read:

14030. A corporation may be formed by seven or more persons who are residents of this state, to carry out the intent of the Legislature as expressed in Section 14002.

SEC. 21. Section 14032 of the Corporations Code is amended to read:

14032. The articles of incorporation shall set forth:

(a) The name of the corporation, which shall include the words "small business development corporation," except for those corporations formed pursuant to this part prior to 1985, which may also be called "rural or urban development corporations."

(b) The purposes for which the corporation is formed, which shall be those specified in Section 14002. This requirement shall not be deemed to preclude a statement of powers.

(c) A geographical description of the corporation's service area.

(d) The names and addresses of seven or more persons who are to act in the capacity of directors until the selection of their successors.

(e) That the corporation is organized pursuant to the California Small Business Development Corporation Law.

SEC. 22. Section 14035 of the Corporations Code is amended to read:

14035. Every corporation shall adopt bylaws, which shall include provisions governing the election and qualification of directors; the establishment and functions of loan committees of the corporation; and the method of selecting the representative of the corporation on the board.

The bylaws shall provide for removal of officers only by a two-thirds vote of the directors of the corporation.

SEC. 23. Section 14035.5 of the Corporations Code is amended to read:

14035.5. Each corporation shall have provisions establishing a

grievance procedure for employees, clients, or potential clients, to appeal a decision or obtain redress of an action done by the staff or loan committee of the corporation. If a client or potential client is dissatisfied with the decision under that procedure, the matter may be submitted to and reviewed by OSB, in accordance with rules and procedures established by it.

SEC. 24. Section 14036 of the Corporations Code is repealed.

SEC. 25. Section 14040 of the Corporations Code is amended to read:

14040. There is hereby continued in the State Treasury in the expansion fund, the Small Business Development Loan Guarantee Account as part of the expansion fund.

SEC. 26. Section 14041 of the Corporations Code is amended to read:

14041. The loan account is created solely for the purpose of receiving state, federal, or local government money, and other public or private money, for subsequent allocation by the office, with the approval of the Department of Finance, to a corporate fund formed pursuant to Section 14045.

SEC. 27. Section 14043 of the Corporations Code is amended to read:

14043. All money deposited in the loan account is hereby appropriated, without regard to fiscal years, for the purposes of this chapter. The state shall not be liable or obligated in any way beyond the state money which is allocated and deposited in the loan account from state money which is appropriated for these purposes.

SEC. 28. Section 14044 of the Corporations Code is amended to read:

14044. The funds in the loan account shall be paid out to a small business development corporation loan guarantee fund by the Treasurer on warrants drawn by the Controller and requisitioned by the office, pursuant to the purposes of this chapter. The office may transfer funds allocated to the corporate fund to accounts, established solely to receive the funds, in lending institutions designated by that corporation. The lending institutions so designated shall be approved by the state for the receipt of state deposits. Interest earned on the accounts in lending institutions may be utilized by the corporations pursuant to the purposes of this chapter.

SEC. 29. Section 14044.1 of the Corporations Code is amended to read:

14044.1. Pursuant to this section and the regulations, the state has residual interest in the funds deposited by the state to a corporate fund and to the return on these funds from investment. On dissolution of the corporation or if the executive director believes these funds are in jeopardy or are not being effectively utilized, these funds may be withdrawn by the executive director from the trust if they are not encumbered by guarantees, and returned to the expansion fund or transferred to another corporate fund. This

provision shall be contained in the trust instructions to the trustee.

SEC. 30. Section 14044.5 of the Corporations Code is repealed.

SEC. 31. Section 14045 of the Corporations Code is amended to read:

14045. Every corporation formed under this chapter may establish a corporate fund pursuant to regulations adopted by the board. This fund shall not be subject to any state regulation other than by the board and Department of Finance. Each corporate fund is a legally separate fund, and the assets of one fund shall not be used to satisfy loan guarantees or other obligations of another corporation. No corporation shall use corporate funds to secure a corporate indebtedness. Corporate funds are state funds and, with the exception of guarantees established pursuant to this chapter, shall not be subject to liens or encumbrances of the corporation or its creditors.

SEC. 32. Section 14046 of the Corporations Code, as amended by Section 3 of Chapter 844 of the Statutes of 1987, is amended to read:

14046. (a) Except as provided in subdivision (d) of Section 14131 and Sections 14083 and 14083.5, the purpose of a corporate fund shall be to make and guarantee loans, approved by the corporation, which meet the California Small Business Development Corporation Law loan criteria. The state shall not be liable or obligated in any way as a result of the allocation of state money to a corporate fund beyond the state money which is allocated and deposited in the fund pursuant to this chapter, and which is not otherwise withdrawn by the state pursuant to this chapter.

(b) A summary of all loans to which a state guarantee is attached shall be submitted to the executive director upon completion of the loan agreement.

This section shall become inoperative on July 1, 1991, and, as of January 1, 1992, is repealed.

SEC. 33. Section 14046 of the Corporations Code, as added by Section 9 of Chapter 750 of the Statutes of 1987, is amended to read:

14046. (a) Except as provided in subdivision (d) of Section 14131, and Section 14083, the purpose of a corporate fund shall be to guarantee loans, approved by the corporation, which meet the California Small Business Development Corporation Law loan criteria. The state shall not be liable or obligated in any way as a result of the allocation of state money to a corporate fund beyond the state money which is allocated and deposited in the fund pursuant to this chapter, and which is not otherwise withdrawn by the state pursuant to this chapter.

(b) A summary of all loans to which a state guarantee is attached shall be submitted to the executive director upon completion of the loan agreement.

(c) This section shall become operative on July 1, 1991.

SEC. 34. Section 14047 of the Corporations Code is repealed.

SEC. 35. Section 14048 of the Corporations Code is amended to read:

14048. Every corporation formed under this chapter may establish an account within the corporate fund to receive funds appropriated to the expansion fund in the State Treasury. The executive director shall determine the allocation from the expansion fund to the corporate fund.

SEC. 36. Section 14049 of the Corporations Code is amended to read:

14049. Corporations may grant energy efficiency improvement loans.

SEC. 37. Section 14060 of the Corporations Code is amended to read:

14060. The corporate powers of a corporation shall be exercised by the board of directors.

SEC. 38. Section 14061 of the Corporations Code is repealed.

SEC. 39. Section 14062 of the Corporations Code is amended to read:

14062. (a) No person shall serve on a board of directors who is not:

(1) A resident of the state described in the articles of incorporation, or

(2) The owner, controlling shareholder, or a permanent employee of an organization maintaining a regular place of business in this state.

(b) Each board of directors shall include representatives from all of the following:

(1) The financial community.

(2) The business community.

(3) The economically disadvantaged.

SEC. 40. Section 14066 of the Corporations Code is amended to read:

14066. (a) Every corporation shall establish one or more loan committees, each of which shall be composed of five or more persons, a majority of whom shall be experienced in banking and lending operations.

(b) A loan committee shall review every application to the corporation for a loan or guarantee and shall do each of the following:

(1) Determine the feasibility of the proposed transaction and the likelihood of successful use of the corporation's money and credit within the overall objectives of the corporation.

(2) On the basis of the determination, recommend to the board of directors any action that the committee deems appropriate under the circumstances, provided, however, that the loan committee shall not recommend the granting of any loan or guarantee unless it determines that the conditions of Section 14081 are satisfied, and so certifies to the board of directors.

(c) A loan committee shall expeditiously act to accept or reject loan applications.

(d) The loan committee in recommending the granting of loans or guarantees shall emphasize consideration to applications that will

increase employment of disadvantaged, disabled persons, or unemployed persons and increase employment of youth residing in areas of high youth unemployment and high youth delinquency.

SEC. 41. Section 14081 of the Corporations Code is amended to read:

14081. In furtherance of the purposes set forth in Section 14002, a corporation may lend money to, and guarantee, endorse, or act as surety on the bonds, notes, contracts, or other obligations of, or assist financially, any person, firm, corporation or association, and may establish and regulate the terms and conditions with respect to any such loans or financial assistance and the charges for interest and service connected therewith, except that the corporation shall not make or guarantee any loan unless and until it determines:

(a) There is no probability that the loan or other financial assistance would be granted by a financial company under reasonable terms or conditions, and the borrower has demonstrated a reasonable prospect of repayment of the loan.

(b) The loan proceeds shall be used exclusively in this state.

(c) The loan qualifies as a small business loan or an employment incentive loan.

(d) That the borrower has a minimum equity interest in the business as determined by the board.

(e) As a result of the loan, the jobs generated or retained demonstrate reasonable conformance to the regulations specifying employment criteria.

SEC. 42. Section 14081.1 of the Corporations Code is repealed.

SEC. 43. Section 14081.2 of the Corporations Code is amended to read:

14081.2. A corporation may charge the borrower or financial institution a loan fee on all loans made or guaranteed by the corporation to defray the operating expenses of the corporation. The amount of the fee shall be determined by the board.

SEC. 44. Section 14082 of the Corporations Code is amended to read:

14082. With the approval of the executive director, a corporation may establish a profitmaking subsidiary for the specific purpose of sponsoring a small business investment company regulated by the Small Business Administration.

SEC. 45. Section 14083 of the Corporations Code is amended to read:

14083. A corporation, acting as a sponsor and with the approval of the executive director under Section 14082, is authorized to establish a small business investment company (including minority enterprise small business investment companies and business and industrial development companies) with funds committed by its members, in an amount designated by the board of directors of the corporation.

SEC. 46. Section 14083.5 of the Corporations Code is amended to read:

14083.5. If the office establishes the program authorized by Section 14029.9, the corporations are authorized to use up to one-tenth of the amount within their corporate funds to make investments in California small businesses for product development as specified in Sections 14029.9 and 14029.95. The investments in each business shall not exceed the amount of the current loan guarantee limits established by regulation.

This section shall become inoperative on July 1, 1991, and, as of January 1, 1992, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 1992, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 47. Section 14083.6 of the Corporations Code is amended to read:

14083.6. If the office establishes the program authorized by Section 14029.9, revenues derived from royalties on product investments shall be returned to the investing corporation's corporate fund.

This section shall become inoperative on July 1, 1991, and, as of January 1, 1992, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 1992, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 48. Section 14084 of the Corporations Code is amended to read:

14084. Every corporation shall provide for and maintain a central staff to perform all administrative requirements of the corporation including all those functions required of a corporation by the board and the executive director.

SEC. 49. Section 14085 of the Corporations Code is amended to read:

14085. Costs incurred by a corporation in the creation and maintenance of a central staff shall be paid to the corporation from state funds allocated to the office during the first four years of operation for these purposes. Reasonable costs incurred following the initial four years of operation shall be paid from the return on corporate funds.

SEC. 50. Section 14090 of the Corporations Code is amended to read:

14090. Notwithstanding the provisions of any other law, the notes or other interest-bearing obligations, and that portion of loans guaranteed by a corporation, issued in accordance with this chapter and any regulations governing the issuance of these obligations shall be legal investments for banks, insurance and surety companies, and third party investors, such as private parties and pension funds. However, in no case shall the aggregate amount of these obligations held by any such bank, insurance or surety company, including membership loans and loans guaranteed by corporate funds, exceed an amount equal to 3 percent of the capital and surplus of any such bank, insurance or surety company.

SEC. 51. Section 14100 of the Corporations Code is amended to

read:

14100. The executive director shall have the accounts of each corporation formed under this part audited as of the close of business on June 30, of each year. The executive director shall also have the portfolio of each corporation audited a minimum of once a year. Material audit exceptions which are not corrected by the corporation within a reasonable period of time may result in the suspension of the corporation.

SEC. 52. Section 14110 of the Corporations Code is amended to read:

14110. It shall be unlawful for the executive director or any person who is an officer, director, or employee of a corporation, or who is a member of a loan committee, or who is a member of the board or employee of the office to:

(a) Ask for, consent or agree to receive, any commission, emolument, gratuity, money, property, or thing of value for his or her own use, benefit, or personal advantage, for procuring or endeavoring to procure for any person, partnership, joint venture, association, or corporation, any loan, guarantee, financial or other assistance from any corporation.

(b) Borrow money, property, or to benefit knowingly, directly or indirectly, from the use of the money, credit, or property of any corporation.

(c) Make, maintain, or attempt to make or maintain, a deposit of the funds of a corporation with any other corporation or association on condition, or with the understanding, expressed or implied, that the corporation or association receiving such deposit shall pay any money or make a loan or advance, directly or indirectly, to any person, partnership, joint venture, association, or corporation, other than to a corporation formed under this part.

SEC. 53. Section 14111 of the Corporations Code is amended to read:

14111. It shall be unlawful for the executive director or any member of a corporation, or any person who is an officer or director of a corporation, or who is a member or employee of the office or the board or executive director, to purchase or receive, or to be otherwise interested in the purchase or receipt, directly or indirectly, of any asset of a corporation, without paying to the corporation the fair market value of the asset at the time of the transaction.

SEC. 54. Section 14115 of the Corporations Code is amended to read:

14115. The corporation shall not deposit any of its funds in any financial institution unless the financial institution has been designated as a depository by a vote of the majority of all of the directors of the corporation, exclusive of any director who is an officer or director of the institution so designated. The financial institution which is to act as trustee of the corporate fund shall be designated by the board of directors of the corporation on a

competitive bid basis. The corporation shall not receive money on deposit.

SEC. 55. Section 14120 of the Corporations Code is repealed.

SEC. 56. The heading of Article 14 (commencing with Section 14125) of the Corporations Code is amended to read:

Article 14. Small Business Development Corporations

SEC. 57. Section 14125 of the Corporations Code is amended to read:

14125. (a) The board may authorize the establishment of a new corporation. To qualify for consideration as a corporation, an organization must have had a minimum of two years' experience in small business finance assistance. These qualifications may be waived by the board and the executive director in areas of high unemployment if the proposed corporation is newly established and the incorporators have small business finance and assistance experience.

(b) The state, through the Office of Small Business, shall continue to have jurisdiction and to exercise supervision over corporations which have achieved independence from state administrative funding. The state shall have the right to review and approve the activities and expenditure of funds of those corporations to ensure conformity with the provisions and intent of the Small Business Corporation Law and the regulations thereof. The use of state funds paid out to the corporate fund and the return on those funds from investment pursuant to Section 14044 is conditional pursuant to Sections 14025 and 14044.1. Each corporation shall enter into a written signed agreement with the state at the beginning of each fiscal year. The agreement shall govern the activities in which the corporations engage, the investment of state funds and its return, and the budgeted administrative expenses the corporations may incur. In the event the state and corporation do not reach an agreement, or the state finds the corporation has violated the terms of an active agreement, the state may take action under Sections 14025 and 14044.1 or other action as appropriate. In the event the state and corporation do not reach agreement or the state finds the corporation has violated the terms of an active agreement, the corporation shall have no authority to withdraw or encumber the corporate fund or the return on those funds by the issuance of guarantees, by incurring expenses against the fund and its return in any manner whatsoever, and the state may take action under Sections 14025 and 14044.1 or other action as appropriate. Any such guarantee or other encumbrance made by the corporation in violation of this section shall be null and void, and neither the state nor the corporate fund will be liable therefor.

SEC. 58. Section 14126 of the Corporations Code is repealed.

SEC. 59. Section 14126 is added to the Corporations Code, to read:

14126. For six months following the establishment of a corporation, commencing upon filing of the articles of incorporation with the Secretary of State, a corporation shall be on probation. While on probation, the following limitations shall apply:

(a) The corporation shall not establish a corporate account. The corporation may receive authorization from the executive director to guarantee a specific amount of funds in the expansion fund.

(b) The corporation can be suspended upon 10 days' written notice by the executive director. This suspension is nonappealable and not subject to the procedures for suspension applicable to a corporation not on probation.

SEC. 60. Section 14127 of the Corporations Code is amended to read:

14127. (a) The corporations shall report to the executive director, or his or her designated representative, all statistical and other reports required by this part, responses to audit reports, budget requirements, invoices submitted for payment by the state, and information concerning loans made or guaranteed.

SEC. 61. Section 14128 of the Corporations Code is repealed.

SEC. 62. Section 14129 of the Corporations Code is amended to read:

14129. To implement its responsibilities, the corporations shall undertake a program which shall include, but not be limited to, the following:

(a) Develop and implement a program of outreach to low-resource businesses. The corporations located in rural areas shall give priority to low-resource farmers, rural, and agriculturally related businesses.

(b) Work with other organizations and lenders to locate, identify, and assist those unable to obtain credit through conventional sources because of reasons such as low equity, inadequate collateral, unacceptable legal structure (such as a co-op or nonprofit organization), management inadequacies and language problems.

(c) To the extent possible, bring all possible financial resources (low interest lenders, BIDCOs, MESBICs, other guarantors, etc.) to bear on borrower's problems.

(d) Provide assistance to businesses receiving loans of guarantees which will maximize the probability of loan repayment.

(e) Develop and implement a program for increasing program resources through private sector involvement and nonstate funds.

(f) Develop a program for collecting and liquidating defaulted loans so that the corporations can qualify to become full-service lenders under the Small Business Administration. Corporations located in rural areas shall, in addition, try to qualify for lender status under Farmers Home Administration.

(g) Develop a program which shall enable the corporations to be independent of state General Fund allocations for administrative support within four years.

(h) Become an agent for other lenders and guarantors.

SEC. 63. Section 14130 of the Corporations Code is amended to read:

14130. In all their state-funded programs, the corporations shall, to the extent practicable, be complementary to, and not competitive with, commercial lenders and other state and federal programs.

SEC. 64. Section 14131 of the Corporations Code is amended to read:

14131. (a) The corporate guarantee shall be backed by funds on deposit in the corporation's corporate fund established pursuant to Articles 5 (commencing with Section 14040) and 6 (commencing with Section 14045).

(b) Loan guarantees shall be secured by a reserve of at least 25 percent to be determined by the Executive Director of the Office of Small Business with the approval of the board. The guarantee percentage rate shall be set by the Executive Director of the Office of Small Business upon approval of the board.

(c) The corporation shall guarantee loans wherever possible. However, earnings from the trust funds may be used for direct lending provided that corporate direct loan funds do not constitute more than one-third of the loan, with the following exceptions:

(1) If a firm has received a Phase 1 or Phase 2 Small Business Innovation Research Grant awarded by a federal agency and is suffering cash flow problems because of delay in receipt of grant funds from the date of incurring expenses related to the grant project, a corporation may advance an interim loan covering 80 percent of the project expenses from trust fund earnings, provided the firm assigns proceeds of grant invoices (or other documentations submitted by the firm to the federal agency for payment) to the corporation for payment of the interim loan advanced and the federal agency agrees to the assignment.

(2) Any corporation located in a rural area that is making a direct loan to a farmer or farm corporation may use trust funds from both the income and trust account, provided that the direct loan is guaranteed or that at least 50 percent of the direct loan portfolio is guaranteed by a governmental agency, excluding any state government agency. The total amount of direct loans issued by a corporation shall not exceed 33 percent of the trust fund, including trust income, as determined at the time each loan is made. Only unencumbered funds shall be available for direct lending. Each corporation located in a rural area shall submit an application to the department for participation in the direct loan program under this section. In its capacity as a direct lender, the corporation may sell in the secondary market the guaranteed portion of each loan so as to raise additional funds for direct lending. Funds raised through the secondary market shall not be considered in arriving at the percentage of the loan portfolio to be guaranteed by a government agency above. Any direct loan made by a corporation under this section shall not exceed three hundred fifty thousand dollars ($350,000). The department, in consultation with the board, shall

issue regulations governing these direct loans.

(d) In furtherance of the purposes of this part, up to one-half of the corporate funds may be used to guarantee loans utilized to establish a Business and Industrial Development Corporation (BIDCO) under Division 15 (commencing with Section 33000) of the Financial Code.

(e) The corporation may assume a negotiated equity position of not more than 5 percent of the current equity in an eligible small business, in lieu of part or all of the fees chargeable to the business or through direct purchase, provided state funds are not used to purchase the equity position. An equity position of 5 percent or less shall not be construed as a conflict of interest in terms of financial and technical assistant participation.

(f) As a method of implementing the direct loan programs established in this chapter, the Office of Small Business may loan trust funds to a corporation located in a rural area for the express purpose of lending those funds to an identified borrower. The loan by the Office of Small Business to the corporation shall be in the amount and terms similar to the loan between the corporation and the borrower. The loan between the Office of Small Business and the corporation shall be evidenced by a credit agreement secured by assignment of any note, executed in favor of the corporation by the borrower to the Office of Small Business. The terms and conditions of the credit agreement shall be similar to the loan agreement between the corporation and the borrower which shall be collateralized by the note between the corporation and the borrower. In the absence of fraud on the part of the corporation, the liability of the corporation to repay the loan to the Office of Small Business is limited to the repayment received by the corporation from the borrower except in a case where the Farmers Home Administration requires exposure by the corporation in rule or regulation. Interest and principal received by the Office of Small Business from the corporation shall be deposited in the small business development corporation loan guarantee account of that corporation.

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## CHAPTER 1643

An act to add Section 5101.3 to the Vehicle Code, relating to vehicles, and making an appropriation therefor.

[Became law without Governor's signature. Filed with Secretary of State October 1, 1988.]

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

SECTION 1. Section 5101.3 is added to the Vehicle Code, to read:

5101.3. (a) Any person otherwise eligible under this article who

qualifies under subdivision (b) may, commencing July 1, 1989, apply for special license plates which shall run in a separate numerical series and shall contain the words "Pearl Harbor Survivor." The plates may be issued for any passenger vehicle, not including any commercial vehicle, which is owned or coowned by the person.

(b) To qualify for issuance of the special plates, the applicant shall by satisfactory proof show all of the following:

(1) The applicant was a member of the United States Armed Forces on December 7, 1941, and received an honorable discharge from military service.

(2) The applicant was on station at Pearl Harbor, the Island of Oahu, or offshore within a distance of three miles, on December 7, 1941, during the hours of 7:55 a.m. to 9:45 a.m., Hawaii time, as certified by a California chapter of the Pearl Harbor Survivors Association.

(c) In addition to the regular registration fees, the department shall charge a fee of thirty-five dollars ($35) for the issuance of the special plates. Notwithstanding Section 9265, the applicant for a substitute Pearl Harbor Survivor license plate shall be charged a fee of thirty-five dollars ($35).

(d) Whenever any person who has been issued a Pearl Harbor Survivor license plate applies to the department for transfer of the plates to another vehicle, a transfer fee of twenty dollars ($20) shall be charged in addition to all other appropriate fees.

(e) The special plates may not be transferred to any other person, including a coowner of the vehicle for which the license plates were issued, and shall be surrendered to the department upon the decease of the person to whom they were issued.

SEC. 2. The Controller shall transfer, pursuant to subdivision (b) of Section 21191 of the Public Resources Code, the sum of ninety thousand dollars ($90,000) from the California Environmental License Plate Fund to the Motor Vehicle Account in the State Transportation Fund, and that amount is hereby appropriated from the Motor Vehicle Account to the Department of Motor Vehicles to implement Section 5101.3 of the Vehicle Code.

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## CHAPTER 1644

An act to add Section 5101.8 to the Vehicle Code, relating to vehicles.

[Became law without Governor's signature Filed with Secretary of State October 1, 1988.]

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

SECTION 1. Section 5101.8 is added to the Vehicle Code, to read:

5101.8. (a) Any person otherwise eligible under this article who

is a Purple Heart recipient may apply for special license plates for vehicles which are not used for transportation for hire, compensation, or profit, under this article. The special plates assigned to the vehicle shall run in a separate numerical series, shall have inscribed on the plate the Purple Heart insignia, and shall contain the words "Combat Wounded" and "Purple Heart" or at least the letters "PH" as part of the numerical series. The department shall reserve and issue the special plates to all applicants providing the proof required by subdivision (b).

(b) The applicant shall, by satisfactory proof, show that the applicant is a Purple Heart recipient.

(c) Special plates may be issued pursuant to subdivision (a) only for a vehicle owned or coowned by a Purple Heart recipient and may not be transferred to any other person, including the coowner of the vehicle. The special plates shall be surrendered to the department upon the decease of the Purple Heart recipient.

(d) In addition to the regular fees for an original or renewal registration, a fee sufficient to cover all costs of this program shall be paid.

(e) When an applicant for the Purple Heart license plate qualifies as a disabled veteran as defined in subdivision (a) of Section 22511.9, the applicant may also apply for a distinguishing placard described in subdivision (d) of Section 22511.9 to be used in conjunction with the Purple Heart license plate for the purpose of allowing special parking privileges pursuant to subdivision (b) of Section 22511.9.

(f) Sections 5106 and 5108 do not apply.

SEC. 2. This act shall become operative on July 1, 1989.

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## CHAPTER 1645

An act to add Section 421.5 to the Government Code, relating to state dances.

[Became law without Governor's signature. Filed with Secretary of State October 1, 1988.]

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

SECTION 1. The Legislature finds and declares, as follows:

(a) West Coast Swing Dancing, also known as Swing, Whip, or Jitterbug, came into being in the early 1930's in response to new musical forms then sweeping the land. It was created at the grassroots level of our people. Devotees of this art come from every conceivable ethnic, religious, racial, and economic background. Age is no factor, nor is gender. Among the ranks of swing dancers, one can find judges, schoolteachers, lawyers, waitresses, salesmen, doctors, students, and so on.

West Coast Swing Dancing is an intricate dance, requiring a great

deal of coordination, good timing, and intelligent application. It is a healthy and joyful activity that belongs to all our people. They created it, they nurtured it, and they have kept it alive.

West Coast Swing is an American dance which is danced to American music. It originated in California and is danced in competition nationally and internationally.

(b) Square Dancing is the American folk dance which is called, cued, or prompted to the dancers, and includes squares, rounds, clogging, contra, line, and heritage dances.

The Square Dance has a long and proud history. It is an exciting art form that is truly an original of our country, and has been danced continuously in California since "Gold Rush Days."

As our state's population has grown, so has the square dance activity. California leads the nation with more than 200,000 residents square dancing weekly. It conforms to our ever changing lifestyles and appeals to people of all ages, races, and creeds. Class distinction is forgotten when people join together to enjoy the true fellowship of the Square Dance.

SEC. 2. Section 421.5 is added to the Government Code, to read:

421.5. (a) West Coast Swing Dance is the official state dance.

(b) The Square Dance is the official state folk dance.

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## CHAPTER 1646

An act to amend Section 8710 of, and to add Section 9280 to, the Elections Code, relating to elections.

[Became law without Governor's signature Filed with Secretary of State October 1, 1988.]

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

SECTION 1. Section 9280 is added to the Elections Code, to read:

9280. (a) The state central committee may prohibit or limit the power of county central committees established pursuant to Chapter 4 (commencing with Section 9320) to endorse, support, or oppose any candidate for nomination by the Republican Party for partisan office in the direct primary election.

(b) The superior court, in any case brought before it by the state central committee or by any registered voter, may issue a temporary or permanent restraining order or injunction to prohibit the endorsement, support, or opposition by a county central committee of any candidate for nomination by the Republican Party for partisan office in the direct primary election, if the endorsement, support, or opposition is in violation of the bylaws or rules of the state central committee. All cases of this nature shall be in a preferred position for purposes of trial and appeal, so as to assure the speedy disposition thereof.

SEC. 2. Section 8710 of the Elections Code is amended to read:

8710. This committee shall convene in Sacramento after a general election between the first full weekend in January and the first full weekend in March. The meeting shall begin no later than 10 o'clock a.m. on Saturday.

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## CHAPTER 1647

An act to amend Sections 6011 and 6012 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 1 1988 ]

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

SECTION 1. Section 6011 of the Revenue and Taxation Code is amended to read:

6011. (a) "Sales price" means the total amount for which tangible personal property is sold or leased or rented, as the case may be, valued in money, whether paid in money or otherwise, without any deduction on account of any of the following:

(1) The cost of the property sold.

(2) The cost of materials used, labor or service cost, interest charged, losses, or any other expenses.

(3) The cost of transportation of the property, except as excluded by other provisions of this section.

(b) The total amount for which the property is sold or leased or rented includes all of the following:

(1) Any services that are a part of the sale.

(2) Any amount for which credit is given to the purchaser by the seller.

(3) The amount of any tax imposed by the United States upon producers and importers of gasoline and the amount of any tax imposed pursuant to Part 2 (commencing with Section 7301) of this division.

(c) "Sales price" does not include any of the following:

(1) Cash discounts allowed and taken on sales.

(2) The amount charged for property returned by customers when that entire amount is refunded either in cash or credit, but this exclusion shall not apply in any instance when the customer, in order to obtain the refund, is required to purchase other property at a price greater than the amount charged for the property that is returned. For the purpose of this section, refund or credit of the entire amount shall be deemed to be given when the purchase price less rehandling and restocking costs are refunded or credited to the customer. The amount withheld for rehandling and restocking costs may be a

percentage of the sales price determined by the average cost of rehandling and restocking returned merchandise during the previous accounting cycle.

(3) The amount charged for labor or services rendered in installing or applying the property sold.

(4) The amount of any tax (not including, however, any manufacturers' or importers' excise tax) imposed by the United States upon or with respect to retail sales whether imposed upon the retailer or the consumer.

(5) The amount of any tax imposed by any city, county, city and county, or rapid transit district within the State of California upon or with respect to retail sales of tangible personal property, measured by a stated percentage of sales price or gross receipts, whether imposed upon the retailer or the consumer.

(6) The amount of any tax imposed by any city, county, city and county, or rapid transit district within the State of California with respect to the storage, use or other consumption in such city, county, city and county, or rapid transit district of tangible personal property measured by a stated percentage of sales price or purchase price, whether such tax is imposed upon the retailer or the consumer.

(7) Separately stated charges for transportation from the retailer's place of business or other point from which shipment is made directly to the purchaser, but the exclusion shall not exceed a reasonable charge for transportation by facilities of the retailer or the cost to the retailer of transportation by other than facilities of the retailer. However, if the transportation is by facilities of the retailer, or the property is sold for a delivered price, this exclusion shall be applicable solely with respect to transportation which occurs after the purchase of the property is made.

(8) Charges for transporting landfill from an excavation site to a site specified by the purchaser, either if the charge is separately stated and does not exceed a reasonable charge or if the entire consideration consists of payment for transportation.

(9) The amount of any motor vehicle, mobilehome, or commerical coach fee or tax imposed by and paid the State of California that has been added to or is measured by a stated percentage of the sales or purchase price of a motor vehicle, mobilehome, or commercial coach.

SEC. 2. Section 6011 of the Revenue and Taxation Code is amended to read:

6011. (a) "Sales price" means the total amount for which tangible personal property is sold or leased or rented, as the case may be, valued in money, whether paid in money or otherwise, without any deduction on account of any of the following:

(1) The cost of the property sold.

(2) The cost of materials used, labor or service cost, interest charged, losses, or any other expenses.

(3) The cost of transportation of the property, except as excluded by other provisions of this section.

(b) The total amount for which the property is sold or leased or rented includes all of the following:

(1) Any services that are a part of the sale.

(2) Any amount for which credit is given to the purchaser by the seller.

(3) The amount of any tax imposed by the United States upon producers and importers of gasoline and the amount of any tax imposed pursuant to Part 2 (commencing with Section 7301) of this division.

(c) "Sales price" does not include any of the following:

(1) Cash discounts allowed and taken on sales.

(2) The amount charged for property returned by customers when that entire amount is refunded either in cash or credit, but this exclusion shall not apply in any instance when the customer, in order to obtain the refund, is required to purchase other property at a price greater than the amount charged for the property that is returned. For the purpose of this section, refund or credit of the entire amount shall be deemed to be given when the purchase price less rehandling and restocking costs are refunded or credited to the customer. The amount withheld for rehandling and restocking costs may be a percentage of the sales price determined by the average cost of rehandling and restocking returned merchandise during the previous accounting cycle.

(3) The amount charged for labor or services rendered in installing or applying the property sold.

(4) (A) The amount of any tax (not including, however, any manufacturers' or importers' excise tax, except as provided in subparagraph (B)) imposed by the United States upon or with respect to retail sales whether imposed upon the retailer or the consumer.

(B) The amount of manufacturers' or importers' excise tax imposed pursuant to Section 4091 of the Internal Revenue Code for which the purchaser certifies that he or she is entitled to either a direct refund or credit against his or her income tax for the federal excise tax paid.

(5) The amount of any tax imposed by any city, county, city and county, or rapid transit district within the State of California upon or with respect to retail sales of tangible personal property, measured by a stated percentage of sales price or gross receipts, whether imposed upon the retailer or the consumer.

(6) The amount of any tax imposed by any city, county, city and county, or rapid transit district within the State of California with respect to the storage, use or other consumption in such city, county, city and county, or rapid transit district of tangible personal property measured by a stated percentage of sales price or purchase price, whether such tax is imposed upon the retailer or the consumer.

(7) Separately stated charges for transportation from the retailer's place of business or other point from which shipment is made directly to the purchaser, but the exclusion shall not exceed a

reasonable charge for transportation by facilities of the retailer or the cost to the retailer of transportation by other than facilities of the retailer. However, if the transportation is by facilities of the retailer, or the property is sold for a delivered price, this exclusion shall be applicable solely with respect to transportation which occurs after the purchase of the property is made.

(8) Charges for transporting landfill from an excavation site to a site specified by the purchaser, either if the charge is separately stated and does not exceed a reasonable charge or if the entire consideration consists of payment for transportation.

(9) The amount of any motor vehicle, mobilehome, or commerical coach fee or tax imposed by and paid the State of California that has been added to or is measured by a stated percentage of the sales or purchase price of a motor vehicle, mobilehome, or commercial coach.

SEC. 3. Section 6012 of the Revenue and Taxation Code is amended to read:

6012. (a) "Gross receipts" mean the total amount of the sale or lease or rental price, as the case may be, of the retail sales of retailers, valued in money, whether received in money or otherwise, without any deduction on account of any of the following:

(1) The cost of the property sold. However, in accordance with such rules and regulations as the board may prescribe, a deduction may be taken if the retailer has purchased property for some other purpose than resale, has reimbursed his or her vendor for tax which the vendor is required to pay to the state or has paid the use tax with respect to the property, and has resold the property prior to making any use of the property other than retention, demonstration, or display while holding it for sale in the regular course of business. If such a deduction is taken by the retailer, no refund or credit will be allowed to his or her vendor with respect to the sale of the property.

(2) The cost of the materials used, labor or service cost, interest paid, losses, or any other expense.

(3) The cost of transportation of the property, except as excluded by other provisions of this section.

(4) The amount of any tax imposed by the United States upon producers and importers of gasoline and the amount of any tax imposed pursuant to Part 2 (commencing with Section 7301) of this division.

(b) The total amount of the sale or lease or rental price includes all of the following:

(1) Any services that are a part of the sale.

(2) All receipts, cash, credits and property of any kind.

(3) Any amount for which credit is allowed by the seller to the purchaser.

(c) "Gross receipts" do not include any of the following:

(1) Cash discounts allowed and taken on sales.

(2) Sale price of property returned by customers when that entire amount is refunded either in cash or credit, but this exclusion shall

not apply in any instance when the customer, in order to obtain the refund, is required to purchase other property at a price greater than the amount charged for the property that is returned. For the purpose of this section, refund or credit of the entire amount shall be deemed to be given when the purchase price less rehandling and restocking costs are refunded or credited to the customer. The amount withheld for rehandling and restocking costs may be a percentage of the sales price determined by the average cost of rehandling and restocking returned merchandise during the previous accounting cycle.

(3) The price received for labor or services used in installing or applying the property sold.

(4) The amount of any tax (not including, however, any manufacturers' or importers' excise tax) imposed by the United States upon or with respect to retail sales whether imposed upon the retailer or the consumer.

(5) The amount of any tax imposed by any city, county, city and county, or rapid transit district within the State of California upon or with respect to retail sales of tangible personal property measured by a stated percentage of sales price or gross receipts whether imposed upon the retailer or the consumer.

(6) The amount of any tax imposed by any city, county, city and county, or rapid transit district within the State of California with respect to the storage, use or other consumption in such city, county, city and county, or rapid transit district of tangible personal property measured by a stated percentage of sales price or purchase price, whether such tax is imposed upon the retailer or the consumer.

(7) Separately stated charges for transportation from the retailer's place of business or other point from which shipment is made directly to the purchaser, but the exclusion shall not exceed a reasonable charge for transportation by facilities of the retailer or the cost to the retailer of transportation by other than facilities of the retailer. However, if the transportation is by facilities of the retailer, or the property is sold for a delivered price, this exclusion shall be applicable solely with respect to transportation which occurs after the sale of the property is made to the purchaser.

(8) Charges for transporting landfill from an excavation site to a site specified by the purchaser, either if the charge is separately stated and does not exceed a reasonable charge or if the entire consideration consists of payment for transportation.

(9) The amount of any motor vehicle, mobilehome, or commercial coach fee or tax imposed by and paid to the State of California that has been added to or is measured by a stated percentage of the sales or purchase price of a motor vehicle, mobilehome, or commercial coach.

For purposes of the sales tax, if the retailers establish to the satisfaction of the board that the sales tax has been added to the total amount of the sale price and has not been absorbed by them, the total amount of the sale price shall be deemed to be the amount received

exclusive of the tax imposed. Section 1656.1 of the Civil Code shall apply in determining whether or not the retailers have absorbed the sales tax.

SEC. 4. Section 6012 of the Revenue and Taxation Code is amended to read:

6012. (a) "Gross receipts" mean the total amount of the sale or lease or rental price, as the case may be, of the retail sales of retailers, valued in money, whether received in money or otherwise, without any deduction on account of any of the following:

(1) The cost of the property sold. However, in accordance with such rules and regulations as the board may prescribe, a deduction may be taken if the retailer has purchased property for some other purpose than resale, has reimbursed his or her vendor for tax which the vendor is required to pay to the state or has paid the use tax with respect to the property, and has resold the property prior to making any use of the property other than retention, demonstration, or display while holding it for sale in the regular course of business. If such a deduction is taken by the retailer, no refund or credit will be allowed to his or her vendor with respect to the sale of the property.

(2) The cost of the materials used, labor or service cost, interest paid, losses, or any other expense.

(3) The cost of transportation of the property, except as excluded by other provisions of this section.

(4) The amount of any tax imposed by the United States upon producers and importers of gasoline and the amount of any tax imposed pursuant to Part 2 (commencing with Section 7301) of this division.

(b) The total amount of the sale or lease or rental price includes all of the following:

(1) Any services that are a part of the sale.

(2) All receipts, cash, credits and property of any kind.

(3) Any amount for which credit is allowed by the seller to the purchaser.

(c) "Gross receipts" do not include any of the following:

(1) Cash discounts allowed and taken on sales.

(2) Sale price of property returned by customers when that entire amount is refunded either in cash or credit, but this exclusion shall not apply in any instance when the customer, in order to obtain the refund, is required to purchase other property at a price greater than the amount charged for the property that is returned. For the purpose of this section, refund or credit of the entire amount shall be deemed to be given when the purchase price less rehandling and restocking costs are refunded or credited to the customer. The amount withheld for rehandling and restocking costs may be a percentage of the sales price determined by the average cost of rehandling and restocking returned merchandise during the previous accounting cycle.

(3) The price received for labor or services used in installing or applying the property sold.

(4) (A) The amount of any tax (not including, however, any manufacturers' or importers' excise tax, except as provided in subparagraph (B)) imposed by the United States upon or with respect to retail sales whether imposed upon the retailer or the consumer.

(B) The amount of manufacturers' or importers' excise tax imposed pursuant to Section 4091 of the Internal Revenue Code for which the purchaser certifies that he or she is entitled to either a direct refund or credit against his or her income tax for the federal excise tax paid.

(5) The amount of any tax imposed by any city, county, city and county, or rapid transit district within the State of California upon or with respect to retail sales of tangible personal property measured by a stated percentage of sales price or gross receipts whether imposed upon the retailer or the consumer.

(6) The amount of any tax imposed by any city, county, city and county, or rapid transit district within the State of California with respect to the storage, use or other consumption in such city, county, city and county, or rapid transit district of tangible personal property measured by a stated percentage of sales price or purchase price, whether such tax is imposed upon the retailer or the consumer.

(7) Separately stated charges for transportation from the retailer's place of business or other point from which shipment is made directly to the purchaser, but the exclusion shall not exceed a reasonable charge for transportation by facilities of the retailer or the cost to the retailer of transportation by other than facilities of the retailer. However, if the transportation is by facilities of the retailer, or the property is sold for a delivered price, this exclusion shall be applicable solely with respect to transportation which occurs after the sale of the property is made to the purchaser.

(8) Charges for transporting landfill from an excavation site to a site specified by the purchaser, either if the charge is separately stated and does not exceed a reasonable charge or if the entire consideration consists of payment for transportation.

(9) The amount of any motor vehicle, mobilehome, or commercial coach fee or tax imposed by and paid to the State of California that has been added to or is measured by a stated percentage of the sales or purchase price of a motor vehicle, mobilehome, or commercial coach.

For purposes of the sales tax, if the retailers establish to the satisfaction of the board that the sales tax has been added to the total amount of the sale price and has not been absorbed by them, the total amount of the sale price shall be deemed to be the amount received exclusive of the tax imposed. Section 1656.1 of the Civil Code shall apply in determining whether or not the retailers have absorbed the sales tax.

SEC. 5. Sections 2 and 4 of this bill incorporate amendments to Section 6011 and 6012 of the Revenue and Taxation Code, proposed by both this bill and Assembly Bill 884. Sections 2 and 4 of this bill

shall become operative only if (1) both bills are enacted and become effective on or before January 1, 1989, (2) each bill amends the above sections of the Revenue and Taxation Code, and (3) this bill is enacted after Assembly Bill 884, in which case the above sections of the Revenue and Taxation Code, as amended by Assembly Bill 884, shall remain operative only until the operative date of this bill, at which time Sections 2 and 4 of this bill shall become operative, and Sections 1 and 3 of this bill shall not become operative.

SEC. 6. Notwithstanding Section 2230 of the Revenue and Taxation Code, no appropriation is made by this act and the state shall not reimburse any local agency for any sales and use tax revenues lost by it under this act.

SEC. 7. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect. However, the provisions of this act shall become operative on the first day of the first calendar quarter commencing more than 90 days after the effective date of this act.

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CONCURRENT AND JOINT RESOLUTIONS

AND CONSTITUTIONAL AMENDMENTS

1987–88

# REGULAR SESSION

1988 RESOLUTION CHAPTERS

# RESOLUTION CHAPTER 1

Senate Constitutional Amendment No. 35—A resolution to propose to the people of the State of California an amendment to the Constitution of the State, by amending Sections 1 and 4 of Article XI thereof, relating to county officers.

[Filed with Secretary of State January 20, 1988.]

*Resolved by the Senate, the Assembly concurring,* That the Legislature of the State of California at its 1987–88 Regular Session commencing on the first day of December 1986, two-thirds of the members elected to each of the two houses of the Legislature voting therefor, hereby proposes to the people of the State of California that the Constitution of the State be amended as follows:

First—That Section 1 of Article XI thereof is amended to read:

SEC. 1. (a) The State is divided into counties which are legal subdivisions of the State. The Legislature shall prescribe uniform procedure for county formation, consolidation, and boundary change. Formation or consolidation requires approval by a majority of electors voting on the question in each affected county. A boundary change requires approval by the governing body of each affected county. No county seat shall be removed unless two-thirds of the qualified electors of the county, voting on the proposition at a general election, shall vote in favor of such removal. A proposition of removal shall not be submitted in the same county more than once in four years.

(b) The Legislature shall provide for county powers, an elected county sheriff, an elected district attorney, an elected assessor, and an elected governing body in each county. Except as provided in subdivision (b) of Section 4 of this article, each governing body shall prescribe by ordinance the compensation of its members, but the ordinance prescribing such compensation shall be subject to referendum. The Legislature or the governing body may provide for other officers whose compensation shall be prescribed by the governing body. The governing body shall provide for the number, compensation, tenure, and appointment of employees.

Second—That Section 4 of Article XI thereof is amended to read:

SEC. 4. County charters shall provide for:

(a) A governing body of 5 or more members, elected (1) by district or, (2) at large, or (3) at large, with a requirement that they reside in a district. Charter counties are subject to statutes that relate to apportioning population of governing body districts.

(b) The compensation, terms, and removal of members of the governing body. If a county charter provides for the Legislature to prescribe the salary of the governing body, such compensation shall be prescribed by the governing body by ordinance.

(c) An elected sheriff, an elected district attorney, an elected assessor, other officers, their election or appointment, compensation,

terms and removal.

(d) The performance of functions required by statute.

(e) The powers and duties of governing bodies and all other county officers, and for consolidation and segregation of county officers, and for the manner of filling all vacancies occurring therein.

(f) The fixing and regulation by governing bodies, by ordinance, of the appointment and number of assistants, deputies, clerks, attachés, and other persons to be employed, and for the prescribing and regulating by such bodies of the powers, duties, qualifications, and compensation of such persons, the times at which, and terms for which they shall be appointed, and the manner of their appointment and removal.

(g) Whenever any county has framed and adopted a charter, and the same shall have been approved by the Legislature as herein provided, the general laws adopted by the Legislature in pursuance of Section 1(b) of this article, shall, as to such county, be superseded by said charter as to matters for which, under this section it is competent to make provision in such charter, and for which provision is made therein, except as herein otherwise expressly provided.

(h) Charter counties shall have all the powers that are provided by this Constitution or by statute for counties.

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## RESOLUTION CHAPTER 2

Senate Concurrent Resolution No. 61—Relative to Rural Crime Prevention Month.

[Filed with Secretary of State February 1, 1988.]

WHEREAS, It has come to the attention of the Legislature that February 1988 is designated as Rural Crime Prevention Month, and it is appropriate at this time that the California Rural Crime Prevention Task Force be extended the special honor and commendations of the people of California in recognition of its many contributions to the citizens of California; and

WHEREAS, It is the duty of government, private industry, and the citizens of California to assist in protecting themselves and others from crime; and

WHEREAS, Crime prevention programs implemented at the local level inspire citizens to actively participate; and

WHEREAS, Private industry, governmental agencies, law enforcement organizations, agricultural organizations, and the citizens of California have joined in cooperation and sponsorship with the California Rural Crime Prevention Task Force to recognize California's fourth annual Rural Crime Prevention Month in February 1988; now, therefore, be it

*Resolved by the Senate of the State of California, the Assembly thereof concurring,* That the Legislature designates February 1988 as Rural Crime Prevention Month, commends the California Rural Crime Prevention Task Force, and encourages the people of California to support this worthwhile effort; and be it further

*Resolved,* That the Secretary of the Senate transmit a copy of this resolution to the California Rural Crime Prevention Task Force.

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## RESOLUTION CHAPTER 3

Assembly Joint Resolution No. 21—Relative to health care.

[Filed with Secretary of State February 2, 1988.]

WHEREAS, There is state and federal jurisdiction over employee welfare plans which provide health benefits pursuant to the Employee Retirement Income Security Act of 1974 (ERISA); and

WHEREAS, The Employee Retirement Income Security Act's preemption of state control over self-insured plans in areas such as mandated benefit packages and continuation of coverage hampers solutions to uncompensated care problems at the state level; and

WHEREAS, Information is sparse regarding the impact of self-insured plans on the delivery of health care in the United States; now, therefore, be it

*Resolved, by the Assembly and Senate of the State of California, jointly,* That the Legislature of the State of California respectfully memorializes the Congress of the United States to authorize and provide funding for a study by the General Accounting Office, to analyze health care policy and delivery systems for the purpose of guiding the Congress of the United States and state legislatures in the enactment of health care legislation; and be it further

*Resolved,* That the study consider all of the following:

(a) The effect of the Employee Retirement Income Security Act's preemption of state regulation of self-insured plans.

(b) The effect of the cost shift from the federal government to state governments and private payers.

(c) Causes of inflation of health care costs.

(d) The role of the federal and state governments in the health care area; and be it further

*Resolved,* That the Legislature of the State of California requests the National Conference of State Legislatures to urge Congress to make changes in the ERISA preemption in order to allow the state to address adequately the issue of uncompensated care; and be it further

*Resolved,* That the Legislature of the State of California respectfully memorializes the Governor of the State of California to request the National Conference of Governors to urge Congress to

make changes in the ERISA preemption in order to allow the states to address adequately the issue of uncompensated care; and be it further

*Resolved,* That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, to each Senator and Representative from California in the Congress of the United States, to the Governor of the State of California, and to the National Conference of State Legislatures.

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## RESOLUTION CHAPTER 4

Assembly Concurrent Resolution No. 79—Relative to the Leon Raymond Hubbard, Jr. Institute.

[Filed with Secretary of State February 5, 1988.]

WHEREAS, During his lifetime, successful businessman and civic leader Leon "Lee" Raymond Hubbard, Jr. made significant contributions to the City of San Diego; and

WHEREAS, Mr. Hubbard served as a member of the San Diego City Council from 1973 to 1977, the last year of which he served as Deputy Mayor of San Diego; and

WHEREAS, He served as Director of the San Diego Rescue Mission and the San Diego Chapter of the Lions Club; as trustee for the Mercy Hospital and Medical Center, the Children's Hospital and Health Center, and the San Diego Museum of Art, as Commissioner of the Mayor's Crime Commission, and was also active in the Boys and Girls Aid Society, the Metro Y.M.C.A., the San Diego Chamber of Commerce, the National Conference of Christians and Jews, the San Diego Symphony, the San Diego Navy League, and was a Life Member of the Reuben H. Fleet Space Theatre; and

WHEREAS, He was named "Mr. San Diego" by the San Diego Rotary Club in 1982, in recognition of his political, business, and community achievements, and in the same year served as Chairperson of the President's Advisory Committee to the Pension Benefit Guaranty Corporation, a federal advisory committee on pensions; and

WHEREAS, Mr. Hubbard was an avid sportsman, having a great interest in fishing; now, therefore, be it

*Resolved by the Assembly of the State of California, the Senate thereof concurring,* That the Director of the Department of Fish and Game is requested to name the San Diego Marine Research Hatchery, upon its establishment by the California Ocean Resources Enhancement and Hatchery Program, the Leon Raymond Hubbard, Jr. Institute; and be it further

*Resolved,* That the Department of Fish and Game determine the

cost of erecting appropriate plaques and markers and, upon receiving donations from private sources covering the costs of furnishing and erecting those plaques and markers, erect them at the institute; and be it further

*Resolved,* That the Chief Clerk of the Assembly transmit a copy of this resolution to the Director of the Department of Fish and Game.

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## RESOLUTION CHAPTER 5

Assembly Joint Resolution No. 18—Relative to national monetary policy.

[Filed with Secretary of State February 5, 1988 ]

WHEREAS, A sound, stable monetary system is vital to a free nation to protect the economic and political well-being and liberty of its citizens; and

WHEREAS, The present monetary system administered by the federal reserve was established to (1) end the prior "boom and bust" cycles of the United States economy, (2) stabilize the currency, (3) end farm foreclosures, and (4) provide for expansion of the money supply when needed; and

WHEREAS, Past history indicates that the federal reserve has failed to achieve the objectives laid down when it was established in that, under that monetary system, our states and our people have suffered (1) recurring recession cycles, (2) a loss of 90 percent of the purchasing power of the dollar, and (3) farm foreclosures of thousands per week during the Great Depression of the 1930's; and

WHEREAS, No other issue affects our states and our people as directly, in that labor, farmers, and business are absolutely dependent on the nation's monetary system; and

WHEREAS, The Congress enacted the Federal Banking Agency Audit Act in 1978, which required the Comptroller General to audit the Federal Reserve Board and federal reserve banks; and

WHEREAS, The Federal Banking Agency Audit Act was instituted as a result of a federal study and congressional oversight hearings which discovered significant inadequacies in the operation of federal banking agencies; and

WHEREAS, The Federal Banking Agency Audit Act prohibited the Comptroller General from auditing Federal Reserve deliberations, decisions, or actions on monetary policy matters; now, therefore, be it

*Resolved, by the Assembly and the Senate of the State of California, jointly,* That the Legislature of the State of California respectfully memorializes the Congress of the United States to amend federal law to require the Comptroller General to annually audit the federal reserve's conduct of the nation's monetary policy,

including the efficacy with which that policy has been and is conducted with regard to achieving the purposes for which the monetary system was established; and be it further

*Resolved,* That the Legislature recommends that the audit include, but not be limited to: (1) deliberations, decisions, or actions on monetary policy matters, including discount window operations, reserves of member banks, securities credit, interest on deposits, and open market operations; and (2) transactions made under the direction of the Federal Open Market Committee; and the Legislature also recommends that the results of the audit be transmitted to the appropriate oversight committees of the Congress; and be it further

*Resolved,* That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States and to each Senator and Representative from California in the Congress of the United States.

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## RESOLUTION CHAPTER 6

Assembly Joint Resolution No. 44—Relative to commercial whaling.

[Filed with Secretary of State February 17, 1988 ]

WHEREAS, Commercial whaling is responsible for the dangerous decline of many species of whales, such as blue, gray, humpback, and right, as well as many other endangered species; and

WHEREAS, In 1982 the International Whaling Commission passed a moratorium banning commercial whaling effective January 1, 1986; and

WHEREAS, Some countries may aggressively continue commercial whaling, often under the guise of scientific research; and

WHEREAS, There are alternate methods of studying whales—benign techniques - such as photo identification, aerial counts, nonintrusive observations, and radio telemetry, which can provide necessary data on whales without harm; and

WHEREAS, Without exception, every product derived from whales can now be synthesized or obtained from other materials; now, therefore, be it

*Resolved, by the Assembly and Senate of the State of California, jointly,* That the California Legislature respectfully memorializes the Congress and the President of the United States to enforce existing laws, specifically the Packwood-Magnuson Act and the Pelly Amendment, on countries that continue to pursue commercial whaling on any level or that endanger whales and their environment in the name of "scientific research;" and be it further

*Resolved,* That the Chief Clerk of the Assembly transmit copies of

this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, to each Senator and Representative from California in the Congress of the United States, to each member of the International Whaling Commission, to the Administrator of the Environmental Protection Agency, to the Chairperson of the National Marine Fisheries Service, to the Chairperson of the Senate Committees on Commerce, State, and Justice, and to related committees of United States Senate, and to the Chairman of the House of Representatives Committee on Merchant Marines and Fisheries.

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## RESOLUTION CHAPTER 7

Assembly Joint Resolution No. 46—Relative to community aircraft noise impacts.

[Filed with Secretary of State February 17, 1988.]

WHEREAS, Aircraft noise has become one of the most serious threats to airport capacity, airport access, and a deregulated airline industry; and

WHEREAS, While technology has dramatically reduced noise at its source, it has not made aircraft generally capable of nonintrusive "acceptable interruptions," and for that reason technology alone cannot be relied on to solve the aircraft noise problem; and

WHEREAS, Aircraft noise problems are not exclusively related to jet aircraft, but include all types of aircraft manufactured here and abroad; and

WHEREAS, Though there is an established mechanism to certify aircraft noise performance, there is no similar mechanism available to inform aircraft operators and pilots as to how to best operate an aircraft from the point of view of noise, and that lack renders airport "fly quietly" and similar programs of limited value; and

WHEREAS, Although aircraft operators have adopted various approaches to flight procedures intended to reduce aircraft noise on a systemwide basis, including: (1) employment of Air Transport Association or National Business Aircraft Association procedures; (2) establishment, in consultation with an aircraft manufacturer, of unique procedures for a particular airport or aircraft or series of aircraft; and (3) development, in consultation with an airport proprietor, of noise abatement procedures, the effectiveness of these procedures has been limited by their generic nature; and

WHEREAS, Sufficient information is not yet available from which it can be determined whether there can be established for any given aircraft an optimum noise reduction flight profile which is consistent with the safe operation of that aircraft; and

WHEREAS, Those parties most likely to be able to determine such

optimum noise reduction flight profiles are the engine and airframe manufacturers; and

WHEREAS, There is an obvious regulatory gap in the federal aviation regulations in that the regulatory scheme now in place does not require engine and airframe manufacturers to determine optimum noise reduction flight profiles and publish them in the approved aircraft flight manual, which is the document most relied on by the pilot in the normal course of aircraft operations; and

WHEREAS, In the judgment of the California Legislature, reasonable and feasible methods to eliminate unnecessary decibels should be pursued by the Federal Aviation Administration to make aircraft and the airports that serve them more compatible with surrounding communities; now, therefore, be it

*Resolved by the Assembly and the Senate of the State of California, jointly,* That the Federal Aviation Administration is requested to study the matters raised herein, and if it is determined that noise abatement benefits would accrue to those individuals and communities affected by aircraft noise, that the Federal Aviation Administration engage in rulemaking as follows:

(1) That for new aircraft not yet certificated and aircraft currently in production, Federal Aviation Regulations Parts 23 and 25 be amended to require aircraft manufacturers to determine aircraft-specific noise abatement flight procedures and make such procedures a part of the approved aircraft flight manual.

(2) That for aircraft no longer in production and if deemed economically worthwhile, the Federal Aviation Administration require aircraft manufacturers to amend approved aircraft flight manuals or with Federal Aviation Administration assistance publish in advisory circular or other appropriate form noise abatement flight procedures.

(3) That Federal Aviation Regulation Part 91 be amended to require the pilot to use approved aircraft noise abatement procedures when and where those procedures would reduce the noise impact on individuals and communities surrounding an airport.

(4) That Federal Aviation Regulation Part 141 be amended to include noise abatement flight procedures in approved flight school curriculums for all pilot certificates.

(5) That the Federal Aviation Administration require, as a part of biennial flight examinations, type ratings, or original pilot certificates, that airmen demonstrate their knowledge of and ability to comply with and apply noise abatement procedures contained in approved aircraft flight manuals or other documents referenced above.

(6) That to the extent the proposals above impose a financial hardship on engine and airframe manufacturers or the Federal Aviation Administration, funding for these programs be sought as a necessary and proper expenditure from the noise abatement mitigation portion of the Aviation Trust Fund; and be it further

*Resolved,* That the Chief Clerk of the Assembly transmit a copy of

this resolution to the Federal Aviation Administration.

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## RESOLUTION CHAPTER 8

Assembly Concurrent Resolution No. 99—Relative to Cholesterol Management Week.

[Filed with Secretary of State February 17, 1988.]

WHEREAS, Heart disease is the nation's leading cause of death, exceeding all forms of cancer combined; and

WHEREAS, High blood cholesterol is one of the three major controllable risk factors for heart disease; and

WHEREAS, Heart disease is the leading cause of death, and in 1985 there were 69,046 deaths in California due to heart disease; and

WHEREAS, On an average day in 1985, 189 Californians died of heart disease; and

WHEREAS, Proper diet control, exercise and use of medications, when necessary, can help reduce excessive blood cholesterol; and

WHEREAS, Sutter Heart Institute at Sutter Memorial Hospital will conduct a regional screening program at 12 sites around northern California, with the intent to reach 100,000 participants; now, therefore, be it

*Resolved by the Assembly of the State of California, the Senate thereof concurring,* That the California Legislature designates the week of February 20 through February 28, 1988, as "Cholesterol Management Week" in California, and encourages cholesterol education and screening programs in local communities throughout the state; and be it further

*Resolved,* That the Chief Clerk of the Assembly make copies of this resolution available for appropriate distribution.

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## RESOLUTION CHAPTER 9

Senate Concurrent Resolution No. 13—Relative to postrehabilitation residential care.

[Filed with Secretary of State February 17, 1988.]

WHEREAS, Millions of dollars are spent annually for the provision of important rehabilitation services to head trauma, spinal cord injury, and stroke victims; and

WHEREAS, Subsequent to the rendering of these services by rehabilitation facilities to a head trauma, spinal cord injury, or stroke victim, he or she returns to the community; and

WHEREAS, Such an individual often lacks an informed and caring

support group, such as the family, thereby leading to a deterioration in his or her quality of life, which includes a failure to fully realize the benefits of previously provided rehabilitation services; and

WHEREAS, This result is not only costly in human terms, but in economic terms as well; now, therefore, be it

*Resolved by the Senate of the State of California, the Assembly thereof concurring,* That the Legislature requests the State Department of Social Services to study the feasibility of establishing a pilot project to examine the cost efficiency of creating residential care facilities or using existing facilities for head trauma, spinal cord injury, and stroke victims, which would be funded through department resources, or other funding sources that might be available; and be it further

*Resolved,* That the department report its findings to the Legislature on or before December 1, 1988; and be it further

*Resolved,* That this study include input from the Department of Rehabilitation, the State Department of Health Services, and the State Department of Mental Health since these departments also provide services to this population; and be it further

*Resolved,* That the Secretary of the Senate transmit a copy of this resolution to the State Director of Social Services.

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## RESOLUTION CHAPTER 10

Senate Joint Resolution No. 33—Relative to Vietnamese political prisoners.

[Filed with Secretary of State February 23, 1988.]

WHEREAS, Almost 13 years have passed since the end of the Vietnam War, yet thousands of Vietnamese remain held as political prisoners separated from their families in the United States and other countries; and

WHEREAS, Of the estimated 6,000 political prisoners in Vietnamese reeducation camps living in concentration camp conditions, the Socialist Republic of Vietnam recently released 480 political prisoners; and

WHEREAS, These former prisoners only offense was to have former ties with the United States government or to have been members of the South Vietnamese government or the South Vietnamese Army who fought side by side with the United States during the Vietnam War; and

WHEREAS, The government of the Socialist Republic of Vietnam has signed an agreement with the United Nations High Commissioner for Refugees to assist in the reunification of families and has made a commitment to support resettlement of former prisoners abroad to rejoin families; and

WHEREAS, About 300,000 Vietnamese refugees have made their home in California and many are now United States citizens and are contributing members to their adopted country; and

WHEREAS, Many of the former political prisoners are husbands and fathers of former refugees and citizens living in the State of California; now, therefore, be it

*Resolved by the Senate and the Assembly of the State of California, jointly,* That the Legislature of the State of California respectfully memorializes the President, the Secretary of State, and Congress of the United States to work with the United Nations High Commissioner of Refugees for the immediate release of all political prisoners held as a result of their previous association with the government of South Vietnam prior to 1975, and to give former Vietnamese political prisoners first priority to come to the United States under the Orderly Departure Program to join their families here; and be it further

*Resolved,* That the Secretary of the Senate transmit copies of this resolution to the President and the Vice President of the United States, to the Speaker of the House of Representatives, to each Senator and Representative from California in the Congress of the United States, and the Mission of the Government of the Socialist Republic of Vietnam at the United Nations in New York; and be it further

*Resolved,* That a suitably prepared copy of this resolution be transmitted to the Association of Former Vietnamese Political Prisoners, the United Vietnamese Community Council, and the Coalition of Vietnamese Nationalist Organizations in Northern California.

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## RESOLUTION CHAPTER 11

Assembly Joint Resolution No. 40—Relative to clandestine drug laboratories.

[Filed with Secretary of State March 4, 1988.]

WHEREAS, The illegal manufacturing of drugs has dramatically escalated in recent years; and

WHEREAS, One hundred clandestine drug labs were seized by law enforcement in California in 1983, with that number more than tripled in 1986; and

WHEREAS, The federal Drug Enforcement Agency reported a similar trend nationwide; and

WHEREAS, Chemicals combined in illegal drug manufacturing processes, particularly in methamphetamine labs, produce extremely hazardous substances and poisonous gases which permeate structures and contaminate the surrounding environment; and

WHEREAS, Illegal labs have been found in apartments, motel rooms, motorhomes, and other inhabitable dwellings; and

WHEREAS, Currently, no state or federal funding is made available for the immediate cleanup of the structures and surrounding environment contaminated by hazardous substances and spills produced by illegal drug manufacturing processes; and

WHEREAS, The lack of proper cleanup operations undertaken at the site of seized drug labs and the abandoned hazardous waste produced from those labs threaten the health of innocent tenants, homeowners, and landlords who may reinhabit apartments, motorhomes, garages, or other structures following only cursory cleanups of the structures and surrounding environment; and

WHEREAS, There is growing public demand for suppression of illegal drug activity, yet there is no financial support from federal or state government for cleaning up the extremely dangerous contamination at the site of every illegal drug lab seized; now, therefore, be it

*Resolved by the Assembly and Senate of the State of California, jointly,* That, in response to the public mandate for strict drug law enforcement, the Legislature of the State of California urges the President and Congress of the United States to make federal drug law enforcement funds available to match state funds to be used for the cleanup of hazardous substances produced by clandestine drug laboratories; and be it further

*Resolved,* That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States and the presiding officer of each house of the Legislature, to the Speaker of the House of Representatives, to each Senator and Representative from California in the Congress of the United States, and to the Director of the Federal Bureau of Justice Assistance.

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## RESOLUTION CHAPTER 12

Assembly Joint Resolution No. 22—Relative to AIDS vaccine.

[Filed with Secretary of State March 8, 1988.]

WHEREAS, A rapidly spreading epidemic of Acquired Immune Deficiency Syndrome (AIDS) poses an unprecedented major public health crisis in the United States and threatens, directly or indirectly, the life and health of every person in the United States; and

WHEREAS, Human T-cell lymphotropic virus (HTLV-III), the causative agent of AIDS, remains in the body of an infected individual from 3 to 13 years, and thus is one of the most difficult diseases to trace and combat; and

WHEREAS, Nationally, between 1,000,000 and 1,500,000

*Americans are estimated to have been exposed to the virus, and of* those exposed, between 100,000 and 450,000 persons may be expected to develop AIDS within five years; and

WHEREAS, The average cost per patient in the treatment of AIDS until death is now one hundred thousand dollars ($100,000); and

WHEREAS, Although neither a cure nor a vaccine for AIDS presently exists, private industry has the capability to conduct the bioimmunologic research and genetic engineering of the viral components necessary for the development, production, and testing of the vaccine; and

WHEREAS, For a variety of reasons there has been a recent marked decrease in the willingness of pharmaceutical companies to engage in vaccine research, development, and manufacturing; and

WHEREAS, Inclusion of an AIDS vaccine in the national vaccine program will foster private research for the development of an AIDS vaccine; and

WHEREAS, An effective vaccine will virtually eliminate the risk of contracting AIDS; and

WHEREAS, Some recipients may have adverse side effects to even a properly manufactured vaccine, and individuals injured by the vaccine should be reasonably compensated without the necessity of establishing fault, provided the injury is shown to be causally related to vaccine administration; now, therefore, be it

*Resolved, That the Assembly and the Senate of the State of California, jointly,* Memorialize the President and Congress of the United States to enact legislation amending the federal Public Health Services Act to: (1) add AIDS vaccine to the National Vaccine Program, when it is approved by the federal Food and Drug Administration, (2) fund the National Vaccine-Injury Compensation Trust Fund to compensate persons injured through AIDS vaccine administration, and (3) place a tax on vaccines, as determined by Congress, in order to provide funding for the National Vaccine-Injury Compensation Trust Fund; and be it further

*Resolved,* That the Chief Clerk of the Assembly transmit a copy of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, and to each Senator and Representative in the California Congressional delegation.

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## RESOLUTION CHAPTER 13

Assembly Concurrent Resolution No. 98—Relative to Women's History Month.

[Filed with Secretary of State March 8, 1988 ]

WHEREAS, American women of every class and ethnic background have participated in the founding and building of our nation and have played a critical role in shaping the economic, cultural, and social fabric of our society, not in the least of ways through their participation in the labor force, working both inside and outside of the home; and

WHEREAS, Women have been leaders in every movement for progressive social change, including their own suffragette movement, the fight for emancipation, the struggle to organize labor unions, and the civil rights movement; and

WHEREAS, Despite these contributions, the role of American women in history has been consistently overlooked and undervalued; and

WHEREAS, The celebration of Women's History Month will provide an opportunity for schools and communities to focus attention on the heritage of women's contributions to the United States and the State of California, and for students, in particular, to benefit from an awareness of these contributions; and

WHEREAS, Women's History Month will include International Women's Day, March 8, originally proclaimed in 1910 to recognize and commemorate the valuable contributions women have made to the labor movement in improving working conditions and thus bettering peoples' lives; and

WHEREAS, The observance of Women's History Week was begun by the Sonoma County Commission on the Status of Women in 1978, and has since been commemorated throughout the nation by schools, historians, and community groups; and

WHEREAS, Women's History Month will be not only a call to acknowledge the outstanding American women whose names we know, but also a call to pay homage to the many women who have anonymously shaped our collective past; and

WHEREAS, The strides made by our foremothers have enabled contemporary women and men to make tomorrow's history by advocating an end to physical and sexual assault, discrimination in the work force, and the feminization of poverty, and by advocating the full participation of women in the political arena, the provision of adequate child care, and equal access to all of the opportunities this nation has to offer; and

WHEREAS, Women's History Month will recognize the success of women and highlight their accomplishments, considering the changing roles and conditions of women in California, and will counter barriers to full and equal participation in California life for women; and

WHEREAS, Because of the significance and scope of women's roles in making history and shaping American culture and society, it is important that the State of California recognize the many contributions of women; now, therefore, be it

*Resolved by the Assembly of the State of California, the Senate thereof concurring,* That the Legislature of the State of California

takes pleasure in joining with the Sonoma County Commission on the Status of Women and the California Commission on the Status of Women in honoring the contributions of women, and designate the month of March 1988 as Women's History Month; and be it further

*Resolved,* That the Legislature urges all Californians to join in the celebration of International Women's Day on March 8, 1988; and be it further

*Resolved,* That the Chief Clerk of the Assembly transmit copies of this resolution to the Chair of the Sonoma County Commission on the Status of Women and to the Chair of the California Commission on the Status of Women for distribution to appropriate organizations.

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## RESOLUTION CHAPTER 14

Assembly Concurrent Resolution No. 106—Relative to Earthquake Preparedness Month.

[Filed with Secretary of State March 21, 1988 ]

WHEREAS, Most seismologists predict that there will be a major earthquake somewhere in California in the coming decades; and

WHEREAS, A primary means for minimizing the risks of injury and loss of life and damage to property is to make the public aware of all possible earthquake safety measures and precautions; and

WHEREAS, A cooperative effort between the Legislature and the state and local governments will be most effective in developing that public awareness; now, therefore, be it

*Resolved by the Assembly of the State of California, the Senate thereof concurring,* That the Legislature hereby proclaims the month of April 1988 as California Earthquake Preparedness Month and urges all Californians to engage in appropriate earthquake safety-related activities during that month; and be it further

*Resolved,* That the Chief Clerk of the Assembly transmit copies of this resolution to the Governor, the Seismic Safety Commission, the Office of Emergency Services, the Board of Supervisors of the County of Los Angeles, and the City Council of the City of Los Angeles.

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## RESOLUTION CHAPTER 15

Senate Concurrent Resolution No. 58—Relative to the Seismic Safety Commission.

[Filed with Secretary of State March 30, 1988.]

WHEREAS, Earth scientists forecast that there will be a major earthquake somewhere in California in coming decades; and

WHEREAS, With each passing year, the potential for an earthquake-caused catastrophe increases as the time lengthens since the last great earthquake, and earthquakes can cause and have caused enormous loss of life, injury, and destruction of property in California; and

WHEREAS, The Legislature and the Governor, recognizing that these effects can be lessened, enacted the California Earthquake Hazards Reduction Act establishing the goal to reduce statewide earthquake hazards significantly by the end of the century; and

WHEREAS, The act established a coordinated program to be known as the California Earthquake Hazards Reduction Program to implement activities to meet this goal by preparing and annually revising a five-year program; and

WHEREAS, The first five-year program, *California at Risk: Reducing Earthquake Hazards 1987–1992*, prepared in September 1986, specified initiatives to be carried out during the first year by the following agencies: Seismic Safety Commission, Office of Emergency Services, Office of the State Architect, Office of Statewide Health Planning and Development, Department of Insurance, Department of Finance, Department of Conservation, Department of Housing and Community Development, Building Standards Commission, and Department of Education; and

WHEREAS, The success in reducing earthquake hazards requires the full and active support of all of these state agencies; and

WHEREAS, One and one-half years have passed since the five-year program was issued; now, therefore, be it

*Resolved by the Senate of the State of California, the Assembly thereof concurring,* That the Members request each of the agencies named above to review their progress in carrying out the initiatives detailed in *California at Risk: Reducing Earthquake Hazards 1987–1992* and prepare a progress report describing needed specific measurable objectives and resources to carry out the initiatives according to the schedule in *California at Risk*; and be it further

*Resolved,* That copies of this report be transmitted by April 15, 1988, to the Governor, the President pro Tempore of the Senate, the Speaker of the Assembly, the Chairs of the Senate Committees on Toxics and Public Safety Management, Budget and Fiscal Review, and Appropriations, the Assembly Committees on Local Government, Governmental Organization, and Ways and Means, and the Joint Committee on Fire, Police, Emergency, and Disaster Services; and be it further

*Resolved,* That the Members further request each of the agencies named above to prepare an annual progress report and submit it to each of the offices named above on the first Monday of each year until the year 2000; and be it further

*Resolved,* That the Department of Insurance and the Office of Emergency Services shall report on the problems caused after the

Whittier earthquake for those persons who held earthquake insurance policies and were unable to receive disaster aid because of their insurance coverage, and make recommendations for preventing the recurrence of similar problems; and be it further

*Resolved,* That the Secretary of the Senate transmit copies of this resolution to the Governor and to each of the agencies named in the fifth "WHEREAS" clause above.

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## RESOLUTION CHAPTER 16

Senate Concurrent Resolution No. 84—Relative to Pacific Rim Awareness Week.

[Filed with Secretary of State March 30, 1988.]

WHEREAS, Citizens of California are cognizant of the powerful role Pacific Rim countries play upon the world economy and in particular the California economy; and

WHEREAS, In this period of fluctuating economic growth, all avenues of investment must be explored to ensure a continued strong fiscal outlook and international business presence for the State of California; and

WHEREAS, It is vital that the business people of California become fully aware of the wealth of investment and trade opportunities that are available to them throughout the Pacific Rim; and

WHEREAS, Pacific Rim Awareness Week, in conjunction with Export Pacific '88, a conference-exhibition on Pacific Rim investment and trade opportunities, will help bridge gaps between California business people and the Pacific Rim by educating participants on how to successfully access those trade opportunities; and

WHEREAS, Various events during Pacific Rim Awareness Week are aimed at acquainting large companies with the Pacific Rim, and introducing to small business people the investment possibilities open to them in the Pacific Rim; now, therefore, be it

*Resolved by the Senate of the State of California, the Assembly thereof concurring,* That the Legislature of the State of California declares the week commencing Monday April 4, 1988, as Pacific Rim Awareness Week; and be it further

*Resolved,* That the Secretary of the Senate transmit copies of this resolution to the coordinators of Pacific Rim Awareness Week.

## RESOLUTION CHAPTER 17

Senate Joint Resolution No. 27—Relative to child support.

[Filed with Secretary of State March 30, 1988.]

WHEREAS, From 1971 through 1987, California permitted orders for the modification or revocation of child support to be retroactive, pursuant to subdivision (a) of Section 4700 of the Civil Code, which stated in part, "... to the date of the filing of the notice of motion or order to show cause therefor, or to any subsequent date."; and

WHEREAS, Since October 21, 1986, the federal law (42 U.S.C. Sec. 666(9) (C)) has permitted retroactivity only to the date of notice; and

WHEREAS, In 1987 California, in order to continue to receive federal funding for its child support collection activities, amended Section 4700 of the Civil Code to comply with this federal mandate; this amendment was operative January 1, 1988; and

WHEREAS, Divorce is relegating thousands of children to a diminished standard of living and often even to a poverty-level existence; and

WHEREAS, Children residing with their mothers alone are almost five times as likely to be subsisting below the poverty level as are children in two-parent families; and

WHEREAS, Despite legislative efforts to combat the problem, competent data suggest that in California child support awards remain inadequate; and

WHEREAS, For example, the January-March 1986 Quarterly Report of the Child Support Management System, submitted to the Governor by the California Department of Social Services, shows that the average monthly child support payment collected by district attorney's offices to be $159.74 ($151.22 in AFDC cases and $167.69 in non-AFDC cases); and

WHEREAS, The California Legislature believes that 42 U.S.C. Section 666(9) (C) is potentially injurious to custodial parents and their children in that under its provisions they are prohibited from receiving upward modifications in child support at the earliest possible date; and

WHEREAS, The Legislature of the State of California is concerned that the federal statute will encourage some obligor parents to avoid process servers and thereby avoid increased child support payments; and

WHEREAS, This situation would be harmful not only to supported families but also to society as a whole, which must assume the burden of supporting children whose parents do not fulfill their obligations; now, therefore, be it

*Resolved by the Senate and Assembly of the State of California, jointly,* That the Legislature of the State of California memorializes the President and the Congress of the United States to permit the

individual states to determine the appropriate date for retroactive modification or revocation of child support orders; and be it further

*Resolved,* That the Secretary of the Senate transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, and to each Senator and Representative from California in the Congress of the United States.

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## RESOLUTION CHAPTER 18

Assembly Concurrent Resolution No. 87—Relative to the San Joaquin River Parkway.

[Filed with Secretary of State March 30, 1988 ]

WHEREAS, The San Joaquin River Committee, formed in 1985, is working toward development of a San Joaquin River Parkway along the San Joaquin River in Fresno and Madera Counties between Friant Dam and Highway 99; and

WHEREAS, The San Joaquin River Parkway project will be a major asset to the community and the region, as well as helping to protect the area's fish and wildlife resources; and

WHEREAS, The American River Parkway, which can be pointed to as an example to be followed, is a tremendous asset to Sacramento and surrounding communities and provides recreation opportunities to six million people each year; and

WHEREAS, The San Joaquin River Parkway will make the river accessible to the public and will secure the valuable resources of the river for use by future generations; and

WHEREAS, The San Joaquin River Parkway will improve the quality of life of the residents of Fresno and Madera Counties and surrounding communities by providing recreational opportunities, open space, and wildlife preserves, as well as be a major asset to the state as a whole; and

WHEREAS, The realization of the San Joaquin River Parkway will take maximum cooperation between local entities, citizens groups, and the state and federal governments; now, therefore, be it

*Resolved by the Assembly of the State of California, the Senate thereof concurring,* That the San Joaquin River Committee, the City of Fresno, the County of Fresno, the County of Madera, other affected local agencies, and appropriate state and federal agencies are requested to devote effort to develop and implement a plan and management program to create and maintain the San Joaquin River Parkway; and be it further

*Resolved,* That the above entities explore and identify all possible sources of funding for the project, including state park and recreation bond funds, local park and recreation grants, the

California Environmental License Plate Fund, state wildlife conservation funds, and appropriate federal funds; and be it further

*Resolved,* That the Clerk of the Assembly transmit copies of this resolution to the San Joaquin River Committee, the City of Fresno, the County of Fresno, the County of Madera, and other appropriate local, state, and federal agencies.

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## RESOLUTION CHAPTER 19

Assembly Joint Resolution No. 58—Relative to a memorial to women Vietnam veterans.

[Filed with Secretary of State March 30, 1988 ]

WHEREAS, Over 10,000 military and civilian women served our country in a brave and selfless manner in Vietnam; and

WHEREAS, Their unique, valuable, and extremely laudable contributions to American efforts during that conflict have gone unnoticed by many people in our nation; and

WHEREAS, The nonprofit Vietnam Women's Memorial Project, Inc., was founded in 1984 to educate the public about women's military service in Vietnam and to construct a memorial honoring their accomplishments; and

WHEREAS, The proposed placement of the memorial - a lifesize statue - on the grounds of the nation's Vietnam Veterans Memorial received the support of the Secretary of the Interior and the Director of the National Park Service after extensive consultation with veterans and other interested groups; and

WHEREAS, Support has also come from the American Legion, Veterans of Foreign Wars, Vietnam Veterans of America, the American Nurses Association, Disabled American Veterans, National League of Nursing, Jewish War Veterans, American Federation of Nurse & Health Professionals/AFT and others; and

WHEREAS, Despite the extent of this support for the memorial, the federal Fine Arts Commission has disapproved placement of the statue because of its belief that the existing statue depicting three male soldiers also represents the contributions of women, and that if a women veterans statue were allowed, it would be necessary to add other statues such as one for the Canine Corps; and

WHEREAS, A women veterans memorial is most appropriate to show this country's appreciation and recognition for their bravery, honor, and unparalleled commitment to service; now, therefore, be it

*Resolved by the Assembly and Senate of the State of California, jointly,* That the California Legislature respectfully memorializes the President and Congress of the United States to support and enact legislation for the erection of an appropriate memorial statue

honoring women Vietnam veterans on the grounds of the Vietnam Veterans Memorial; and be it further

*Resolved,* That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, to each Senator and Representative from California in the Congress of the United States, and to the federal Fine Arts Commission.

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## RESOLUTION CHAPTER 20

Assembly Concurrent Resolution No. 42—Relative to the California Law Revision Commission.

[Filed with Secretary of State April 6, 1988 ]

WHEREAS, The California Law Revision Commission is authorized to study only topics set forth in the calendar contained in its report to the Governor and the Legislature, which are thereafter approved for its study by concurrent resolution of the Legislature, and topics which have been referred to the commission for the study by concurrent resolution of the Legislature; now, therefore, be it

*Resolved by the Assembly of the State of California, the Senate thereof concurring,* That, pursuant to Section 8293 of the Government Code, the Legislature refers to the California Law Revision Commission for its study the topic of whether the law relating to the payment and the shifting of attorneys' fees between litigants should be revised; and be it further

*Resolved,* That the Chief Clerk of the Assembly transmit a copy of this resolution to the California Law Revision Commission.

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## RESOLUTION CHAPTER 21

Assembly Concurrent Resolution No. 66—Relative to California Poets in the Schools.

[Filed with Secretary of State April 6, 1988 ]

WHEREAS, California Poets in the Schools began in 1964 at San Francisco State University as the Pegasus Project, placing poets in classrooms in the San Francisco Bay area to educate children about the literary arts through both the reading and writing of poetry; and

WHEREAS, In the 1970's, California Poets in the Schools became a statewide program, today serving schools in 27 counties from Humboldt to San Diego, and has introduced half a million students to creative writing by CPITS poets; and

WHEREAS, CPITS Poet-Consultants are committed, professional,

published writers who have been thoroughly trained in the art of teaching poetry to children, and hail from diverse cultural and ethnic heritages and from all walks of life, and serve as living models of commitment to imaginative language and creativity and are thus ideally suited to sharing the insight of artists with students; and

WHEREAS, California Poets in the Schools is the largest writers-in-schools program in the nation, is one of the only artists-in-schools programs administered by practicing artists, is community-based, and provides poets that reflect each community's mores and values, whether serving populations that are urban, minority, suburban or rural; now, therefore, be it

*Resolved by the Assembly of the State of California, the Senate thereof concurring,* That California Poets in the Schools be commended for its endeavor to provide students with language as a living tool to unearth and give voice to the subtle feelings and fears that pervade young people; for affirming the value of the creative process; for assisting them in the cultivation of sensitivity and intellectual discipline; for sharing the cultural diversity of California; for encouraging students to experience their own humanity and its expression through the imagination; for fostering an appreciation of self-expression; and for nurturing that intimate voice of the individual and the overlooked qualities of the heart; and be it further

*Resolved,* That the California Arts Council be urged to continue to fund California Poets in the Schools at the highest level possible, commensurate with its budget and the funding needs of other arts programs, and continue to act as an advocate for the program before other funding agencies and sources such as the National Endowment for the Arts; and be it further

*Resolved,* That the Chief Clerk of the Assembly transmit copies of this resolution to the directors of California Poets in the Schools, the California Arts Council, and The National Endowment for the Arts.

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## RESOLUTION CHAPTER 22

Assembly Concurrent Resolution No. 78—Relative to nongovernmental associations for accreditation of postsecondary educational institutions.

[Filed with Secretary of State April 6, 1988 ]

WHEREAS, The California state government has increasingly turned to nongovernmental accrediting associations for assistance in assuring and increasing the quality of educational programs offered by public, independent, and private postsecondary institutions; and

WHEREAS, Nongovernmental accrediting associations have been given increasing responsibility to monitor independent and private institutions to assure their compliance with minimum standards for

consumer protection, educational quality, and financial stability; and

WHEREAS, California relies upon accrediting associations to identify institutions eligible to participate in state and federally funded student assistance programs; and

WHEREAS, California policy relies upon accrediting associations to identify both (1) institutions which offer professional training programs of sufficient quality that they can be relied on in the licensure of practitioners and (2) teacher education programs which are considered to be of sufficient quality to merit review by the State Commission on Teacher Credentialing; and

WHEREAS, Accrediting associations are expected to adopt policies and practices which are responsive to the public interest and consistent with public policy; now, therefore, be it

*Resolved by the Assembly of the State of California, the Senate thereof concurring,* That the California Postsecondary Education Commission is requested to conduct a study of the operations and procedures of accrediting associations which accredit postsecondary institutions operating pursuant to either Section 94310.1 or subdivision (c) of Section 94311 of the Education Code. This study shall consider, but not be limited to, the following issues:

(1) What are the purposes of nongovernmental accreditation, as stated by each accrediting association.

(2) What are the state's responsibilities in the licensure and oversight of postsecondary institutions which operate in California? Which, if any, of these responsibilities has been delegated to nongovernmental accreditation associations? Should the state assume any or all of the responsibilities currently delegated to nongovernmental accrediting associations?

(3) What criteria should be used by the state to assess the capacity of the accrediting associations to act in the public interest and consistent with public policy?

(4) Is the current level of state monitoring of nongovernmental accrediting associations effective, and if not, how should the monitoring be strengthened?

(5) What is the process by which members of the accrediting commission are selected? Does this process provide a mechanism for the involvement of faculty, administrators, and public representatives in the selection of accreditation commissioners?

(6) How are the operations of each accrediting association funded?

(7) What issues are considered during the public sessions of the meetings of each accreditation association? What issues are considered during the executive sessions of these meetings? To what extent is the public business of the accrediting association conducted in public; and be it further

*Resolved,* That the Executive Director of the California Postsecondary Education Commission, in the preparation of this study, shall establish an advisory committee composed of, but not necessarily limited to, representatives of California institutions

accredited by the National Home Study Council, by the National Association of Trade and Technical Schools, by the Association of Independent Schools and Colleges, and by the Western Association of Schools and Colleges. The advisory committee shall assist in the identification of issues to be included in this study and shall have the opportunity to review and comment on a preliminary draft of the commission's report; and be it further

*Resolved,* That the California Postsecondary Education Commission shall complete the study prior to February 15, 1989, and transmit the results to the education policy committee of the Assembly and of the Senate and the budget committee of the Assembly and of the Senate; and be it further

*Resolved,* That the Chief Clerk of the Assembly transmit a copy of this resolution to the California Postsecondary Education Commission.

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## RESOLUTION CHAPTER 23

Senate Concurrent Resolution No. 83—Relative to Kurt Waldheim.

[Filed with Secretary of State April 11, 1988.]

WHEREAS, The International Historians' Commission concluded that Austrian President Kurt Waldheim had intimate knowledge of Nazi atrocities; and

WHEREAS, The commission specifically reported that despite his strong denials, Waldheim was "unquestionably" a member of the Nazi Student Federation; and

WHEREAS, Waldheim's assertion, repeated as late as January 28, 1988, that he had no idea of the fate awaiting the deportation of Greek Jews was labeled by the commission as "unbelievable"; and

WHEREAS, Although Waldheim denied in writing that he had served in an army unit linked with war crimes against partisans operating in the Balkans and with the deportation of Greek Jews, the commission found "... there is enough evidence to show that the Army in general, and Army Group E (in which Waldheim served) in particular, was involved in the deportation of Jews ..."; and

WHEREAS, Despite Waldheim's claim that it "would have been suicide" to resist orders, the commission reported that "latest research has turned up no example of" a soldier being punished for "refusing to take part in the murder of civilians" and cited two concrete examples of successful resistance by German officers in Greece; and

WHEREAS, The commission stated that Waldheim "repeatedly assisted in connection with illegal actions and thereby facilitated their execution"; and

WHEREAS, The victims of these illegal actions were tens of

thousands of Greeks, Italians, and Yugoslavs, both Christians and Jews; and

WHEREAS, Despite Waldheim's claim that "knowledge is not a crime," the commission, citing the 1946 Nuremberg ruling on passive participation in war crimes, stated, "In general a certain degree of guilt can be incurred by the mere knowledge of human rights violations at one's own post, if the person in question -- through a lack of strength or courage -- fails in his human duty to intervene against injustice"; and

WHEREAS, The United States Department of State, in a most extraordinary decision, placed a Head of State on its Watch List, thereby denying Kurt Waldheim admission to this country; now, therefore, be it

*Resolved by the Senate of the State of California, the Assembly thereof concurring,* That the California State Legislature calls upon Kurt Waldheim, President of Austria, to resign his position; and be it further

*Resolved,* That the Secretary of the Senate transmit copies of this resolution to Kurt Waldheim and to the Chancellor of Austria.

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## RESOLUTION CHAPTER 24

Assembly Concurrent Resolution No. 105—Relative to Holocaust Memorial Week.

[Filed with Secretary of State April 13, 1988.]

WHEREAS, More than 40 years have passed since the tragic events which we now call the Holocaust transpired in which the dictatorship of Nazi Germany murdered six million Jews as part of a systematic program of genocide; and

WHEREAS, The Holocaust was a tragedy of proportions the world had never before witnessed; and

WHEREAS, We must be reminded of the reality of the Holocaust's horrors so they will never be repeated; and

WHEREAS, The United States Holocaust Memorial Council has designated the week of April 10 through April 16, 1988, as Holocaust Memorial Week-Days of Rememberance for Victims of the Holocaust; and

WHEREAS, April 14, 1988, is Yom HaSho'ah, and it has been designated internationally as a day of rememberance for victims of the Holocaust; now, therefore, be it

*Resolved by the Assembly of the State of California, the Senate thereof concurring,* That the week of April 10 through April 16, 1988, is proclaimed as California Holocaust Memorial Week, and that Californians are urged to observe appropriately these Days of Rememberance for Victims of the Holocaust; and be it further

*Resolved,* That the Chief Clerk of the Assembly transmit copies of this resolution to the author for appropriate distribution.

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## RESOLUTION CHAPTER 25

Assembly Joint Resolution No. 33—Relative to imported roses.

[Filed with Secretary of State April 15, 1988.]

WHEREAS, Roses from countries such as Colombia, Mexico, the Netherlands, and Israel are much cheaper than the domestically grown blooms because those governments subsidize their rose industries; and

WHEREAS, Local growers cannot compete with goods subsidized by a foreign government; and

WHEREAS, Importers of fresh cut roses now pay a United States tariff equal to 8 percent of the value of the roses, growers sending their blooms to the European Economic Community must pay a tariff in the summer equal to 24 percent of the value of the roses and related shipping costs, and the tariff in the winter is 17 percent; and

WHEREAS, The higher tariffs in Europe have created a "one-way street" that heads straight to the United States; and

WHEREAS, Clearly we are effectively barred from using the European Economic Community as a marketplace for United States grown merchandise; and

WHEREAS, Foreign blooms now comprise 30 percent of the United States rose market, and, from 1985 to 1986, imports increased 24 percent to 215 million roses; and

WHEREAS, If this trend is not curbed by legislation, we will see many casualties among the rose growers of this country, including those of California; and,

WHEREAS, It is in the best interest of the United States and the European Economic Community to have equal tariff schedules on roses in order to promote open markets and international trade; now, therefore, be it

*Resolved by the Assembly and Senate of the State of California, jointly,* That the Legislature of the State of California urges the United States Trade Representative to actively pursue negotiations with the European Economic Community to reduce their tariff schedules on imported roses to those consistent with the United States; and be it further

*Resolved,* That barring substantial tariff schedule reductions on roses by the European Economic Community, the Legislature of the State of California memorializes the President to support and the Congress of the United States to enact HR 750, also known as the Rose Equity Bill, in the interest of preserving the American rose growers' market; and be it further

*Resolved,* That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, to the United States Trade Representative, to the Speaker of the House of Representatives, and to each Senator and Representative from California in the Congress of the United States.

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## RESOLUTION CHAPTER 26

Assembly Joint Resolution No. 79—Relative to emergency drought relief.

[Filed with Secretary of State April 15, 1988.]

WHEREAS, California's beef production industry ranks as the second largest agricultural commodity statewide, with sales amounting to $1.4 billion annually; and

WHEREAS, The California sheep, lamb, and wool industry ranks second nationally, with an annual cash value exceeding $63 million; and

WHEREAS, California is experiencing sustained drought conditions which have existed since last fall; and

WHEREAS, Significant areas of the state have received inadequate winter moisture, with some areas receiving as low as 41 percent of normal rainfall; and

WHEREAS, These drought conditions have forced cattle and sheep producers to supplement pasture feed with more expensive nonpasture feedstuffs; now, therefore, be it

*Resolved by the Assembly and Senate of the State of California, jointly,* That the California Legislature respectfully memorializes the President and Congress of the United States to direct the Agricultural Stabilization and Conservation Service in the United States Department of Agriculture to act expeditiously in implementing its emergency livestock feed program and other applicable disaster relief programs to provide relief to California cattle and sheep producers experiencing drought conditions; and be it further

*Resolved,* That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, to each Senator and Representative from California in the Congress of the United States, to the Secretary of Agriculture, and to the Administrator of the Agricultural Stabilization and Conservation Service.

## RESOLUTION CHAPTER 27

Assembly Concurrent Resolution No. 96—Relative to John Muir.

[Filed with Secretary of State April 18, 1988 ]

WHEREAS, John Muir was the founding father of the conservation efforts which resulted in our national park system, which today has grown to almost 80 billion acres; and

WHEREAS, He began his conservation efforts in the 1880s when the social consciousness of America concentrated on the Industrial Revolution and its expansionist philosophies which would have led to the devastation of the natural environment; and

WHEREAS, He popularized the concept of conservation and land use and was instrumental in changing the direction of this country toward socially beneficial goals which resulted in the United States becoming a leading force that worked on behalf of global unity and the preservation of the environment; and

WHEREAS, He was cofounder and lifetime president of the Sierra Club, a private, nonprofit organization that acts as an advocate on environmental issues and is known worldwide; and

WHEREAS, John Muir was an outstanding figure in the history of the United States and of California and was subsequently named Greatest Californian by the California Historical Society in 1976; and

WHEREAS, He was an accomplished author whose writings about wildlands and wildlife are still widely read and treasured; and

WHEREAS, He is honored by more geographical namesakes than any other person in the State of California; and

WHEREAS, Despite his death 70 years ago, John Muir still holds a preeminent place in the hearts and minds of many Californians; and

WHEREAS, Generations of Americans have reveled in the beauty and magnificence of national parks such as Yosemite, Sequoia, the Kings Canyon, the Grand Canyon, and Petrified Forest, all of which were set aside at the urging of Muir; now, therefore, be it

*Resolved by the Assembly of the State of California, the Senate thereof concurring,* That April 21, 1988, is hereby proclaimed by the Legislature as John Muir Day; and be it further

*Resolved,* That the Governor is requested to make a similar proclamation; and be it further

*Resolved,* That this measure be adopted with urgency as this April 21st marks the 150th anniversary of the birth of John Muir who was born in 1838 on that date; and be it further

*Resolved,* That April 21st of every year after this resolution is enacted be designated as a commemorative holiday to observe the importance that an ecologically sound natural environment plays in the quality of life of us all and indeed the future of our own existence; and be it further

*Resolved,* That the observance of John Muir Day emphasize John

Muir's significant contribution to the fostering of such an awareness and the indelible mark left on California and the world by him; and be it further

*Resolved,* That, in their observance, public schools endeavor to include special studies in their curriculum and public agencies providing services to the public endeavor to include special programs in their activities to deal with the contributions of John Muir; and be it further

*Resolved,* That the Chief Clerk of the Assembly transmit a copy of this resolution to the Governor.

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## RESOLUTION CHAPTER 28

Assembly Concurrent Resolution No. 95—Relative to Voter Registration Week.

[Filed with Secretary of State April 18, 1988.]

WHEREAS, The exercise of the franchise is not only a right, but an obligation, of the citizenry of our democratic society; and

WHEREAS, Only by registering to vote can a citizen exercise the right, and fulfill the obligation, of making his or her voice heard at an election; and

WHEREAS, When a large portion of the voting age public fails to vote, the fundamental principle of democratic participation in government is undermined; and

WHEREAS, One of the greatest challenges facing our society is the transferrance to our young people of an appreciation for our democratic system of government; and

WHEREAS, On June 7, 1988, Californians will go to the polls to select candidates for President of the United States, as well as representatives to state, local, and national levels of government; and

WHEREAS, Secretary of State March Fong Eu and Superintendent of Public Instruction Bill Honig are sponsoring "You've Got the Power. Register and Vote Week" in California schools during the week of April 18, 1988; and

WHEREAS, "You've Got the Power. Register and Vote Week" will include activities to encourage students at all grade levels to talk and think about democracy—and then do something about it by (1) registering to vote if they turn 18 on or before election day, (2) pledging to register to vote once they turn 18, and (3) registering their teachers, parents, and family members to vote; and

WHEREAS, 1988 marks only the 5th time since 1971, when the 26th Amendment extended the right to vote to 18-20 year olds, that high school seniors will be able to cast their votes for President; and

WHEREAS, Voter turnout of 18-20 year olds is the lowest of any age group; and

WHEREAS, "You've Got the Power. Register and Vote Week" in the schools will involve teachers, parents, and students at all grade levels in activities to encourage understanding and appreciation of the underlying ideals and principles of a free and democratic society; now, therefore, be it

*Resolved by the Assembly of the State of California, the Senate thereof concurring,* That the California Legislature hereby proclaims the week of April 18, 1988, as "You've Got the Power. Register and Vote Week"; and be it further

*Resolved,* That the California Legislature supports "You've Got the Power. Register and Vote Week" in California schools, and encourages all school officials, election officials, parents, teachers, and students to participate in the week's activities; and be it further

*Resolved,* That the California Legislature urges the Secretary of State and all election officials to encourage voter registration by the eligible California citizens during "You've Got the Power. Register and Vote Week"; and be it further

*Resolved,* That the Chief Clerk of the Assembly transmit a copy of this resolution to the Governor, the Superintendent of Public Instruction, the Secretary of State, and to each county clerk.

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## RESOLUTION CHAPTER 29

Assembly Joint Resolution No. 27—Relative to Jewish citizens of the Union of Soviet Socialist Republics.

[Filed with Secretary of State April 18, 1988 ]

WHEREAS, The right to travel freely is a fundamental human right, and Jewish citizens of the Soviet Union deserve fair consideration of their visa applications and freedom from harassment and threats for seeking to exercise that right; and

WHEREAS, It has come to the attention of the Legislature of the State of California that, despite the Soviet Union's laudable recent releases of some notable political prisoners, many more persons are still imprisoned for their political beliefs, and that approximately 400,000 Jews who seek to emigrate are denied that basic human right by the Soviet Union which in January allowed only 98 Jewish refuseniks to emigrate; and

WHEREAS, Soviet citizens have suffered harassment and injuries when they have demonstrated for their right to travel, the release of political prisoners, and other vital human rights; now, therefore, be it

*Resolved by the Assembly and Senate of the State of California, jointly,* That the Legislature of the State of California urges the government of the Union of Soviet Socialist Republics to free all of its political prisoners, to allow the emigration of all of its citizens who

duly apply for that right, and to end the harassment of Soviet citizens who demonstrate for their rights; and be it further

*Resolved,* That the Legislature urges the President of the United States and other federal officials and Members of Congress to refrain from publicly or privately praising the Soviet Union for its "glasnost" policy that has permitted only a few dissidents and refuseniks to go free until the Union of Soviet Socialist Republics takes substantial and permanent steps to free all of its political prisoners, allow the emigration of all of its citizens who duly apply for that right, and end the harassment of Soviet citizens who demonstrate for their rights; and be it further

*Resolved,* That the Legislature urges the President of the United States and other federal officials and Members of Congress to use all appropriate diplomatic channels in every meeting, contact, or communication between American and Soviet officials to press Soviet authorities to take the actions urged by this resolution; and be it further

*Resolved,* That the Chief Clerk of the Assembly transmit copies of this resolution to the President, Vice President, and Secretary of State of the United States, to the Speaker of the United States House of Representatives, to each Senator and Representative from California in the Congress of the United States, to the Ambassador to the United States from the Union of Soviet Socialist Republics, and to the Consul General of the Union of Soviet Socialist Republics headquartered in San Francisco.

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## RESOLUTION CHAPTER 30

Assembly Concurrent Resolution No. 120—Relative to proclaiming Southeast Asia Genocide Remembrance Week.

[Filed with Secretary of State April 21, 1988.]

WHEREAS, The Genocide which is occurring in the Southeast Asian countries of Cambodia, Vietnam, and Laos following their fall to Communist forces in April 1975 is a human tragedy of immense proportions; and

WHEREAS, After the fall of Cambodia, millions of Cambodians were forcibly taken from their homes and put in concentration camps set up by the Khmer Rouge; and

WHEREAS, The Khmer Rouge executed all former government officials, military personnel, civil servants, professionals, and other educated persons; and

WHEREAS, Millions of Cambodians died of starvation in these concentration camps; and

WHEREAS, After the fall of South Vietnam to the Communists in 1975, the Communists began to methodically execute former

government officials, civil servants, and military personnel; and

WHEREAS, Tens of thousands of Vietnamese patriots have been executed since 1975; and

WHEREAS, The Communist government of Laos is reportedly conducting chemical warfare against indigenous Hmong tribesmen; and

WHEREAS, The Surgeon General of the United States Department of the Army conducted an exhaustive study which confirmed the chemical warfare being conducted by the Communist government of Laos; and

WHEREAS, Amnesty International has determined that between 1.2 million and 2.5 million Cambodian, Vietnamese, and Laotian people have perished in this genocide since 1975; and

WHEREAS, The Southeast Asia Genocide is continuing today in these countries, as evidenced by the thousands of refugees fleeing each month; and

WHEREAS, The world must be made aware of the terrible reality of the Southeast Asia Genocide so that it will be stopped; now, therefore, be it

*Resolved by the Assembly of the State of California, the Senate thereof concurring,* That the week of April 24 through April 30, 1988, is hereby proclaimed Southeast Asia Genocide Remembrance Week; and be it further

*Resolved,* That the Legislature urges all Californians to learn more about the Southeast Asia Genocide and to participate in the activities of Southeast Asia Genocide Remembrance Week; and be it further

*Resolved,* That the Chief Clerk of the Assembly transmit a copy of this resolution to the author for appropriate distribution.

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## RESOLUTION CHAPTER 31

Assembly Joint Resolution No. 64—Relative to immigration.

[Filed with Secretary of State April 28, 1988.]

WHEREAS, The Immigration and Reform and Control Act (IRCA), which brought the most sweeping change in United States immigration laws for the last 30 years, was signed into law on November 6, 1986; and

WHEREAS, The act has two major provisions: sanctions against employers who knowingly hire undocumented workers; and legalization of undocumented residents who can establish continuous residency in the United States since 1982 and satisfy a number of other eligibility requirements; and

WHEREAS, Under the act, people who have arrived in the United States before January 1, 1982, and have lived here continuously since then have until May 4, 1988, to apply for legal residence, except that

agricultural workers have an extra six months to apply for legal residence; and

WHEREAS, Even though over 900,000 persons are expected to apply for legalization, the Immigration and Naturalization Service estimates at least 1.7 million to be eligible legalized aliens residing in California; and

WHEREAS, Limited public information has hampered the application of many who are qualified to apply and has provided little information for those eligible to make informed and wise decisions; and

WHEREAS, With the application deadline of May 4, 1988, approaching, and with a significant majority of eligible persons having yet to apply for legalization, many persons may not get the chance to establish a place for themselves in our country of refuge and opportunity; and

WHEREAS, Failure to provide an adequate legalization program may perpetuate the existence of a large underclass of undocumented immigrants and continue to exact enormous social costs associated with such a large number of second class residents in our state and nation; and

WHEREAS, California will receive federal funds to pay for certain services for this population based on the number of eligible legalized aliens who apply; now, therefore, be it

*Resolved by the Assembly and Senate of the State of California, jointly,* That the Legislature of the State of California respectfully memorializes the Congress and the President of the United States to enact legislation to extend the legalization deadline to May 1989; and be it further

*Resolved,* That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, to each Senator and Representative from California in the Congress of the United States, and to the Senate and House Judiciary Committees.

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## RESOLUTION CHAPTER 32

Assembly Concurrent Resolution No. 109—Relative to the National Day of Prayer.

[Filed with Secretary of State April 29, 1988.]

WHEREAS, Deep religious beliefs inspired many of the early settlers of our country, providing them with the strength, character, convictions, and faith necessary to withstand great hardship and danger in this new and rugged land; and

WHEREAS, These shared beliefs helped forge a sense of common purpose among the widely dispersed colonies—a sense of community

which laid the foundation for the spirit of nationhood that was to develop in later decades; and

WHEREAS, Whether at the landing of our forebears in New England and Virginia, the ordeal of the Revolutionary War, the stormy days of binding the 13 Colonies into one country, the Civil War, or other moments of trial over the years, we have turned to God in prayer for His help; and

WHEREAS, As we crossed and settled a continent, built a nation in freedom, and endured war and critical struggles to become the leader of the Free World and a sentinel of liberty, we repeatedly turned to our maker for strength and guidance in achieving the awesome tasks before us; and

WHEREAS, The attitudes we have as people united together, caring for each other, committed to freedom, holding high the dignity of each person, we practice through prayer which we derived from our religious heritage; and

WHEREAS, Since April 17, 1952, the recognition of a particular day each year as a National Day of Prayer has become part of the traditions we have as a people and is a day on which we are invited to turn to God in prayer and meditation in places of worship, in groups, and as individuals; and

WHEREAS, Ronald Reagan, President of the United States of America, has proclaimed Thursday, May 5, 1988, as "National Day of Prayer"; now, therefore, be it

*Resolved by the Assembly of the State of California, the Senate thereof concurring,* That the Legislature hereby recognizes Thursday, May 5, 1988, as "National Day of Prayer" and calls upon the people of California, each according to his or her faith, to gather together on that day in homes and places of worship to pray for unity of the hearts of all mankind; and be it further

*Resolved,* That the Chief Clerk of the Assembly transmit a suitably prepared copy of this resolution to the author for appropriate distribution.

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## RESOLUTION CHAPTER 33

Assembly Concurrent Resolution No. 143—Relative to Barrier Awareness Day 1988.

[Filed with Secretary of State April 29, 1988.]

WHEREAS, Four out of five Americans will experience some form of disability during their lifetime, and there are currently 37 million Americans who are disabled; and

WHEREAS, The problems that exist for individuals with disabilities are of concern not only to them, but also to their families and schools, and affect the economics of their communities and the

nation; and

WHEREAS, All people must direct their efforts toward protecting and improving the quality of life for disabled individuals; and

WHEREAS, A person who is not disabled cannot conceive of the full implication of living with a disability, and this lack of understanding negatively impacts disabled people in all facets of their lives; and

WHEREAS, Historically, it has been far too easy for the general population to ignore the problems of disabled people with regard to barriers, and the National Barrier Awareness Foundation was established to increase the public's awareness of the architectural, attitudinal, and communicative barriers encountered daily by disabled individuals; and

WHEREAS, First held nationwide on May 7, 1986, Barrier Awareness Day was developed to bring the public to the realization that people with disabilities must be allowed to compete on equal terms in our society; now, therefore, be it

*Resolved by the Assembly of the State of California, the Senate thereof concurring,* That May 7, 1988, be recognized as "Barrier Awareness Day 1988" in the State of California, and that all citizens are urged to take part in programs and activities scheduled for that day and to use the information and sensitivity they gain to remove barriers impeding disabled individuals and to work to improve the quality of life for persons with disabilities in our community; and be it further

*Resolved,* That the Chief Clerk of the Assembly transmit a copy of this resolution to the National Barrier Awareness Foundation.

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## RESOLUTION CHAPTER 34

Assembly Concurrent Resolution No. 144—Relative to Mexican-American Cultural Awareness Week.

[Filed with Secretary of State April 29, 1988 ]

WHEREAS, California has strong cultural and historical ties to Mexico dating back hundreds of years; indeed, Mexican influences on California's culture can be seen throughout the state; and

WHEREAS, A significant percentage of Californians are of Mexican descent; and

WHEREAS, California retains strong economic, political, and cultural ties to its sister country; and

WHEREAS, May 5th is the anniversary of Mexico's victorious battle over the French in 1862 and memorializes the defeat of French intervention which led to true Mexican independence; and

WHEREAS, Cinco de Mayo has always been a day of celebration for the Mexican-American and Chicano, representing unity,

strength, and pride of heritage; and

WHEREAS, The Mexican-American citizen has contributed much to the development of this state and country; and

WHEREAS, Cinco de Mayo celebrations are planned in communities all over California reaffirming ties between cultures; now, therefore, be it

*Resolved, by the Assembly of the State of California, the Senate thereof concurring,* That the week of May 2, 1988, is designated Mexican-American Cultural Awareness Week in the State of California.

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## RESOLUTION CHAPTER 35

Assembly Concurrent Resolution No. 104—Relative to California Small Business Week.

[Filed with Secretary of State May 6, 1988.]

WHEREAS, The President of the United States of America, by proclamation, will designate the week of May 8 through May 14, 1988, as Small Business Week in special tribute to the outstanding contributions of small businesswomen and businessmen of this nation; and

WHEREAS, Two million of the nation's 14 million small businesses are located in California, employing 10 million people; and

WHEREAS, These small businesses provide industrial innovation which gives California its competitive edge; and

WHEREAS, The entrepreneurship and productivity of small businesswomen and businessmen constitute the core of the American free enterprise system; and

WHEREAS, Small businesses provide the vast majority of the job opportunities for women, youth, minorities, and displaced workers; and

WHEREAS, The economic health of California depends, in large measure, on the prospects of the state's small businesses; and

WHEREAS, California's small business community has a tremendous potential to promote our state's economic and cultural role in the emerging Pacific Rim trade relationships; now, therefore, be it

*Resolved by the Assembly of the State of California, the Senate thereof concurring,* That the Governor is hereby requested, in conjunction with the national designation thereof, to proclaim the week of May 8 through May 14, 1988, as California Small Business Week, in special recognition of the contributions which small businesswomen and businessmen have made, and will continue to make, to our state; and be it further

*Resolved,* That the Chief Clerk of the Assembly transmit a copy of

this resolution to the Governor of the State of California.

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## RESOLUTION CHAPTER 36

Assembly Concurrent Resolution No. 116—Relative to proclaiming Travel and Tourism Month.

[Filed with Secretary of State May 6, 1988 ]

WHEREAS, California has been and continues to be the premier travel destination in the United States; and

WHEREAS, Californians proudly and warmly welcome millions of domestic and international visitors annually; and

WHEREAS, As people all over the world become aware of the outstanding cultural, historical, and recreational resources available throughout the state, tourism is becoming an increasingly important aspect of the daily lives of people everywhere; and

WHEREAS, The great diversity of the Golden State's unique attractions and exciting destinations truly offer something for everyone; and

WHEREAS, The multiethnic and colorful heritage of the people of California presents a rich variety of backgrounds and culture in communities throughout the state; and

WHEREAS, Travel and tourism contribute significantly to California's economic life, generating over $35 billion and supporting nearly 600,000 jobs; and

WHEREAS, Local tourism development and promotion have become increasingly important to our state's rural regions; and

WHEREAS, Over 6 million international visitors came to California in 1987; and

WHEREAS, Due to the decreased value of the dollar compared to foreign currencies, and California's place as a gateway to the Pacific Rim visitor, a major increase in international visitors from both Europe and Asia is expected in 1988; and

WHEREAS, The Legislature proclaimed May to be Travel and Tourism Month in 1981, and the Governor has issued a similar proclamation every year since; and

WHEREAS, Local convention and visitor bureaus, local chambers of commerce, the California Travel Industry Association, and the federal government, which together represent the public and private sectors of the tourism industry, historically recognize the month of May as a time to celebrate travel and tourism's important economic and social contributions to this country; now, therefore, be it

*Resolved by the Assembly of the State of California, the Senate thereof concurring,* That the Legislature of the State of California hereby designates May 1988 as "Travel and Tourism Month"; and be

it further

*Resolved,* That the Legislature urges the Office of Tourism to work with local convention and visitor bureaus, local chambers of commerce, any other local tourism promotion agencies or groups, and the California Travel Industry Association to designate and promote appropriate events, ceremonies, and activities commemorating Travel and Tourism Month; and be it further

*Resolved,* That the Legislature further urges the Office of Tourism to coordinate its Travel and Tourism Month activities with any federal government designation of a Travel and Tourism Month or National Tourism Week; and be it further

*Resolved,* That the Chief Clerk of the Assembly shall transmit a copy of this resolution to the Office of Tourism.

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## RESOLUTION CHAPTER 37

Assembly Concurrent Resolution No. 142—Relative to Toxic Awareness Week.

[Filed with Secretary of State May 6, 1988.]

WHEREAS, Four years ago, on May 14, 1984, a hazardous waste spill occurred in the City of Santa Barbara, California; and

WHEREAS, This hazardous waste spill resulted in the evacuation of 3,500 people from the center of the city; and

WHEREAS, The training and preparedness for the emergency response to this disaster averted tragedy; and

WHEREAS, This hazardous waste accident has been the largest metropolitan hazardous waste accident in recent California history; and

WHEREAS, The transportation of hazardous materials through densely populated areas is a daily and frequent occurrence; and

WHEREAS, The transporters of these materials do not always employ all possible safety precautions; and

WHEREAS, A hazardous material accident could result in injuries or deaths, or in the evacuation, of the residents of the cities through which the transporters of hazardous materials must pass; and

WHEREAS, Maintaining public health and safety is a prime responsibility of the State of California; and

WHEREAS, Hazardous wastes and hazardous materials are a threat to the health and safety of the citizens of California; and

WHEREAS, Despite the care taken by producers and transporters of hazardous materials, accidents and unforeseen dangers may occur; and

WHEREAS, It is critical that all individuals be aware of the dangers of hazardous materials and the safety precautions necessitated by the use of these materials; now, therefore, be it

*Resolved by the Assembly of the State of California, the Senate thereof concurring,* That the Legislature hereby proclaims the week of May 8, 1988, as "Toxic Awareness Week," to commemorate the toxic spill of May 14, 1984, in the City of Santa Barbara; and be it further

*Resolved,* That the Legislature urges all Californians to reflect upon the role that hazardous materials play in the state's daily domestic and commercial existence; and be it further

*Resolved,* That the Legislature hereby requests the Department of Transportation to place, during the week of May 8, 1988, a sign at the site of the toxic spill of May 14, 1984, in the City of Santa Barbara to identify the location of the spill; and be it further

*Resolved,* That the Legislature encourages California's public schools and businesses to sponsor programs to inform students and employees of those accident prevention measures that should be taken when dealing with hazardous materials and proper emergency responses to hazardous waste accidents; and be it further

*Resolved,* That the Chief Clerk of the Assembly transmit copies of this resolution to the Mayor and City Council of the City of Santa Barbara and to the Board of Supervisors of the County of Santa Barbara.

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## RESOLUTION CHAPTER 38

Assembly Concurrent Resolution No. 146—Relative to Mother's Day.

[Filed with Secretary of State May 10, 1988.]

WHEREAS, Mother's Day is recognized as one of the most important days of the year because it is observed for those women who gave us life, encouraged our development and continue to support us throughout the years; and

WHEREAS, The emblem of Mother's Day, through the universal language and beauty of a flower, a Carnation, is expressive of an ideal and is associated throughout the world with the name "Mother"; and

WHEREAS, The establishment of Mother's Day can most aptly be credited to Anna M. Jarvis, daughter of Anna Reeves Jarvis, for being most directly responsible for organizing the observance in the United States; now, therefore, be it

*Resolved by the Assembly of the State of California, the Senate thereof concurring,* That the Legislature hereby recognizes the second Sunday of May 1988 as Mother's Day, and urges all Californians to engage in appropriate observances and activities therefor; and be it further

*Resolved,* That the Chief Clerk of the Assembly transmit copies of this resolution to the authors for appropriate distribution.

## RESOLUTION CHAPTER 39

Senate Concurrent Resolution No. 53—Relative to the William Z. Hegy Memorial Highway.

[Filed with Secretary of State May 11, 1988.]

WHEREAS, It was with the most profound sorrow and deep sense of loss that word was received of the passing of William Z. Hegy, a distinguished California resident and devoted civic leader; and

WHEREAS, Mr. Hegy, a native of Plunkett, Saskatchewan, Canada, graduated from Stanford University with a degree in civil engineering, and went to work for the State of California in 1936 as an engineering aide; and

WHEREAS, He served as the State Maintenance Engineer prior to transferring to Eureka, where he served as District 1 Director for the Department of Transportation; and

WHEREAS, Following an illustrious career of state service, he retired in 1978; and

WHEREAS, He was a member of the American Society of Civil Engineers and was active in the community as President of the Rotary Club of Eureka and of the United Way of Eureka, as Commissioner of the Boy Scouts of America, as Chairman of the Board of Directors of the Humboldt Area Foundation, as Interim Manager, President, and Board Member for KEET-TV, as 1960-61 Foreman of the Humboldt County Grand Jury, as a charter member of the Humboldt North Coast Land Trust, and as a member of the Trinidad Chamber of Commerce; and

WHEREAS, He was active in St. Alban's Episcopal Church of Arcata, where he served in many capacities, including vestryman and senior warden; and

WHEREAS, William Z. Hegy is survived by his wife, Elizabeth; and his children, David, William, and Julie; now, therefore, be it

*Resolved by the Senate of the State of California, the Assembly thereof concurring,* That the portion of State Highway Route 101 from the Little River near the City of Trinidad to the Patrick's Point Undercrossing is hereby officially designated the "William Z. Hegy Memorial Highway"; and be it further

*Resolved,* That the Department of Transportation be directed to determine the cost of and to erect appropriate plaques and markers consistent with the signing requirements for the state highway system, showing this official designation, upon receiving donations from private sources covering the cost of erecting those plaques and markers; and be it further

*Resolved,* That copies of this resolution be transmitted by the Secretary of the Senate to the Director of Transportation, the Secretary of the Business, Transportation and Housing Agency, and the City Council of the City of Trinidad; and be it further

*Resolved,* That a copy of this resolution be transmitted by the

Secretary of the Senate to Elizabeth Hegy.

## RESOLUTION CHAPTER 40

Assembly Concurrent Resolution No. 140—Relative to California Foster Care Awareness Month.

[Filed with Secretary of State May 13, 1988.]

WHEREAS, Thousands of children throughout California are provided service through the foster care system; and

WHEREAS, These children have been seriously traumatized by abuse or neglect or have been abandoned; and

WHEREAS, Children who cannot live with their birth families require the skill, nurturing, and commitment of caring foster parents; and

WHEREAS, Foster parents make a vital contribution to their communities and to the state; and

WHEREAS, Public and private agencies throughout California sponsor foster parent recognition events during the month of May; and

WHEREAS, There is a critical shortage of foster homes for infants, school age children, and teenagers; now, therefore, be it

*Resolved by the Assembly of the State of California, the Senate thereof concurring,* That the month of May 1988 be recognized as "California Foster Care Awareness Month" and that all citizens are urged to give recognition and appreciation to foster parents for the caring they provide; and be it further

*Resolved,* That the Chief Clerk of the Assembly transmit a copy of this resolution to the Family Finders Coalition.

## RESOLUTION CHAPTER 41

Assembly Joint Resolution No. 68—Relative to the United States-Canada Free Trade Agreement.

[Filed with Secretary of State May 13, 1988.]

WHEREAS, The United States and Canada are united by geography, history, and culture, and have the largest bilateral trade and economic relationship in the world; and

WHEREAS, Two-way trade between Canada and the United States totaled $125 billion in 1986, with $6.5 billion of that total representing trade between California and Canada; and

WHEREAS, Canadian direct investment in California is valued at $5.6 billion and provides approximately 30,000 jobs in this state, and

California companies have major investments in Canada which are likewise important to the Canadian economy; and

WHEREAS, Canada is California's second largest export market, with approximately 36 percent of California exports to Canada being in the high technology sector, and California's agricultural sector deriving major economic benefits from export sales to Canada of fruits, vegetables, wines, and related products; and

WHEREAS, It is in the best interest of California-Canadian trade relations to support liberalized trade arrangements and greater market access; and

WHEREAS, In 1985, President Reagan and Canadian Prime Minister Brian Mulroney met in Quebec, Canada to discuss the reduction and elimination of existing barriers in bilateral trade, and negotiators for Canada and the United States subsequently reached a consensus on a framework for a comprehensive bilateral free trade agreement in October, 1987; and

WHEREAS, President Reagan signed a free trade agreement with Canada on January 2, 1988, which would eliminate trade barriers in goods and services, facilitate fair competition, liberalize conditions for investments, and establish effective procedures for the joint administration of the agreement and the resolution of disputes; and

WHEREAS, Congress, through implementing legislation, must approve the agreement before it can take effect; and

WHEREAS, Although the agreement does not cover all industries important to the California economy, including the film, publishing, and record industries, a free trade agreement between Canada and the United States would, nevertheless, be advantageous to California and would, among other benefits, encourage greater trade and investment opportunities and ensure the continued supply of Canadian gas into the California market; now, therefore, be it

*Resolved by the Assembly and the Senate of the State of California, jointly,* That the Legislature of the State of California respectfully memorializes the Congress and President of the United States to give favorable and prompt consideration to legislation implementing the United States-Canada Free Trade Agreement; and be it further

*Resolved,* That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, the United States Secretary of Commerce, Secretary of State, Secretary of the Treasury, the United States Trade Representative, the Chairman of the House of Representatives Ways and Means Committee, the Chairman of the Senate Finance Committee, and to each Senator and Representative from California in the Congress of the United States.

## RESOLUTION CHAPTER 42

Senate Concurrent Resolution No. 73—Relative to Teacher Appreciation Week.

[Filed with Secretary of State May 17, 1988 ]

WHEREAS, A good education is vital to an individual's chances of obtaining economic security and leading a full, rich, and rewarding life; and

WHEREAS, Educating our children and youth properly and well is essential to California's social, cultural, political, and economic well-being; and

WHEREAS, California's elementary and secondary schools, community colleges, and public university systems endeavor to provide every student with the best possible education; and

WHEREAS, California's teachers, instructors, professors, and other educators demonstrate high levels of caring for their students and commitment to providing every student with a quality education; and

WHEREAS, Our educators routinely overcome great disadvantages, including insufficient resources, overcrowded classrooms, and stressful conditions; and

WHEREAS, Many teachers and other education professionals regularly devote many hours of their own time to preparing lessons, grading papers, and helping individual students; and

WHEREAS, California should provide its teachers with salaries and resources commensurate with the responsibilities they bear and the contribution they make to society; now, therefore, be it

*Resolved by the Senate of the State of California, the Assembly thereof concurring,* That the week of May 8 through May 14, 1988, is proclaimed to be "Teacher Appreciation Week"; and be it further

*Resolved,* That the Senate and Assembly of the State of California commend and express their appreciation to the state's teachers, instructors, professors, and other educators for providing their many services to our children, youth, and adult students; and be it further

*Resolved,* That the Senate and Assembly of the State of California urge all the people of the state to recognize and appreciate the contributions of California's professional educators.

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## RESOLUTION CHAPTER 43

Senate Concurrent Resolution No. 80—Relative to the 225th anniversary of the presence of Filipinos in the continental United States.

[Filed with Secretary of State May 17, 1988 ]

WHEREAS, It has been documented by the Filipino American National Historical Society that Filipinos were the first Asians to settle permanently in the continental United States; and

WHEREAS, These first Filipinos arrived in Louisiana as early as 1763 by way of the Manila galleon trade between the Philippines and other Spanish colonies; and

WHEREAS, Marina Espina, a researcher from New Orleans, has found that these Filipino seamen, who were forced to be crew members in the Spanish Colonial Philippines, jumped ship in New Orleans and escaped into the Louisiana bayous, where they were known as "Manilamen" or "Filipino Cajuns"; and

WHEREAS, These Filipinos established three villages in the bayous and fought on the side of the United States against the British during the War of 1812; and

WHEREAS, Today, citizens and residents of Filipino descent total more than 520,000 in the State of California, more than one million throughout the United States, and constitute the largest of all Asian Pacific American ethnic groups; and

WHEREAS, 1988 will mark the 225th anniversary of the presence of Filipinos in the continental United States, and the Filipino American National Historical Society has designated 1988 as a year-long national observance of the anniversary and urges Filipino Americans across the country to join in celebrating this historic occasion; now, therefore, be it

*Resolved by the Senate of the State of California, the Assembly thereof concurring,* That the Legislature of the State of California hereby expresses its support for the activities of the Filipino American National Historical Society; and be it further

*Resolved,* That the Legislature urges all Californians to take this opportunity to learn more about Filipino Americans and the many contributions they have made to all segments of our society and to join in activities celebrating this anniversary; and be it further

*Resolved,* That the Secretary of the Senate shall transmit copies of this resolution to the Filipino American National Historical Society and to the author for appropriate distribution.

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## RESOLUTION CHAPTER 44

Assembly Joint Resolution No. 63—Relative to federal highway funding.

[Filed with Secretary of State May 26, 1988 ]

WHEREAS, The federal gasoline tax was increased by Congress from five cents per gallon to nine cents per gallon in 1982; and

WHEREAS, The federal gasoline tax, unless extended by Congress,

will be automatically repealed by operation of law in 1993; and

WHEREAS, Less than 100 percent of federal gasoline taxes paid by Californians are returned to California by the federal government for expenditure on California transportation projects; and

WHEREAS, The emphasis by the federal government on completing the National System of Interstate and Defense Highways has resulted in insufficient funding for noninterstate highway projects of high priority to California; and

WHEREAS, With the completion of the interstate system, it would be appropriate to reduce or eliminate the federal government's role in highway funding since the highways themselves are owned, maintained, and operated by the states; now, therefore, be it

*Resolved by the Assembly and Senate of the State of California, jointly,* That the Legislature of the State of California respectfully memorializes the President and Congress of the United States to reduce or eliminate the federal funding role in highway construction programs after 1993, along with the federal gas tax, in order to focus resources available to each state on high priority transportation needs identified at the state and local level; and be it further.

*Resolved,* That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, and to each Senator and Representative from California in the Congress of the United States.

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## RESOLUTION CHAPTER 45

Senate Concurrent Resolution No. 87—Relative to creating the Joint Legislative Committee on the 1992 California Quincentennial of the Voyages of Christopher Columbus.

[Filed with Secretary of State May 27, 1988.]

WHEREAS, The Legislature finds and declares that the year of 1992, being the 500th anniversary of the first voyage of Christopher Columbus, is a time for all citizens of the State of California to pause and reflect upon the significance of the events which have occurred in the Americas since Christopher Columbus first encountered the lands and peoples of the Western Hemisphere; and

WHEREAS, As a result of the voyages of the Genovese navigator and his crew, that historic encounter occurred between the peoples and civilizations of two hemispheres, enabling new nations and cultures to grow and flourish from roots cultivated and developed in Spain, Italy, and Portugal, and by the indigenous peoples of the Americas, as well as later arrivals from Africa, Asia, and Oceania, which added to the diversity and richness of this hemisphere; and

WHEREAS, The Legislature finds and declares that much

preparation needs to be accomplished in order to make the events leading up to the quincentennial, as well as the events and celebrations of the year 1992, as rich and significant as they are deserving, and in order to preserve the people's rights to shape and participate in these events and celebrations, it is imperative that the Legislature, in cooperation with the private sector and the cultural and educational institutions of the State of California, take an active and guiding role in developing the means and resources necessary to plan and implement those events; now, therefore, be it

*Resolved by the Senate of the State of California, the Assembly thereof concurring,* That the Joint Legislative Committee on the 1992 California Quincentennial of the Voyages of Christopher Columbus, to also be known as the 1992 California Quincentennial Committee, is hereby created and is authorized and directed to do all of the following:

(a) Develop goals and objectives relative to any and all events occurring within the State of California which commemorate, celebrate, or memorialize the voyages of Christopher Columbus and the impact of those encounters on the history, culture, art, and architecture of the State of California.

(b) Encourage the participation of the citizens of the State of California in activities fostering cultural enrichment, social purpose, and economic opportunity within the context of the quincentennial celebration.

(c) Coordinate the role that any state agency, board, commission, or educational institution, including the Legislature, shall play in achieving the goals set forth in this resolution.

(d) Develop any subsequent legislation necessary to carry out the goals and objectives set forth in this resolution.

(e) Seek the assistance of California citizens in achieving these goals by appointing any advisory or other committees which may become necessary to carry out the work of this committee.

(f) Seek any necessary aid, advice, concurrence, support, or other assistance of similar legislative bodies or state agencies in other states or nations.

(g) Plan and implement events, exchanges, expositions, exhibitions, productions, or other public events or occurrences which further the purposes or goals of the committee and of this resolution.

(h) Publish reports, brochures, notices, or any other forms of publication or public communication which outline the work of the committee or which commemorate or celebrate the quincentennial and the impact of or implications stemming from the voyages of Columbus; and be it further

*Resolved,* That the committee consists of 10 Members of the Senate, appointed by the Senate Committee on Rules, and 10 Members of the Assembly, appointed by the Speaker of the Assembly; and that the chairperson shall be selected from among the members of the committee by the Joint Rules Committee, pursuant to Rule 36.7 of the Temporary Joint Rules of the Senate and

Assembly; and be it further

*Resolved,* That the committee shall report to the Legislature as directed by the Joint Rules Committee, and shall be in existence from the date of the enactment of this measure until November 30, 1990; and be it further

*Resolved,* That the committee may seek assistance from other standing, joint, select, or special legislative committees in carrying out the duties of the committee; and be it further

*Resolved,* That the committee may do any and all other things necessary or convenient to enable it to fully and adequately exercise its powers, perform its duties, and accomplish the objects and purposes of this resolution; and be it further

*Resolved,* That the Senate Committee on Rules or the Assembly Committee on Rules may make such money available from the contingent funds under their direction and control as they deem necessary for expenses of the committee and its members. Any expenditure of money shall be made in compliance with policies set forth by the rules committee making the money available and shall be subject to the approval of that rules committee. The committee shall, within 15 calendar days following the adoption of this measure, present its budget to the Joint Rules Committee for its review and comment.

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## RESOLUTION CHAPTER 46

Senate Concurrent Resolution No. 78—Relative to "California Chiropractic Wellness Week."

[Filed with Secretary of State May 31, 1988.]

WHEREAS, Good physical health and a sense of wellness are essential elements of a productive and enjoyable life; and

WHEREAS, The chiropractic profession has, for several decades, helped Californians achieve and maintain good health through the use of the body's own restorative powers; and

WHEREAS, The chiropractic profession has improved the quality of life for California citizens through numerous achievements and advancements and these contributions are in the highest tradition of health care services; and

WHEREAS, Chiropractic care has benefited millions of California's citizens; now, therefore, be it

*Resolved by the Senate of the State of California, the Assembly thereof concurring,* That the Legislature recognizes the devoted care which doctors of chiropractic have bestowed upon their patients in the state; and be it further

*Resolved,* That the Legislature designates the week of June 11 through June 17, 1988, as "California Chiropractic Wellness Week";

and be it further

*Resolved,* That the Secretary of the Senate transmit a copy of this resolution to Dr. Jerilynn Kaibel, President of the California Chiropractic Association, and to the Chairperson of the Board of Chiropractic Examiners.

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## RESOLUTION CHAPTER 47

Senate Joint Resolution No. 41—Relative to the National Estuaries Program.

[Filed with Secretary of State May 31, 1988.]

WHEREAS, The federal Water Quality Act of 1987 established the National Estuaries Program within the Environmental Protection Agency for the purpose of coordinating and developing individual plans for the clean up and management of distressed bays; and

WHEREAS, Each site designated to participate in the National Estuaries Program will be the subject of a unique management conference comprised of a panel of experts representing federal, state, and local agencies, elected officials, environmentalists, and industrial dischargers; and

WHEREAS, The management conference will produce a comprehensive conservation and management plan recommending actions to restore the water quality and marine environment of the bay and ensure its long-term protection, and, upon approval of the management plan, the bay will be eligible for federal implementation grants; and

WHEREAS, The Governor of California has officially nominated Santa Monica Bay as a candidate for the National Estuaries Program, and Santa Monica Bay was named a priority bay for inclusion in the program in the omnibus federal spending bill signed into law in December of 1987; and

WHEREAS, Santa Monica Bay is a natural resource of great importance for the State of California, providing significant economic and recreational benefits to the public; and

WHEREAS, The quality of Santa Monica Bay has deteriorated as a result of pollutant inputs from industrial and municipal sources and urban runoff, and high levels of PCBs and DDT have been discovered in sediment and fish tissue taken from Santa Monica Bay; and

WHEREAS, The extraordinary level of consumption of fish from Santa Monica Bay and the frequency of human contact with the waters of the bay indicates a dire need for a regional pollution control and abatement strategy; and

WHEREAS, The Evironmental Protection Agency will choose from among the nominated sites seeking inclusion in the National

Estuaries Program and will make a selection of participants in the summer of 1988; now, therefore, be it

*Resolved by the Senate and Assembly of the State of California, jointly,* That the Legislature of the State of California memorializes the Environmental Protection Agency to select Santa Monica Bay for the National Estuaries Program in order to protect the beneficial uses of the bay for the California public; and be it further

*Resolved,* That the Legislature memorializes the Environmental Protection Agency to immediately convene the National Estuaries Program management conference for Santa Monica Bay in order to expedite the adoption of a strict management plan to prohibit future pollution of the bay, and to mitigate the current pollution at the earliest possible date; and be it further

*Resolved,* That the Secretary of the Senate transmit copies of this resolution to the President and Vice President of the United States, to the Administrator of the Environmental Protection Agency, to the Speaker of the United States House of Representatives, and to each Senator and Representative from California in the Congress of the United States.

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## RESOLUTION CHAPTER 48

Assembly Concurrent Resolution No. 102—Relative to the Stagecoach Inn historical marker.

[Filed with Secretary of State June 1, 1988.]

WHEREAS, The original site of the Stagecoach Inn is a designated historical landmark; and

WHEREAS, The Stagecoach Inn was relocated from its original site to allow for the construction of the Ventura Freeway (State Highway Route 101); and

WHEREAS, The Conejo Valley Historical Society currently operates and maintains the Stagecoach Inn Museum at its current location at 51 South Ventu Park Road in Newbury Park; and

WHEREAS, It is the desire of the Conejo Valley Historical Society to place an historical marker and plaque at the intersection of Ventu Park Road and the Ventura Freeway to designate the original site of the Stagecoach Inn; now, therefore, be it

*Resolved by the Assembly of the State of California, the Senate thereof concurring,* That the Legislature hereby requests the Department of Transportation to place an historical marker and plaque at the intersection of Ventu Park Road and the Ventura Freeway (State Highway Route 101) to designate the original site of the Stagecoach Inn; and be it further

*Resolved,* That the department be directed to determined the cost of erecting an appropriate marker and plaque showing the historical

designation and, upon receiving donations from private sources covering that cost, to erect the marker and plaque; and be it further

*Resolved,* That the Chief Clerk of the Assembly transmit a copy of this resolution to the Director of Transportation.

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## RESOLUTION CHAPTER 49

Assembly Concurrent Resolution No. 115—Relative to Public Lands Conservation and Recreation Month.

[Filed with Secretary of State June 1, 1988.]

WHEREAS, Publicly held lands represent nearly 50 percent of the total acreage of the State of California; and

WHEREAS, Public lands provide a wide variety of recreational opportunities for the citizens of this state; and

WHEREAS, These public lands must be properly managed and conserved in order to protect this resource for future generations; and

WHEREAS, Population projections for California indicate in excess of 30 million residents by the year 2000, many of whom will be seeking recreational experiences on public lands; and

WHEREAS, The average citizen of this state should be fully aware of the value of public lands and the need for a cooperative conservation effort to preserve this most valuable resource; therefore, be it

*Resolved by the Assembly of the State of California, the Senate thereof concurring,* That the month of June 1988 be declared Public Lands Conservation and Recreation Month; and be it further

*Resolved,* That the Legislature hereby encourages government land management agencies, special interest groups concerned with public lands, and the public at large to participate cooperatively during this month in programs aimed at heightening general awareness of the many recreational opportunities available on public lands and the role that individuals and groups can play in conserving and protecting the resource.

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## RESOLUTION CHAPTER 50

Assembly Concurrent Resolution No. 119—Relative to a joint forest fire damage recovery effort in California.

[Filed with Secretary of State June 1, 1988.]

WHEREAS, During the summer and early fall of 1987, almost 800,000 acres of land were burned or affected by fire in the State of

California, taking the lives of 10 firefighters and destroying 38 homes; and

WHEREAS, The fire burned 1.9 billion board feet of timber, enough to build homes for a city of the size of San Francisco; and

WHEREAS, A rehabilitation effort costing $150 million is needed over the next five years; and

WHEREAS, A massive rehabilitation and recovery effort known as OPERATION PHOENIX is underway to salvage, replant, and reforest the burned acres; and

WHEREAS, OPERATION PHOENIX is one of the largest cooperative programs ever undertaken in California by federal agencies, state agencies, and private organizations; now, therefore, be it

*Resolved by the Assembly of the State of California, the Senate thereof concurring,* That the Legislature extends its support to the sponsors of OPERATION PHOENIX, including the United States Forest Service, the California Department of Forestry and Fire Protection, private industry, and forestry professionals, and encourages them in their forest fire rehabilitation and recovery efforts throughout the state; be it further

*Resolved,* That the Chief Clerk of the Assembly transmit copies of this resolution to the Department of Forestry and Fire Protection and to the United States Forest Service.

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## RESOLUTION CHAPTER 51

Assembly Concurrent Resolution No. 149—Relative to Better Hearing and Speech Month.

[Filed with Secretary of State June 1, 1988.]

WHEREAS, Hearing, speech, and language disorders constitute our nation's number one handicapping disability, affecting an estimated 500,000 individuals in California, alone and 22 million Americans nationally; and

WHEREAS, Most people with communicative problems can be helped medically, surgically, through hearing aids, or hearing-speech-language rehabilitation, but first must know that this help is available; and

WHEREAS, Better Hearing and Speech Month is an intensive annual effort sponsored by leading national hearing, speech, and language organizations and other civic groups to inform people about communicative disorders, to encourage those who suspect a problem to seek assistance, and to publicize the availability of service resources; and

WHEREAS, This campaign should help encourage and stimulate early detection, proper treatment, prevention, and greater

understanding of hearing, speech and language impairments; now therefore, be it

*Resolved by the Assembly of the State of California, the Senate thereof, concurring,* That the month of May 1988 be declared as Better Hearing and Speech Month.

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## RESOLUTION CHAPTER 52

Assembly Concurrent Resolution No. 128—Relative to the creation of the Joint Legislative Committee on Tort Liability.

[Filed with Secretary of State June 2, 1988.]

*Resolved by the Assembly of the State of California, the Senate thereof concurring, as follows:*

(1) The Joint Legislative Committee on Tort Liability is hereby created, authorized, and directed to ascertain, study, and analyze the facts relating to the need for revision of the law relating to tort liability and related insurance laws, including the rules governing liability for, and the amount of compensation or damages to be paid on account of, injury to, or death of, persons, or damage to, or destruction of, property, the manner and method of determination and payment thereof, court procedures relating thereto, and related matters. These may include liability arising from defective products, whether based on contract or tort, governmental liability, liability arising from malpractice, third-party liability arising from the working conditions of industrial employees, and liability arising from vehicle accidents.

(2) The joint committee shall consist of seven members of the Senate, appointed by the Senate Committee on Rules, and seven members of the Assembly, appointed by the Speaker of the Assembly. The members shall serve at the pleasure of the appointing power and vacancies shall be filled by the appointing power. The chairperson and vice chairperson of the committee shall be appointed by the Joint Rules Committee from a member or members recommended by the Senate Committee on Rules and a member or members recommended by the Speaker of the Assembly.

(3) The committee and all advisory committees appointed pursuant to subdivision (b) of paragraph (5) are authorized to act during the 1987–88 Regular Session of the Legislature, including any recess, until the end of the 1987–88 Regular Session.

(4) The committee and its members shall have and exercise all of the rights, duties, and powers conferred upon investigating committees and their members by the provisions of the Joint Rules of the Senate and Assembly as they are adopted and amended from time to time, which provisions are incorporated herein and made applicable to this committee and its members.

(5) The committee has the following additional powers and duties:

(a) If a consultant is not otherwise retained by the Joint Rules Committee or either house, to contract with a consultant and to employ those persons as may be necessary to assist the committee, subject to the approval of the Joint Rules Committee and any Committee on Rules that makes money available from its contingent funds, pursuant to paragraph (7), for the payment of the compensation of the particular consultant or employee.

(b) To appoint one or more advisory committees consisting of persons knowledgeable in the various areas being studied, and to assist the committee and staff. The advisory committees shall report directly to the joint committee.

(c) To make recommendations regarding changes in laws relating to tort liability and insurance.

(d) To contract with such other agencies, public or private, as it deems necessary for the rendition and affording of those services, facilities, and studies as will best assist the committee in carrying out the purposes for which it is created. The contract is subject to the approval of the Joint Rules Committee and any Committee on Rules that makes money available from its contingent funds, pursuant to paragraph (7), for those purposes.

(e) To cooperate with and secure the cooperation of county, city, city and county, and other local law enforcement agencies in investigating any matter within the scope of this resolution and to direct, with the approval of the Joint Rules Committee, the Senate Committee on Rules, and the Assembly Committee on Rules, the sheriff of any county to serve subpoenas, orders, and other process issued by the committee.

(f) To obtain, with the approval of the Joint Rules Committee, all necessary office space, equipment, and materials.

(g) To do any and all other things necessary or convenient to enable it fully and adequately to exercise its powers, perform its duties, and accomplish the objectives and purposes of this resolution.

(6) The consultant to the joint committee shall work with the committee and advisory committees, and shall provide assistance to the author of any bill or constitutional amendment.

(7) The Senate Committee on Rules or the Assembly Committee on Rules may make such money available from the contingent funds under the committee's direction and control as it deems necessary for expenses of the committee and its members. Any expenditure of money shall be made in compliance with policies set forth by the particular rules committee making the money available and shall be subject to the approval of that rules committee. The committee shall, within 15 calendar days following the adoption of this measure, present its budget to the Joint Rules Committee for its review and comment.

(8) The joint committee shall designate a chairperson for each advisory committee. In making this designation, the joint committee

shall give consideration to the persons recommended by the advisory committee.

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## RESOLUTION CHAPTER 53

Senate Joint Resolution No. 32—Relative to child care.

[Filed with Secretary of State June 7, 1988 ]

WHEREAS, Mothers are increasing their labor force participation; and

WHEREAS, Child care is key to maintaining a family's income but many families do not earn enough to pay for decent child care; and

WHEREAS, When child care help is provided, families can begin to move out of poverty; and

WHEREAS, Long waiting lists preclude eligible families from receiving child care help; and

WHEREAS, Quality child care is key to the future economic security of our nation; and

WHEREAS, The quality of child care must be improved; now, therefore, be it

*Resolved by the Senate and Assembly of the State of California, jointly,* That the Legislature of the State of California respectfully memorializes the President and the Congress of the United States to enact legislation to help states make child care more affordable for low- and moderate-income families, increase the number of child care facilities and the number of qualified day care staff available to all families, improve the quality of child care available to all families, and coordinate child care resources to preserve their efficient use; and be it further

*Resolved,* That the Secretary of the Senate transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, and to each Senator and Representative from California in the Congress of the United States.

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## RESOLUTION CHAPTER 54

Assembly Constitutional Amendment No. 56—A resolution to propose to the people of the State of California an amendment to the Constitution of the State, by amending Section 16 of Article XVI thereof, relating to property taxation.

[Filed with Secretary of State June 8, 1988 ]

*Resolved by the Assembly, the Senate concurring,* That the Legislature of the State of California at its 1987–88 Regular Session commencing on the first day of December 1986, two-thirds of the members elected to each of the two houses of the Legislature voting therefor, hereby proposes to the people of the State of California that the Constitution of the State be amended by amending Section 16 of Article XVI thereof, to read:

SEC. 16. All property in a redevelopment project established under the Community Redevelopment Law as now existing or hereafter amended, except publicly owned property not subject to taxation by reason of that ownership, shall be taxed in proportion to its value as provided in Section 1 of this article, and those taxes (the word "taxes" as used herein includes, but is not limited to, all levies on an ad valorem basis upon land or real property) shall be levied and collected as other taxes are levied and collected by the respective taxing agencies.

The Legislature may provide that any redevelopment plan may contain a provision that the taxes, if any, so levied upon the taxable property in a redevelopment project each year by or for the benefit of the State of California, any city, county, city and county, district, or other public corporation (hereinafter sometimes called "taxing agencies") after the effective date of the ordinance approving the redevelopment plan, shall be divided as follows:

(a) That portion of the taxes which would be produced by the rate upon which the tax is levied each year by or for each of those taxing agencies upon the total sum of the assessed value of the taxable property in the redevelopment project as shown upon the assessment roll used in connection with the taxation of that property by the taxing agency, last equalized prior to the effective date of the ordinance, shall be allocated to, and when collected shall be paid into, the funds of the respective taxing agencies as taxes by or for those taxing agencies on all other property are paid (for the purpose of allocating taxes levied by or for any taxing agency or agencies which did not include the territory in a redevelopment project on the effective date of the ordinance but to which that territory has been annexed or otherwise included after the ordinance's effective date, the assessment roll of the county last equalized on the effective date of that ordinance shall be used in determining the assessed valuation of the taxable property in the project on that effective date); and

(b) Except as provided in subdivision (c), that portion of the levied taxes each year in excess of that amount shall be allocated to and when collected shall be paid into a special fund of the redevelopment agency to pay the principal of and interest on loans, moneys advanced to, or indebtedness (whether funded, refunded, assumed or otherwise) incurred by the redevelopment agency to finance or refinance, in whole or in part, the redevelopment project. Unless and until the total assessed valuation of the taxable property in a redevelopment project exceeds the total assessed value of the

taxable property in the project as shown by the last equalized assessment roll referred to in subdivision (a), all of the taxes levied and collected upon the taxable property in the redevelopment project shall be paid into the funds of the respective taxing agencies. When the loans, advances, and indebtedness, if any, and interest thereon, have been paid, then all moneys thereafter received from taxes upon the taxable property in the redevelopment project shall be paid into the funds of the respective taxing agencies as taxes on all other property are paid.

(c) That portion of the taxes identified in subdivision (b) which are attributable to a tax rate levied by a taxing agency for the purpose of producing revenues in an amount sufficient to make annual repayments of the principal of, and the interest on, any bonded indebtedness for the acquisition or improvement of real property shall be allocated to, and when collected shall be paid into, the fund of that taxing agency. This paragraph shall only apply to taxes levied to repay bonded indebtedness approved by the voters of the taxing agency on or after January 1, 1989.

The Legislature may also provide that in any redevelopment plan or in the proceedings for the advance of moneys, or making of loans, or the incurring of any indebtedness (whether funded, refunded, assumed, or otherwise) by the redevelopment agency to finance or refinance, in whole or in part, the redevelopment project, the portion of taxes identified in subdivision (b), exclusive of that portion identified in subdivision (c), may be irrevocably pledged for the payment of the principal of and interest on those loans, advances, or indebtedness.

It is intended by this section to empower any redevelopment agency, city, county, or city and county under any law authorized by this section to exercise the provisions hereof separately or in combination with powers granted by the same or any other law relative to redevelopment agencies. This section shall not affect any other law or laws relating to the same or a similar subject but is intended to authorize an alternative method of procedure governing the subject to which it refers.

The Legislature shall enact those laws as may be necessary to enforce the provisions of this section.

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## RESOLUTION CHAPTER 55

Assembly Concurrent Resolution No. 103—Relative to high school student leadership activities.

[Filed with Secretary of State June 8, 1988.]

WHEREAS, To ensure the survival of democracy America must train its leaders at a young age; and

WHEREAS, Our schools play an important role in preparing students to become concerned and active citizens; and

WHEREAS, Activities such as student government, peer counseling, and debate encourage youths to act in an advisory capacity; and

WHEREAS, Students educated in effective leadership skills will be ready to compete internationally for jobs and positions of service to the community; and

WHEREAS, Leadership activities help to instill positive ethics in the young leaders of today; now, therefore, be it

*Resolved by the Assembly of the State of California, the Senate thereof concurring,* That school district governing boards are encouraged to promote programs which involve students in leadership activities; and be it further

*Resolved,* That principals and faculties of individual high schools consider means of incorporating leadership activities in the curricula of their high schools; and be it further

*Resolved,* That the Chief Clerk of the Assembly transmit a suitably prepared copy of this resolution to the president of each school district governing board in the state and to the principal of each high school in the state.

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## RESOLUTION CHAPTER 56

Assembly Concurrent Resolution No. 107—Relative to student involvement in community service.

[Filed with Secretary of State June 8, 1988.]

WHEREAS, Social responsibility lies at the heart of preserving American liberty; and

WHEREAS, Our schools play an important role in preparing students to become concerned and active citizens; and

WHEREAS, Students can play an active role in community service and are an excellent resource for the community; and

WHEREAS, Involvement in community service can foster a life-long understanding for others less fortunate than ourselves; and

WHEREAS, Community service programs can channel student energies and enthusiasm in a positive direction; now, therefore be it

*Resolved by the Assembly of the State of California, the Senate thereof concurring,* That district boards of education are encouraged to promote programs which involve students in community services; and be it further

*Resolved,* That principals of individual high schools consider means of involving students in volunteer community organizations; and be it further

*Resolved,* That the Chief Clerk of the Assembly transmit a copy of

this resolution to the state president of the California Association of Student Councils.

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## RESOLUTION CHAPTER 57

Assembly Concurrent Resolution No. 110—Relative to declaring Dr. Aristides de Sousa Mendes do Amaral e Abranches an honorary citizen of California.

[Filed with Secretary of State June 8, 1988.]

WHEREAS, Dr. Aristides de Sousa Mendes do Amaral e Abranches, one of the greatest heroes of the Holocaust and a man whose courageous deeds have touched and inspired Californians, is richly deserving of official acknowledgment and commendation by the Legislature of the State of California; and

WHEREAS, Born in 1885, Dr. de Sousa Mendes was a member of a distinguished Portuguese family–his father was a Portuguese supreme court justice; and

WHEREAS, In 1940, Dr. de Sousa Mendes, a career diplomat, was serving as Portugal's consul-general in Bordeaux, France; and

WHEREAS, At that time, the Portuguese government instructed its consular representatives *not* to issue visas to those seeking temporary refuge in Portugal–in particular, the Portuguese government ordered its representatives not to issue visas to Jews; and

WHEREAS, Defying the orders of his government, Dr. de Sousa Mendes issued Portuguese visas to 10,000 Jews and to thousands of other refugees, thus saving those individuals from extermination by the Nazis; and

WHEREAS, Because of his courageous actions, Dr. de Sousa Mendes was recalled to Portugal and stripped of his diplomatic post, his mansion, and his family fortune; he died in poverty in 1954; and

WHEREAS, After a lengthy effort by his family, Dr. de Sousa Mendes was awarded a posthumous national medal of honor by the nation of Portugal; and

WHEREAS, Dr. de Sousa Mendes has not been forgotten by the nation of Israel, where he has been memorialized by the planting of a tree in his memory in the Garden of the Righteous, where heroes of the Holocaust are honored; and

WHEREAS, Israel has also honored Dr. de Sousa Mendes by awarding him the Yad Vashem Medal, which is given to those who acted during the Holocaust to save the lives of others; and

WHEREAS, Dr. de Sousa Mendes honored California by his presence here as the Portuguese consul in San Francisco during the 1920s, and two of his sons currently reside in California; now, therefore, be it

*Resolved by the Assembly of the State of California, the Senate*

*thereof concurring,* That the Legislature of the State of California, in recognition of the heroic deeds of Dr. Aristides de Sousa Mendes do Amaral e Abranches and his period of residence in California, does hereby declare him to be an honorary citizen of the State of California; and be it further

*Resolved,* That the Legislature urges all Californians to learn about the magnificent accomplishments of Dr. de Sousa Mendes, who epitomized compassion and courage; and be it further

*Resolved,* That the Chief Clerk of the Assembly shall transmit copies of this resolution to the author for appropriate distribution.

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## RESOLUTION CHAPTER 58

Assembly Concurrent Resolution No. 154—Relative to Mental Health Month in California.

[Filed with Secretary of State June 8, 1988 ]

WHEREAS, The Legislature is increasingly aware of the treatment and support needs of the mentally disordered in California; and

WHEREAS, The attitudes of the general public toward this segment of our population are often stigmatizing and punitive; and

WHEREAS, There is hope and treatment for people who suffer from severe mental disorders such as schizophrenia, depressions, and other illnesses, thanks to biomedical research; and

WHEREAS, Being mentally healthy is as important as being physically fit; and

WHEREAS, There is a continuing need for community understanding and support from the general public; and

WHEREAS, The California Coalition for Mental Health is helping patients, their families, and the public learn the facts about mental health and about the mentally disordered; and

WHEREAS, The California Coalition for Mental Health, in cooperation with other statewide groups and its own local chapters throughout the state, is developing a major campaign to change public attitudes toward mental disorders and encourage a more understanding and supportive climate for those who suffer from mental disorders; and

WHEREAS, Every year since 1953, May has been designated Mental Health Month in America; now, therefore, be it

*Resolved by the Assembly of the State of California, the Senate thereof concurring,* That the Legislature hereby declares the month of May, Mental Health Month in California; and be it further

*Resolved,* That all citizens in California are encouraged to join the volunteers, staff, and supporters of the California Coalition for Mental Health and its local chapters in working for California's

mental health during May and throughout the year; and be it further

*Resolved,* That the Chief Clerk of the Assembly transmit a copy of this resolution to the California Coalition for Mental Health.

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## RESOLUTION CHAPTER 59

Assembly Constitutional Amendment No. 63—A resolution to propose to the people of the State of California an amendment to the Constitution of the State by amending Section 11 of Article XI thereof, relating to the deposit of public moneys.

[Filed with Secretary of State June 10, 1988.]

*Resolved by the Assembly, the Senate concurring,* That the Legislature of the State of California at its 1987–88 Regular Session commencing on the first day of December 1986, two-thirds of the members elected to each of the two houses of the Legislature voting therefor, hereby proposes to the people of the State of California that the Constitution of the State be amended by amending Section 11 of Article XI thereof, to read:

SEC. 11. (a) The Legislature may not delegate to a private person or body power to make, control, appropriate, supervise, or interfere with county or municipal corporation improvements, money, or property, or to levy taxes or assessments, or perform municipal functions.

(b) The Legislature may, however, provide for the deposit of public moneys in any bank in this state or in any savings and loan association in this state or any credit union in this state or in any federally insured industrial loan company in this state and for payment of interest, principal, and redemption premiums of public bonds and other evidence of public indebtedness by banks within or without this state. It may also provide for investment of public moneys in securities and the registration of bonds and other evidences of indebtedness by private persons or bodies, within or without this state, acting as trustees or fiscal agents.

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## RESOLUTION CHAPTER 60

Assembly Concurrent Resolution No. 151—Relative to Latino AIDS Awareness Week.

[Filed with Secretary of State June 10, 1988 ]

WHEREAS, Acquired immune deficiency syndrome (AIDS) is the greatest health crisis of our time; and

WHEREAS, While Latinos represent 6 percent of the population,

they represent 14 percent of the total AIDS cases; and

WHEREAS, Latino infants represent 23 percent of the total pediatric AIDS cases; and

WHEREAS, Latinos have been traditionally underserved for medical and social services; and

WHEREAS, Until recently, efforts to educate the Latino community in a biculturally and bilingually sensitive manner have not been mobilized; and

WHEREAS, Cultural and bilingual barriers, combined with other factors, contribute to the severity of AIDS within the Latino community; now, therefore, be it

*Resolved by the Assembly of the State of California, the Senate thereof concurring,* That the Legislature of the State of California hereby designates the week of May 29 to June 5, 1988, as Latino AIDS Awareness Week.

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## RESOLUTION CHAPTER 61

Assembly Joint Resolution No. 62—Relative to child care services.

[Filed with Secretary of State June 22, 1988 ]

WHEREAS, After food, shelter, and taxes, child care is the fourth highest family expense and ranges anywhere from $250 to $500 per month per child; and

WHEREAS, California's subsidized child-care program only meets the needs of 7 percent of low-income working families who are eligible; and

WHEREAS, There are at least 1.2 million children in California who have working parents in need of some child care, yet our state can only accommodate a portion of this need; and

WHEREAS, Predictions show that within 10 years, the number of children under the age of six needing child care will increase by 50 percent; and

WHEREAS, The need for, and price of, child care will continue to rise; and

WHEREAS, Experimental programs have proven that low-income children who have been enrolled in high-quality child-care programs develop higher levels of self-esteem, grow up to be more confident, and become productive adults and are less dependent upon social programs; and

WHEREAS, Our congressional leaders have recognized the need for more affordable, better quality child care through House Bill 3660 and Senate Bill 1885, the Act for Better Child Care Services of 1987; and

WHEREAS, This act will provide $2.5 billion to help states supplement current child-care programs, resulting in $221 million

for California; and

WHEREAS, The act will make funds available to increase the number of child-care openings, provide training and technical assistance to child-care providers, help local governments improve licensing standards, and help providers meet licensing standards; and

WHEREAS, The act has received bipartisan support and is supported by more than 150 national organizations; now, therefore, be it

*Resolved by the Assembly and Senate of the State of California, jointly,* That the Legislature of the State of California respectfully joins in support of House Bill 3660 and Senate Bill 1885, the Act for Better Child Care Services of 1987 and calls for its enactment; and be it further

*Resolved,* That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, and to each Senator and Representative in the Congress of the United States.

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## RESOLUTION CHAPTER 62

Assembly Concurrent Resolution No. 122—Relative to State Highway Route 52.

[Filed with Secretary of State June 24, 1988 ]

WHEREAS, In 1979, realizing the importance of State Route 52, then-Assembly Member Jim Ellis formed a group, still active today, called "Citizens for 52," consisting of concerned citizens from along the entire proposed route, including 22 elected officials and because of the dedicated efforts of Senator Jim Ellis, Highway 52 is a reality; and

WHEREAS, Out of a genuine concern for public safety, the "Citizens for 52" committee, under the able leadership of cochairpersons M.J. Hegeness and E.T. (Woodie) Miller, dedicated untold time, energy, and thought throughout the arduous and often discouraging process to include Route 52 in the state transportation improvement program; and

WHEREAS, On January 30, 1980, the Citizens for 52 Committee made, in the words of one California Transportation Commissioner, "one of the best presentations ever made before the commission;" and

WHEREAS, Because of their dedication, persistence, self-sacrifice, intelligence, and confidence in our system of government, all California citizens will soon benefit from the completion of State Highway Route 52; and

WHEREAS, It is just such citizen efforts that have made the State of California the great state it is today; now, therefore, be it

*Resolved by the Assembly of the State of California, the Senate thereof concurring,* That the California State Bridge No. 57-923, which is 384 feet long and 148 feet wide, in the City of San Diego, is hereby officially designated the Senator Jim Ellis Bridge; and be it further

*Resolved,* That the California State Bridge Number 57-968G, the east to north connector of the State Highway Route 15/52 interchange, in the City of San Diego, is hereby officially designated the Citizens for 52 Bridge; and be it further

*Resolved,* That the Department of Transportation be directed to determine the cost of erecting appropriate plaques and markers, consistent with signing requirements for the state highway system, showing this official designation and, upon receiving donations from private sources covering that cost, to erect those plaques and markers; and be it further

*Resolved,* That the Chief Clerk of the Assembly transmit a copy of this resolution to the Director of Transportation.

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## RESOLUTION CHAPTER 63

Senate Constitutional Amendment No. 9—A resolution to propose to the people of the State of California an amendment to the Constitution of the State, by amending Section 8 of Article V thereof, relating to the Governor.

[Filed with Secretary of State June 28, 1988 ]

*Resolved by the Senate, the Assembly concurring,* That the Legislature of the State of California at its 1987–88 Regular Session commencing on the first day of December 1986, two-thirds of the members elected to each of the two houses of the Legislature voting therefor, hereby proposes to the people of the State of California that the Constitution of the State be amended by amending Section 8 of Article V thereof, to read:

SEC. 8. (a) Subject to application procedures provided by statute, the Governor, on conditions the Governor deems proper, may grant a reprieve, pardon, and commutation, after sentence, except in case of impeachment. The Governor shall report to the Legislature each reprieve, pardon, and commutation granted, stating the pertinent facts and the reasons for granting it. The Governor may not grant a pardon or commutation to a person twice convicted of a felony except on recommendation of the Supreme Court, 4 judges concurring.

(b) No decision of the parole authority of this state with respect to the granting, denial, revocation, or suspension of parole of a person sentenced to an indeterminate term upon conviction of murder shall become effective for a period of 30 days, during which the Governor

may review the decision subject to procedures provided by statute. The Governor may only affirm, modify, or reverse the decision of the parole authority on the basis of the same factors which the parole authority is required to consider. The Governor shall report to the Legislature each parole decision affirmed, modified, or reversed, stating the pertinent facts and reasons for the action.

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## RESOLUTION CHAPTER 64

Assembly Constitutional Amendment No. 1—A resolution to propose to the people of the State of California an amendment to the Constitution of the State, by amending the second paragraph of subdivision (a) of, by amending subdivision (i) of, and by adding a third paragraph to subdivision (a) of, Section 2 of Article XIII A thereof, relating to property taxation.

[Filed with Secretary of State June 28, 1988 ]

*Resolved by the Assembly, the Senate concurring,* That the Legislature of the State of California at its 1987–88 Regular Session commencing on the first day of December 1986, two-thirds of the members elected to each of the two houses of the Legislature voting therefor, hereby proposes to the people of the State of California that the Constitution of the State be amended as follows:

First—That the second paragraph of subdivision (a) of Section 2 of Article XIII A thereof is amended to read:

However, the Legislature may provide that under appropriate circumstances and pursuant to definitions and procedures established by the Legislature, any person over the age of 55 years who resides in property which is eligible for the homeowner's exemption under subdivision (k) of Section 3 of Article XIII and any implementing legislation may transfer the base year value of the property entitled to exemption, with the adjustments authorized by subdivision (b), to any replacement dwelling of equal or lesser value located within the same county and purchased or newly constructed by that person as his or her principal residence within two years of the sale of the original property. For purposes of this section, "any person over the age of 55 years" includes a married couple one member of which is over the age of 55 years. For purposes of this section, "replacement dwelling" means a building, structure, or other shelter constituting a place of abode, whether real property or personal property, and any land on which it may be situated. For purposes of this section, a two-dwelling unit shall be considered as two separate single-family dwellings. This paragraph shall apply to any replacement dwelling which was purchased or newly constructed on or after November 5, 1986.

Second—That a third paragraph is added to subdivision (a) of

Section 2 of Article XIII A thereof, to read:

In addition, the Legislature may authorize each county board of supervisors, after consultation with the local affected agencies within the county's boundaries, to adopt an ordinance making the provisions of this subdivision relating to transfer of base year value also applicable to situations in which the replacement dwellings are located in that county and the original properties are located in another county within this state. For purposes of this paragraph, "local affected agency" means any city, special district, school district, or community college district which receives an annual property tax revenue allocation. This paragraph shall apply to any replacement dwelling which was purchased or newly constructed on or after the date the county adopted the provisions of this subdivision relating to transfer of base year value, but shall not apply to any replacement dwelling which was purchased or newly constructed before November 9, 1988.

Third—That subdivision (i) of Section 2 of Article XIII A thereof is amended to read:

(i) Unless specifically provided otherwise, amendments to this section adopted prior to November 1, 1988, shall be effective for changes in ownership which occur, and new construction which is completed, after the effective date of the amendment. Unless specifically provided otherwise, amendments to this section adopted after November 1, 1988, shall be effective for changes in ownership which occur, and new construction which is completed, on or after the effective date of the amendment.

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## RESOLUTION CHAPTER 65

Assembly Constitutional Amendment No. 12—A resolution to propose to the people of the State of California an amendment to the Constitution of the State, by amending Sections 1 and 15 of, and adding and repealing Section 15.5 of, Article VI thereof, relating to courts.

[Filed with Secretary of State June 28, 1988.]

*Resolved by the Assembly, the Senate concurring,* That the Legislature of the State of California at its 1987–88 Regular Session commencing on the first day of December 1986, two-thirds of the members elected to each of the two houses of the Legislature voting therefor, hereby proposes to the people of the State of California that the Constitution of the State be amended as follows:

First—That Section 1 of Article VI thereof is amended to read:

SEC. 1. The judicial power of this State is vested in the Supreme Court, courts of appeal, superior courts, municipal courts, and justice courts. All courts are courts of record.

Second—That Section 15 of Article VI thereof is amended to read:

SEC. 15. A person is ineligible to be a judge of a court of record unless for 5 years immediately preceding selection to a municipal or justice court or 10 years immediately preceding selection to other courts, the person has been a member of the State Bar or served as a judge of a court of record in this State. A judge eligible for municipal court service may be assigned by the Chief Justice to serve on any court.

Third—That Section 15.5 is added to Article VI thereof, to read:

15.5. The 5-year membership or service requirement of Section 15 does not apply to justice court judges who held office on January 1, 1988.

This section shall be operative only until January 1, 1995, and as of that date is repealed.

Fourth—That the changes made by this measure shall be operative on January 1, 1990.

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## RESOLUTION CHAPTER 66

Assembly Joint Resolution No. 77—Relative to McClellan Air Force Base.

[Filed with Secretary of State June 28, 1988.]

WHEREAS, The recent announcement by the Air Force Logistics Command at Wright Patterson Air Force Base, Ohio, that civilian employees of the Sacramento Air Logistics Center at McClellan Air Force Base will be given a 4-day furlough is of great concern to the people of California; and

WHEREAS, Some 13,000 employees who are scheduled for furlough will be devastated by this unexpected lost income; and

WHEREAS, The wages lost because of the furlough will have a rippling effect on the economy of communities around Sacramento and elsewhere in northern California; and

WHEREAS, Sacramento and other communities depend on the stability of McClellan Air Force Base, a major employer in northern California; and

WHEREAS, The citizens of Sacramento and other Californians have appreciated McClellan Air Force Base civilian employees for their productivity, for their participation in the communities in which they live, and for their valuable contribution to the defense of our nation; now, therefore, be it

*Resolved by the Assembly and Senate of the State of California, jointly,* That the Legislature of the State of California supports the civilian employees at McClellan Air Force Base and also supports the California congressional delegation's efforts to seek equity in the disbursement of national defense funds and in the reduction of

budget expenditures; and be it further

*Resolved,* That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, to each Senator and Representative from California in the Congress of the United States, and to representatives of McClellan Air Force Base employees affected by the anticipated furlough.

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## RESOLUTION CHAPTER 67

Senate Constitutional Amendment No. 6—A resolution to propose to the people of the State of California an amendment to the Constitution of the State, by amending Sections 8 and 18 of Article VI thereof, relating to courts.

[Filed with Secretary of State June 30, 1988 ]

WHEREAS, The Legislature finds and declares that maintaining public confidence in the integrity of the judicial system is essential to good government; and

WHEREAS, The Commission on Judicial Performance bears a great public trust which it must currently fulfill in total secrecy; and

WHEREAS, Because responsible public disclosure and accountability is proper, desirable, and consistent with the goal of public confidence, it is the intent of this measure that appropriate commission proceedings be open to public scrutiny, and that this measure be construed so as to accomplish this purpose which is hereby declared to be the public policy of this state; now, therefore, be it

*Resolved by the Senate, the Assembly concurring,* That the Legislature of the State of California at its 1987–88 Regular Session commencing on the first day of December 1986, two-thirds of the members elected to each of the two houses of the Legislature voting therefor, hereby proposes to the people of the State of California that the Constitution of the State be amended, as follows:

First—That Section 8 of Article VI thereof is amended to read:

SEC. 8. (a) The Commission on Judicial Performance consists of 2 judges of courts of appeal, 2 judges of superior courts, and one judge of a municipal court, each appointed by the Supreme Court; 2 members of the State Bar of California who have practiced law in this State for 10 years, appointed by its governing body; and 2 citizens who are not judges, retired judges, or members of the State Bar of California, appointed by the Governor and approved by the Senate, a majority of the membership concurring. Except as provided in subdivision (b), all terms are 4 years. No member shall serve more than 2 4-year terms.

Commission membership terminates if a member ceases to hold

the position that qualified the member for appointment. A vacancy shall be filled by the appointing power for the remainder of the term. A member whose term has expired may continue to serve until the vacancy has been filled by the appointing power.

(b) To create staggered terms among the members of the Commission on Judicial Performance, the following members shall be appointed, as follows:

(1) The court of appeal member appointed to immediately succeed the term that expires on November 8, 1988, shall serve a 2-year term.

(2) Of the State Bar members appointed to immediately succeed terms that expire on December 31, 1988, one member shall serve for a 2-year term.

Second—That Section 18 of Article VI thereof is amended to read:

SEC. 18. (a) A judge is disqualified from acting as a judge, without loss of salary, while there is pending (1) an indictment or an information charging the judge in the United States with a crime punishable as a felony under California or federal law, or (2) a recommendation to the Supreme Court by the Commission on Judicial Performance for removal or retirement of the judge.

(b) On recommendation of the Commission on Judicial Performance or on its own motion, the Supreme Court may suspend a judge from office without salary when in the United States the judge pleads guilty or no contest or is found guilty of a crime punishable as a felony under California or federal law or of any other crime that involves moral turpitude under that law. If the conviction is reversed suspension terminates, and the judge shall be paid the salary for the judicial office held by the judge for the period of suspension. If the judge is suspended and the conviction becomes final the Supreme Court shall remove the judge from office.

(c) On recommendation of the Commission on Judicial Performance the Supreme Court may (1) retire a judge for disability that seriously interferes with the performance of the judge's duties and is or is likely to become permanent, and (2) censure or remove a judge for action occurring not more than 6 years prior to the commencement of the judge's current term that constitutes wilful misconduct in office, persistent failure or inability to perform the judge's duties, habitual intemperance in the use of intoxicants or drugs, or conduct prejudicial to the administration of justice that brings the judicial office into disrepute. The Commission on Judicial Performance may privately admonish a judge found to have engaged in an improper action or dereliction of duty, subject to review in the Supreme Court in the manner provided for review of causes decided by a court of appeal.

(d) A judge retired by the Supreme Court shall be considered to have retired voluntarily. A judge removed by the Supreme Court is ineligible for judicial office and pending further order of the court is suspended from practicing law in this State.

(e) A recommendation of the Commission on Judicial

Performance for the censure, removal or retirement of a judge of the Supreme Court shall be determined by a tribunal of 7 court of appeal judges selected by lot.

(f) If, after conducting a preliminary investigation, the Commission on Judicial Performance by vote determines that formal proceedings should be instituted:

(1) The judge or judges charged may require that formal hearings be public, unless the Commission on Judicial Performance by vote finds good cause for confidential hearings.

(2) The Commission on Judicial Performance may, without further review in the Supreme Court, issue a public reproval with the consent of the judge for conduct warranting discipline. The public reproval shall include an enumeration of any and all formal charges brought against the judge which have not been dismissed by the commission.

(3) The Commission on Judicial Performance may in the pursuit of public confidence and the interests of justice, issue press statements or releases or, in the event charges involve moral turpitude, dishonesty, or corruption, open hearings to the public.

(g) The Commission on Judicial Performance may issue explanatory statements at any investigatory stage when the subject matter is generally known to the public.

(h) The Judicial Council shall make rules implementing this section and providing for confidentiality of proceedings.

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## RESOLUTION CHAPTER 68

*Senate Constitutional Amendment No. 16—A resolution to propose to the people of the State of California an amendment to the Constitution of the State, by amending subdivisions (o), (p), and (q) of Section 3 of Article XIII thereof, relating to taxation.*

[Filed with Secretary of State June 30, 1988 ]

WHEREAS, The presence of certain language in subdivisions (o), (p), and (q) of Section 3 of Article XIII of the California Constitution has fostered an understandably common but nevertheless wholly erroneous assumption that the availability of the property tax exemption created in those subdivisions for certain active and honorably discharged members of the armed forces, the unmarried spouses of those members who are deceased, or the parents of those members who are deceased is dependent upon the exemption claimant's or the member's prior residence in this state as of a specific date or the member's residence in this state at the time of his or her entry into the armed forces; and

WHEREAS, This erroneous assumption may continue to jeopardize the filing of valid claims for the exemption or precipitate

costly and unnecessary litigation concerning eligibility for the exemption; and

WHEREAS, In order that the aforementioned consequences resulting from this erroneous assumption may be eliminated at the earliest possible time, the Legislature of the State of California concludes that it is necessary to take the unusual action of deleting language from the Constitution to more accurately reflect existing law; now, therefore, be it

*Resolved by the Senate, the Assembly concurring,* That the Legislature of the State of California at its 1987–88 Regular Session commencing on the first day of December 1986, two-thirds of the members elected to each of the two houses of the Legislature voting therefor, hereby proposes to the people of the State of California that the Constitution of the State be amended as follows:

First—That subdivision (o) of Section 3 of Article XIII thereof is amended to read:

(o) Property in the amount of $1,000 of a claimant who—

(1) is serving in or has served in and has been discharged under honorable conditions from service in the United States Army, Navy, Air Force, Marine Corps, Coast Guard, or Revenue Marine (Revenue Cutter) Service; and—

(2) served either

(i) in time of war, or

(ii) in time of peace in a campaign or expedition for which a medal has been issued by Congress, or

(iii) in time of peace and because of a service-connected disability was released from active duty; and—

(3) resides in the State on the current lien date.

An unmarried person who owns property valued at $5,000 or more, or a married person, who, together with the spouse, owns property valued at $10,000 or more, is ineligible for this exemption.

If the claimant is married and does not own property eligible for the full amount of the exemption, property of the spouse shall be eligible for the unused balance of the exemption.

Second—That subdivision (p) of Section 3 of Article XIII thereof is amended to read:

(p) Property in the amount of $1,000 of a claimant who—

(1) is the unmarried spouse of a deceased veteran who met the service requirement stated in paragraphs (1) and (2) of subsection 3(o), and

(2) does not own property in excess of $10,000, and

(3) is a resident of the State on the current lien date.

Third-That subdivision (q) of Section 3 of Article XIII thereof is amended to read:

(q) Property in the amount of $1,000 of a claimant who—

(1) is the parent of a deceased veteran who met the service requirement stated in paragraphs (1) and (2) of subsection 3(o), and

(2) receives a pension because of the veteran's service, and

(3) is a resident of the State on the current lien date.

Either parent of a deceased veteran may claim this exemption.

An unmarried person who owns property valued at $5,000 or more, or a married person, who, together with the spouse, owns property valued at $10,000 or more, is ineligible for this exemption.

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## RESOLUTION CHAPTER 69

Senate Concurrent Resolution No. 60—Relative to the David A. Hoffman Bridge.

[Filed with Secretary of State June 30, 1988.]

WHEREAS, David A. Hoffman was a graduate of the University of Maryland in civil engineering and became a state employee, working for the California Department of Transportation (CALTRANS); and

WHEREAS, David came to work for CALTRANS as a Junior Civil Engineer in February 1980; and

WHEREAS, David, a 30-year old CALTRANS engineer in the prime of his life, a son, husband, father, and good friend of all his CALTRANS co-workers, worked on many CALTRANS projects, particularly, for several years, designing the extension of State Route 52 in San Diego, especially in the Route 163 and Ruffin Road area; and

WHEREAS, David was an Assistant Resident Engineer in Construction who was then assigned as the Resident Engineer for the construction of the widening of Del Mar Heights Road Overcrossing on Interstate 5 in Del Mar; and

WHEREAS, David, who was seen by CALTRANS management as having a bright future in the organization, was assisting with the supervision of another CALTRANS construction project on Interstate 5 in Oceanside on the night of March 16, 1987, when he was killed by an errant motorist; and

WHEREAS, It was typical of David, as a CALTRANS engineer and as a human being, that he was always available to do excellent work and to help others, and that he lost his life in the performance of these duties; now, therefore, be it

*Resolved, by the Senate of the State of California, the Assembly thereof concurring,* That in appreciation of David A. Hoffman as an exemplary human being and employee of the State of California, the Del Mar Heights Road Overcrossing on Interstate 5 in Del Mar be officially designated the David A. Hoffman Memorial Bridge; and be it further

*Resolved,* That the Department of Transportation is hereby requested to determine the cost of appropriate signs, consistent with signing requirements for the state highway system, showing that official designation and, upon receiving donations from private sources to cover that cost, to erect those signs; and be it further

*Resolved,* That the Secretary of the Senate transmit a copy of this

resolution to the Director of Transportation.

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## RESOLUTION CHAPTER 70

Assembly Constitutional Amendment No. 17—A resolution to propose to the people of the State of California an amendment to the Constitution of the State, by amending Section 17 of Article VI thereof, relating to judges.

[Filed with Secretary of State June 30, 1988.]

WHEREAS, Many judges have found it possible to teach part time without interfering with their judicial duties, teaching by judges is approved by canons 4 and 5 of the California Code of Judicial Conduct, teaching by judges may make a valuable contribution to the public, and the California Constitution makes specific provision for the discipline or removal of any judge who persistently fails to perform his or her judicial duties; now, therefore, be it

*Resolved, by the Assembly, the Senate concurring,* That the Legislature of the State of California at its 1987–88 Regular Session commencing on the first day of December 1986, two-thirds of the members elected to each of the two houses of the Legislature voting therefor, hereby proposes to the people of the State of California that the Constitution of the State be amended by amending Section 17 of Article VI thereof, to read:

SEC. 17. A judge of a court of record may not practice law and during the term for which the judge was selected is ineligible for public employment or public office other than judicial employment or judicial office, except a judge of a court of record may accept a part-time teaching position that is outside the normal hours of his or her judicial position and that does not interfere with the regular performance of his or her judicial duties while holding office. A judge of a trial court of record may, however, become eligible for election to other public office by taking a leave of absence without pay prior to filing a declaration of candidacy. Acceptance of the public office is a resignation from the office of judge.

A judicial officer may not receive fines or fees for personal use.

A judicial officer may not earn retirement service credit from a public teaching position while holding judicial office.

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## RESOLUTION CHAPTER 71

Senate Joint Resolution No. 36—Relative to the United States Coast Guard.

[Filed with Secretary of State July 1, 1988.]

WHEREAS, The United States Coast Guard provides vital services to the People of the State of California, including search and rescue, maritime law enforcement, aids to navigation, boating safety, defense operations, environmental response, marine inspection and licensing, port safety and security, and waterways management; and

WHEREAS, The Coast Guard will have to close units, slow down operations, and cut personnel during the rest of the 1987–88 fiscal year because of a one hundred million dollar budget shortfall, and if the Coast Guard does not receive budget relief soon, even more drastic cuts will be made; and

WHEREAS, The California Legislature is concerned that the loss of the United States Coast Guard stations at Mare Island and Lake Tahoe and the elimination of patrols on the Klamath River will seriously impact the safety of mariners in those waters; and

WHEREAS, Coast Guard law enforcement operations are being cut by 55 percent as a result of the budget shortfall, and the Legislature is concerned that reductions of routine patrols by up to 55 percent in waters both within and adjacent to California will have a major detrimental impact on drug interdiction and fishery law enforcement and leave our waters more vulnerable to environmental damage; and

WHEREAS, The Secretary of Transportation, the Honorable James H. Burnley, IV, is planning to request a reprogramming of sixty million dollars from other United States Department of Transportation agencies to the Coast Guard for fiscal year 1987–88; and

WHEREAS, The administration has agreed to support a fiscal year 1988–89 budget for the Coast Guard that will allow resumption of normal operations by the Coast Guard units that remain in service; and

WHEREAS, Congressional approval of both the sixty million dollar Department of Transportation reprogramming in 1987–88 and the full 1988–89 Coast Guard appropriation is essential to avoid even more drastic closures of units and reductions in service; now, therefore, be it

*Resolved by the Senate and Assembly of the State of California, jointly,* That the Legislature memorializes Congress to expeditiously approve the reprogramming of sixty million dollars to the United States Coast Guard for the 1987–88 fiscal year, to appropriate all funds necessary to restore all Coast Guard services to California waters for the remainder of the 1987–88 fiscal year, and to provide adequate funding for the Coast Guard in the 1988–89 fiscal year; and be it further

*Resolved,* That the Secretary of the Senate transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, to the Secretary of Transportation, and to each Senator and Representative from

California in the Congress of the United States.

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## RESOLUTION CHAPTER 72

Assembly Concurrent Resolution No. 133—Relative to outreach and public information on the costs of higher education.

[Filed with Secretary of State July 7, 1988.]

WHEREAS, It is in the best interest of the people of this state to enhance and foster the ability of California residents to enroll in institutions of higher education within this state; and

WHEREAS, The technical complexity of the application process for both state and federal financial aid makes real access to financial aid for many students problematic; and

WHEREAS, The increased cost of tuition and fees for education coupled with inadequate increases for grant assistance is forcing more students and families to obtain loans to pay the costs of attendance; and

WHEREAS, Early information about college costs will encourage many families to improve their financial planning and increase these savings for college, and thereby avoid the necessity of borrowing large amounts of money to assist their children in attending college; and

WHEREAS, Information to elementary and junior high school pupils and their families about options for college attendance, including necessary academic as well as financial preparation, has been demonstrated to enhance personal motivation and increase the probabilities that pupils will complete secondary school and prepare for college; and

WHEREAS, A state priority exists to increase college attendance for economically disadvantaged groups who historically have not had access to postsecondary education because of either financial barriers or inadequate preparation for college; now, therefore, be it

*Resolved by the Assembly of the State of California, the Senate thereof concurring,* That the California Postsecondary Education Commission is hereby requested to consider alternative strategies to expand early outreach and public information efforts to elementary and junior high school pupils and their parents about the academic preparation necessary for college, and about how to apply for financial aid and prepare for the costs of higher education; and be it further

*Resolved,* That the commission is requested to explore the potential utilization of financial incentives for pupils and families to increase pupil motivation to complete their schooling and prepare for college, and alternative strategies to provide information to help families better plan and save for college, and be it further

*Resolved,* That in the preparation of this report, the Executive Director of the California Postsecondary Education Commission is requested to establish an advisory committee composed of representatives from the Student Aid Commission, the University of California, the California State University, the California Community Colleges, the Association of Independent California Colleges and Universities, the State Department of Education, public schools, students, and other appropriate agencies and organizations; and be it further

*Resolved,* That the California Postsecondary Education Commission, prior to November 15, 1989, is requested to present to the Legislature and the Governor (1) specific recommendations for action to implement new policy in this area, (2) a cost estimate for implementing each of the recommendations, and (3) a proposed time schedule for implementation.

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## RESOLUTION CHAPTER 73

Senate Concurrent Resolution No. 99—Relative to the Joint Committee on Organized Crime and Gang Violence.

[Filed with Secretary of State July 7, 1988 ]

WHEREAS, Gang violence in California is a growing problem, resulting in loss of life and property; and

WHEREAS, Law enforcement, community-based organizations, and neighborhood groups are committing substantial resources to combating this spreading social problem; and

WHEREAS, The Legislature recognizes the need to address the interrelated problems of organized crime, drug abuse, and gang violence; now, therefore, be it

*Resolved by the Senate of the State of California, the Assembly thereof concurring,* That the Joint Committee on Organized Crime and Gang Violence is hereby established and authorized to act during the 1987–88 Regular Session of the Legislature; and be it further

*Resolved,* That, pursuant to Joint Rule 36.5, the Joint Committee on Organized Crime and Gang Violence shall consist of nine Members of the Senate, appointed by the Senate Committee on Rules, and nine Members of the Assembly, appointed by the Speaker of the Assembly; and be it further

*Resolved,* That the Joint Committee on Organized Crime and Gang Violence and its members shall have and exercise all of the rights, duties, and powers conferred upon investigating committees and their members by the Joint Rules of the Senate and Assembly as they are adopted and amended from time to time, which provisions are incorporated herein and made applicable to the joint committee

and its members; and be it further

*Resolved,* That the Senate Committee on Rules may make money available from the Contingent Fund of the Senate as it deems necessary for the expenses of the Joint Committee on Organized Crime and Gang Violence and its members. Any expenditure of money by the joint committee shall be made in compliance with policies set forth by the Senate Committee on Rules and shall be subject to the approval of the Senate Committee on Rules; and be it further

*Resolved,* That the Joint Committee on Organized Crime and Gang Violence shall, within 15 days of its authorization, present its annual budget to the Senate Committee on Rules for its review and comment; and be it further

*Resolved,* That, on or before November 30, 1988, the Joint Committee on Organized Crime and Gang Violence shall report to the Legislature on methods of curtailing the problems of organized crime, gang violence, and drug abuse.

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## RESOLUTION CHAPTER 74

Assembly Constitutional Amendment No. 54—A resolution to propose to the people of the State of California an amendment to the Constitution of the State, by amending Section 9 of Article II and Sections 8 and 10 of Article IV thereof, relating to the enactment of statutes.

[Filed with Secretary of State August 1, 1988.]

*Resolved by the Assembly, the Senate concurring,* That the Legislature of the State of California at its 1987–88 Regular Session commencing on the first day of December 1986, two-thirds of the members elected to each of the two houses of the Legislature voting therefor, hereby proposes to the people of the State of California that the Constitution of the State be amended as follows:

First—That Section 9 of Article II is amended to read:

SEC. 9. (a) The referendum is the power of the electors to approve or reject statutes or parts of statutes except urgency statutes, statutes calling elections, and statutes providing for tax levies or appropriations for usual current expenses of the State.

(b) A referendum measure may be proposed by presenting to the Secretary of State, within 90 days after the enactment date of the statute, a petition certified to have been signed by electors equal in number to 5 percent of the votes for all candidates for Governor at the last gubernatorial election, asking that the statute or part of it be submitted to the electors. In the case of a statute enacted by a bill passed by the Legislature on or before the date the Legislature adjourns for a joint recess to reconvene in the second calendar year

of the biennium of the legislative session, and in the possession of the Governor after that date, the petition may not be presented on or after January 1 next following the enactment date unless a copy of the petition is submitted to the Attorney General pursuant to subdivision (d) of Section 10 of Article II before January 1.

(c) The Secretary of State shall then submit the measure at the next general election held at least 31 days after it qualifies or at a special statewide election held prior to that general election. The Governor may call a special statewide election for the measure.

Second—That Section 8 of Article IV is amended to read:

SEC. 8. (a) At regular sessions no bill other than the budget bill may be heard or acted on by committee or either house until the 31st day after the bill is introduced unless the house dispenses with this requirement by rollcall vote entered in the journal, three fourths of the membership concurring.

(b) The Legislature may make no law except by statute and may enact no statute except by bill. No bill may be passed unless it is read by title on 3 days in each house except that the house may dispense with this requirement by rollcall vote entered in the journal, two thirds of the membership concurring. No bill may be passed until the bill with amendments has been printed and distributed to the members. No bill may be passed unless, by rollcall vote entered in the journal, a majority of the membership of each house concurs.

(c) (1) Except as provided in paragraphs (2) and (3) of this subdivision, a statute enacted at a regular session shall go into effect on January 1 next following a 90-day period from the date of enactment of the statute and a statute enacted at a special session shall go into effect on the 91st day after adjournment of the special session at which the bill was passed.

(2) A statute, other than a statute establishing or changing boundaries of any legislative, congressional, or other election district, enacted by a bill passed by the Legislature on or before the date the Legislature adjourns for a joint recess to reconvene in the second calendar year of the biennium of the legislative session, and in the possession of the Governor after that date, shall go into effect on January 1 next following the enactment date of the statute unless, before January 1, a copy of a referendum petition affecting the statute is submitted to the Attorney General pursuant to subdivision (d) of Section 10 of Article II, in which event the statute shall go into effect on the 91st day after the enactment date unless the petition has been presented to the Secretary of State pursuant to subdivision (b) of Section 9 of Article II.

(3) Statutes calling elections, statutes providing for tax levies or appropriations for the usual current expenses of the state, and urgency statutes shall go into effect immediately upon their enactment.

(d) Urgency statutes are those necessary for immediate preservation of the public peace, health, or safety. A statement of facts constituting the necessity shall be set forth in one section of the

bill. In each house the section and the bill shall be passed separately, each by rollcall vote entered in the journal, two thirds of the membership concurring. An urgency statute may not create or abolish any office or change the salary, term, or duties of any office, or grant any franchise or special privilege, or create any vested right or interest.

Third—That Section 10 of Article IV is amended to read:

SEC. 10. (a) Each bill passed by the Legislature shall be presented to the Governor. It becomes a statute if it is signed by the Governor. The Governor may veto it by returning it with any objections to the house of origin, which shall enter the objections in the journal and proceed to reconsider it. If each house then passes the bill by rollcall vote entered in the journal, two thirds of the membership concurring, it becomes a statute.

(b) (1) Any bill, other than a bill which would establish or change boundaries of any legislative, congressional, or other election district, passed by the Legislature on or before the date the Legislature adjourns for a joint recess to reconvene in the second calendar year of the biennium of the legislative session, and in the possession of the Governor after that date, that is not returned within 30 days after that date becomes a statute.

(2) Any bill passed by the Legislature before September 1 of the second calendar year of the biennium of the legislative session and in the possession of the Governor on or after September 1 that is not returned on or before September 30 of that year becomes a statute.

(3) Any other bill presented to the Governor that is not returned within 12 days becomes a statute.

(4) If the Legislature by adjournment of a special session prevents the return of a bill with the veto message, the bill becomes a statute unless the Governor vetoes the bill within 12 days after it is presented by depositing it and the veto message in the office of the Secretary of State.

(5) If the 12th day of the period within which the Governor is required to perform an act pursuant to paragraph (3) or (4) of this subdivision is a Saturday, Sunday, or holiday, the period is extended to the next day that is not a Saturday, Sunday, or holiday.

(c) Any bill introduced during the first year of the biennium of the legislative session that has not been passed by the house of origin by January 31 of the second calendar year of the biennium may no longer be acted on by the house. No bill may be passed by either house on or after September 1 of an even-numbered year except statutes calling elections, statutes providing for tax levies or appropriations for the usual current expenses of the State, and urgency statutes, and bills passed after being vetoed by the Governor.

(d) The Legislature may not present any bill to the Governor after November 15 of the second calendar year of the biennium of the legislative session.

(e) The Governor may reduce or eliminate one or more items of

appropriation while approving other portions of a bill. The Governor shall append to the bill a statement of the items reduced or eliminated with the reasons for the action. The Governor shall transmit to the house originating the bill a copy of the statement and reasons. Items reduced or eliminated shall be separately reconsidered and may be passed over the Governor's veto in the same manner as bills.

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## RESOLUTION CHAPTER 75

Senate Concurrent Resolution No. 64—Relative to the administration of the California Sales and Use Tax Law.

[Filed with Secretary of State August 10, 1988.]

WHEREAS, The State Board of Equalization is the state agency charged with the responsibility for enforcing the California Sales and Use Tax Law; and

WHEREAS, Taxes collected pursuant to the California Sales and Use Tax Law is a major source of revenue for financing essential services provided by the state to its citizens; and

WHEREAS, Under the California Sales and Use Tax Law, every entity holding a sales tax permit issued by the State Board of Equalization is in effect a deputy tax collector for the State of California, and therefore, it is important that every entity holding such a permit fully understand the application of this law; and

WHEREAS, A better educated taxpaying public will increase the revenues of the state, while at the same time decreasing the administrative functions of the State Board of Equalization involved in enforcing compliance with this law, and creating a more cooperative relationship between the taxpayers of the state and the State Board of Equalization; now, therefore, be it

*Resolved, by the Senate of the State of California, the Assembly thereof concurring,* That the State Board of Equalization is requested to establish a more comprehensive program to properly educate the general public and the business community in general regarding the correct application of the California Sales and Use Tax Law so as to assure the proper assessment of the tax to any particular transaction or event, and that this training program include all of the following:

(1) The use of existing procedures for audit selection for the purpose of identifying the particular taxpayers that would benefit from the training program. In addition, the Board of Equalization shall ensure that there is adequate participation by small business representatives in this training effort.

(2) The development of procedures to identify particular tax provisions, including regulations, that are consistently and repeatedly misunderstood by the general taxpaying public when

applied to a particular transaction or event, for the purpose of incorporating instructions on these provisions into the training program.

(3) Procedures to identify particular business activities in which there is substantial taxpayer difficulty in understanding the application of the law to a particular transaction or event; and be it further

*Resolved,* That the Secretary of the Senate transmit a copy of this resolution to each member of the State Board of Equalization.

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## RESOLUTION CHAPTER 76

Senate Concurrent Resolution No. 72—Relating to merit awards.

[Filed with Secretary of State August 10, 1988.]

WHEREAS, Section 19823 of the Government Code provides that awards may be made to state employees in excess of three thousand dollars ($3,000) when the awards are approved by concurrent resolution of the Legislature; and

WHEREAS, An award of three thousand dollars ($3,000) has already been made to John S. Radov, State Board of Equalization, for a suggestion which resulted in a net revenue gain of four hundred six thousand four hundred sixty-three dollars ($406,463) by recommending that Form BT-414, Transcript of Returns Filed - Sales and Use Tax, no longer be prepared, unless requested, for certain classes of accounts for which a prior audit proved to be "unproductive"; and

WHEREAS, An award of three thousand dollars ($3,000) has already been made to William P. Kimsey, State Board of Equalization, for a suggestion which resulted in a net revenue gain of thirty-eight thousand two hundred sixty-seven dollars ($38,267) by recommending that the Audit Staff routinely telephone the Department of Motor Vehicles (DMV), when performing audits of used vehicle dealers, to obtain the number of DMV Report of Sale books and corresponding serial numbers for unreported used vehicle sales; and

WHEREAS, An award of three thousand dollars ($3,000), divided equally, has already been made to James D. Conway and Robert J. Walker, Department of California Highway Patrol, for a suggestion which resulted in one-time savings of sixty-eight thousand nine hundred twenty-six dollars ($68,926) by recommending that overlay dashboard covers be purchased through local automotive stores and be installed by department technicians instead of through local dealership sources; and

WHEREAS, An award of three thousand dollars ($3,000) has already been made to Philip Gene Maine, Franchise Tax Board, for

a suggestion which resulted in one-time savings of one hundred twenty-two thousand five hundred fifty-three dollars ($122,553) by recommending that corporation folders be stored in open-faced (PIT) files rather than TAB files and that letter-sized (8½" x 11") folders, guide cards and PIT shelving be used instead of legal size; and

WHEREAS, An award of three thousand dollars ($3,000) has already been made to Sylvia Jackson, Franchise Tax Board, for a suggestion which resulted in annual savings of forty thousand two hundred fifteen dollars ($40,215) by recommending that a program be made available to all users which computes interest to a future date on billable balance due corporation accounts, thereby, decreasing calculation time and errors; and

WHEREAS, An award of three thousand dollars ($3,000) has already been made to Beverly J. Perry, Department of Motor Vehicles, for a suggestion which resulted in annual savings of fifty-one thousand five hundred eighty-two dollars ($51,582) by recommending that the automation screen used for updating and identifying possible duplicate entries for traffic violations (abstracts) be modified by adding a fourth entry which would automatically review the entire field and avoid duplication and individual review; and

WHEREAS, An award of three thousand dollars ($3,000), divided equally, has already been made to John E. Kenan and C.G. Bork, Department of Transportation, for a suggestion which resulted in annual savings of sixty-eight thousand two hundred forty-five dollars ($68,245) by recommending the design and construction of concrete freeway median barriers with water carrying capabilities to eliminate the need for slotted pipes and catch basins on the freeway shoulder area; and

WHEREAS, An award of three thousand dollars ($3,000) has already been made to Ralph P. Boostrom, Department of Transportation, for a suggestion which resulted in annual savings of one million nine hundred sixty-one thousand four hundred seventy-one dollars ($1,961,471) by recommending that district inventory locations be consolidated as a means to better manage materials and reduce Caltrans' investment in inventories; and

WHEREAS, An award of three thousand dollars ($3,000), divided equally, has already been made to Shirley Best and Ivan G. Slayton, Department of Transportation, for a suggestion which resulted in annual savings of one hundred eleven thousand eight hundred sixty-eight dollars ($111,868) by recommending that all 11" by 17" 60# copies currently printed single-side on the 2 AM 1250 offset and 1 AM 1250 offset presses be run back-to-back on the Itek 975 Profector, reducing press time by 50 percent; and

WHEREAS, The suggestions of these employees have resulted in annually recurring savings, one-time savings, and net revenue gain amounting to two million eight hundred sixty-nine thousand five hundred ninety dollars ($2,869,590); and

WHEREAS, As a result of these savings, it is unnecessary to appropriate additional funds for payment of these awards; now, therefore, be it

*Resolved by the Senate of the State of California, the Assembly thereof concurring,* That the Legislature hereby declares that the following additional awards, which have been authorized by the Department of Personnel Administration, are hereby authorized to the employees named as follows:

John S. Radov, thirty-seven thousand six hundred forty-six dollars ($37,646);

William P. Kimsey, eight hundred twenty-seven dollars ($827);

James D. Conway, two hundred twenty-three dollars ($223);

Robert J. Walker, two hundred twenty-three dollars ($223);

Philip Gene Maine, three thousand one hundred twenty-seven dollars ($3,127);

Sylvia Jackson, one thousand twenty-two dollars ($1,022);

Beverly J. Perry, two thousand one hundred sixty dollars ($2,160);

John E. Kenan, one thousand nine hundred twelve dollars ($1,912);

C.G. Bork, one thousand nine hundred twelve dollars ($1,912);

Ralph P. Boostrom, one hundred ninety-three thousand one hundred forty-seven dollars ($193,147);

Shirley Best, four thousand ninety-three dollars ($4,093);

Ivan G. Slayton, four thousand ninety-three dollars ($4,093); and be it further

*Resolved,* That the Secretary of the Senate is directed to transmit a copy of this resolution to the Controller and to the Department of Personnel Administration.

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## RESOLUTION CHAPTER 77

Senate Concurrent Resolution No. 82—Relative to student participation in the decisionmaking process.

[Filed with Secretary of State August 10, 1988.]

WHEREAS, Students are consumers of education and can add a fresh perspective to the educational process; and

WHEREAS, Recognition of the value of student participation in setting educational policy has led to a student trustee with full voting privileges on the State Board of Education; and

WHEREAS, Forty-five students served on the Western Association of Schools and College Accreditation Teams throughout California in the 1986–87 school year; and

WHEREAS, Student participation has proved a valuable asset to the Child Nutrition Committee of the State Board of Education, 81 local school boards in California, and the steering committees for the

Golden State Examination project sponsored by the State Department of Education; and

WHEREAS, The State Board of Education is considering student membership on the Educational Technology Committee, the Curriculum Development and Supplemental Materials Commission, and the Special Education Commission; and

WHEREAS, The educational potential of a student is enhanced by participation in governmental and policymaking activities which channel student energies and enthusiasm in a positive direction and provide unique opportunities for students to work collectively on viable solutions to educational problems; and

WHEREAS, Students from throughout California and members of the California Association of Student Councils have testified in Assembly and Senate committees on legislation and made presentations to the State Board of Education; now, therefore, be it

*Resolved by the Senate of the State of California, the Assembly thereof concurring,* That the State Board of Education, the Superintendent of Public Instruction, county boards of education, unified school districts, and high school districts are encouraged to promote programs that involve students in the decisionmaking process; and be it further

*Resolved,* That the Secretary of the Senate transmit a copy of this resolution to the State Board of Education and the Superintendent of Public Instruction with the request that the resolution be disseminated to high school districts, unified school district boards and each county school superintendent in the state.

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## RESOLUTION CHAPTER 78

Assembly Joint Resolution No. 60—Relative to veterans centers.

[Filed with Secretary of State August 12, 1988.]

WHEREAS, Approximately 7.5 million American men and women served the United States military during the Vietnam era, with 2.3 million providing Vietnam war zone service, and 906,000 Vietnam era veterans currently residing in the State of California; and

WHEREAS, The legacy of combat and of a nation divided during the Vietnam conflict has left physical and emotional scars for the veterans and a continuing need for professional counseling and support; and

WHEREAS, The United States Congress has established 18 Vietnam veterans centers in California communities which have provided effective readjustment counseling and other services to promote settlement of the psychological and social difficulties faced by Vietnam veterans since their military discharge; and

WHEREAS, Federal statutes in effect in 1988 require the Veterans'

Administration beginning October 1, 1988, to move the Vietnam veterans centers from community settings into Veterans' Administration medical facilities, thereby reducing the potential neighborhood outreach capabilities that promote easy access to services by the veteran population; now, therefore, be it

*Resolved by the Assembly and Senate of the State of California, jointly,* That the Legislature of the State of California strongly encourages the President to support, and the Congress to enact, legislation to continue funding of the Vietnam veterans centers in community locations to ensure that veterans receive assistance to meet the needs created while serving their country; and be it further

*Resolved,* That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, to each Senator and Representative from California in the Congress of the United States, to the Senate Armed Services and Veterans Committee, the Veteran's Administration. and to the chairperson of each committee of the Senate and House of Representatives for consideration of legislation.

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## RESOLUTION CHAPTER 79

Assembly Joint Resolution No. 76—Relative to California's coastal management program.

[Filed with Secretary of State August 12, 1988 ]

WHEREAS, California's coastal resources are vital to the state's tourism and fishing industries, are a fundamental part of the state's ecology, and are enjoyed by the people of the state and the nation because of their scenic beauty and the recreational opportunities which they provide; and

WHEREAS, The federal Coastal Zone Management Act of 1972 (CZMA) encourages states to adopt management programs for their coasts; and

WHEREAS, Congress found in the CZMA that it is national policy to preserve, protect, develop, and where possible, to restore or enhance, the resources of the nation's coastal zone for this and succeeding generations; and

WHEREAS, The CZMA also states that it is national policy to encourage and assist the states to exercise effectively their responsibilities in the coastal zone through the development and implementation of management programs to achieve wise use of the land and water resources; and

WHEREAS, Prior to enactment of the CZMA, the people of California recognized the need for coastal managment through enactment of the McAteer-Petris Act in 1969 which established the

San Francisco Bay Conservation and Development Commission, and by placing Proposition 20 on the ballot in 1972 to develop a coastal management plan; and

WHEREAS, In November 1977, the National Oceanic and Atmosphere Administration (NOAA) approved California's coastal management program, finding that it met the goals and requirements of the CZMA; and

WHEREAS, California's coastal management program has served the state well by planning and permitting needed development while protecting coastal resources which are vital to public recreation and the state's tourism and fishing industries; and

WHEREAS, In its 1987 evaluation of the coastal management program, NOAA threatened to initiate decertification of the state's coastal management program; and

WHEREAS, NOAA's evaluation attacks aspects of the state's program which it had previously approved and which had been affirmed by the court in American Petroleum Institute v. Knecht (609 F. 2d 1306); and

WHEREAS, The State of California has filed suit against NOAA, charging that NOAA's actions violate the terms of the CZMA, the federal Administrative Procedure Act, and the National Environmental Policy Act; and

WHEREAS, The Secretary of Commerce has not halted the actions against the California coastal management program by agencies under the secretary's direction in spite of appeals by both of California's United States Senators and a bipartisan group of the state's Congressional Representatives; and

WHEREAS, Decertification of California's coastal management program would deprive the state of authority over federal projects which affect the coast; and

WHEREAS, Decertification would make California ineligible for annual federal grants of approximately $2 million which have assisted both state and local coastal planning and implementation; now, therefore, be it

*Resolved by the Assembly and the Senate of the State of California, jointly,* That the Legislature of the State of California respectfully memorializes the President of the United States and the Secretary of Commerce not to proceed with decertification of California's coastal management program; and be it further

*Resolved,* That the Legislature urges the State of California and the Secretary of Commerce to enter immediately into meaningful negotiations to resolve any dispute over implementation of California's federally approved coastal management program as an alternative to pursuing decertification; and be it further

*Resolved,* That the Legislature memorializes the Congress of the United States to take such action as is necessary to encourage negotiation and to prevent the Department of Commerce from proceeding with decertification; and be it further

*Resolved,* That the Chief Clerk of the Assembly transmit copies of

this resolution to the President and Vice President of the United States, to the Secretary of Commerce, to the Speaker of the House of Representatives, to the Majority Leader of the Senate, and to each Senator and Representative from California in the Congress of the United States.

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## RESOLUTION CHAPTER 80

Senate Concurrent Resolution No. 91—Relative to acquired immune deficiency syndrome.

[Filed with Secretary of State August 12, 1988 ]

WHEREAS, Acquired immune deficiency syndrome (AIDS) is a serious epidemic in California; and

WHEREAS, Many businesses in California have responded to this epidemic by developing medically appropriate and socially responsible business policies regarding AIDS prevention and people infected with the AIDS virus; now, therefore, be it

*Resolved by the Senate of the State of California, the Assembly thereof concurring,* That the Legislature commends all California companies that have made special efforts to become informed about the AIDS epidemic and to develop business policies based on this information; and be it further

*Resolved,* That the Legislature specifically commends the following California companies whose positive efforts regarding AIDS have come to its attention:

San Francisco Business Leadership Task Force for providing business community leadership as early as 1983 in such areas as development of AIDS in the Workplace videotapes and formulation of policies for employees with AIDS or other serious illness.

Orange County Business Task Force for publication in 1987 of its comprehensive and informative document to help other businesses respond appropriately to the AIDS epidemic: Facilitating AIDS Education in the Work Environment.

Esprit, whose Fall 1987 fashion catalogue incorporates AIDS awareness and prevention messages into its central theme of health and beauty; and be it further

*Resolved,* That the Secretary of the Senate transmit copies of this resolution to each of the companies referenced or specifically mentioned herein, so that these companies will know of the Legislature's recognition of the example they have set for others in the business community.

## RESOLUTION CHAPTER 81

Senate Concurrent Resolution No. 62—Relative to the California Law Revision Commission.

[Filed with Secretary of State August 15, 1988.]

WHEREAS, The California Law Revision Commission is authorized to study only topics set forth in the calendar contained in its report to the Governor and the Legislature which are thereafter approved for study by concurrent resolution of the Legislature, and topics which have been referred to the commission for study by concurrent resolution of the Legislature; and

WHEREAS, The commission, in its annual report covering its activities for 1987, lists 24 topics, all of which the Legislature has previously authorized or directed the commission to study; now, therefore, be it

*Resolved by the Senate of the State of California, the Assembly thereof concurring,* That the Legislature approves for continued study by the California Law Revision Commission the topics listed below, all of which the Legislature has previously authorized or directed the commission to study:

(1) Whether the law relating to creditors' remedies (including, but not limited to, attachment, garnishment, execution, repossession of property (including the claim and delivery statute, self-help repossession of property, and the Commercial Code repossession of property provisions), civil arrest, confession of judgment procedures, default judgment procedures, enforcement of judgments, the right of redemption, procedures under private power of sale in a trust deed or mortgage, possessory and nonpossessory liens, and related matters) should be revised;

(2) Whether the California Probate Code should be revised, including, but not limited to, whether California should adopt, in whole or in part, the Uniform Probate Code;

(3) Whether the law relating to real and personal property (including, but not limited to, a Marketable Title Act, covenants, servitudes, conditions, and restrictions on land use or relating to land, possibilities of reverter, powers of termination, Section 1464 of the Civil Code, escheat of property and the disposition of unclaimed or abandoned property, eminent domain, quiet title actions, abandonment or vacation of public streets and highways, partition, rights and duties attendant upon assignment, subletting, termination, or abandonment of a lease, powers of appointment, and related matters) should be revised;

(4) Whether the law relating to family law (including, but not limited to, community property) should be revised;

(5) Whether the law relating to the award of prejudgment interest in civil actions and related matters should be revised;

(6) Whether the law relating to class actions should be revised;

(7) Whether the law relating to offers of compromise should be revised;

(8) Whether the law relating to discovery in civil cases should be revised;

(9) Whether a summary procedure should be provided by which property owners can remove doubtful or invalid liens from their property, including a provision for payment of attorney's fees to the prevailing party;

(10) Whether acts governing special assessments for public improvements should be simplified and unified;

(11) Whether the law on injunctions and related matters should be revised;

(12) Whether the law relating to involuntary dismissal for lack of prosecution should be revised;

(13) Whether the law relating to statutes of limitations applicable to felonies should be revised;

(14) Whether the law relating to the rights and disabilities of minor and incompetent persons should be revised;

(15) Whether the law relating to custody of children, adoption, guardianship, freedom from parental custody and control, and related matters should be revised;

(16) Whether the Evidence Code should be revised;

(17) Whether the law relating to arbitration should be revised;

(18) Whether the law relating to modification of contracts should be revised;

(19) Whether the law relating to sovereign or governmental immunity in California should be revised;

(20) Whether the decisional, statutory, and constitutional rules governing the liability of public entities for inverse condemnation should be revised (including, but not limited to, liability for damages resulting from flood control projects) and whether the law relating to the liability of private persons under similar circumstances should be revised;

(21) Whether the law relating to liquidated damages in contracts generally, and particularly in leases, should be revised;

(22) Whether the parol evidence rule should be revised;

(23) Whether the law relating to pleadings in civil actions and proceedings should be revised;

(24) Whether there should be changes to administrative law; and be it further

*Resolved,* That the Secretary of the Senate transmit a copy of this resolution to the California Law Revision Commission.

## RESOLUTION CHAPTER 82

Senate Concurrent Resolution No. 67—Relative to truck driver safety.

[Filed with Secretary of State August 15, 1988.]

*Resolved by the Senate of the State of California, the Assembly thereof concurring,* That the Legislature hereby requests the Governor to establish a task force under the direction of the Department of the California Highway Patrol to investigate, and to make recommendations to improve, heavy commercial vehicle and driver safety in California; and be it further

*Resolved,* That the task force include representatives of the Department of the California Highway Patrol, the Public Utilities Commission, the Department of Motor Vehicles, the Office of Traffic Safety in the Business, Transportation and Housing Agency, the Department of Transportation, labor organizations, various segments of the trucking and shipping industries, and motor vehicle owners' and operators' organizations; and be it further

*Resolved,* That the task force study methods of improving heavy commercial vehicle and driver safety, including improved coordination among state agencies and commissions having jurisdiction and responsibility for trucking safety; and be it further

*Resolved,* That the task force obtain information from the trucking industry, state agencies, and other motorist and highway safety-related organizations to identify and study the current safety status of heavy commercial vehicle operation, and of drivers of those commercial vehicles, in this state. The information shall include, but not be limited to, information relating to the licensing, regulation, maintenance, and monitoring of heavy commercial vehicle operations, and the training, licensing, and monitoring of heavy commercial vehicle drivers, and shall be compiled to provide a basis for the development and effective management of cost-effective safety programs and improvements to reduce heavy commercial vehicle accidents; and be it further

*Resolved,* That the task force shall report its findings and recommendations to the Legislature and the Governor not later than January 1, 1990; and be it further

*Resolved,* That the Secretary of the Senate transmit a copy of this resolution to the Governor.

## RESOLUTION CHAPTER 83

Senate Concurrent Resolution No. 68—Relative to landscaping of new state buildings.

[Filed with Secretary of State August 15, 1988 ]

WHEREAS, An important element of the construction of many new state buildings is landscaping considerations, and landscaping contributes a desirable element of beauty and style; and

WHEREAS, Unfortunately, landscaping, as a general rule, requires a continuous supply of water; and

WHEREAS, Water is a precious resource of the State of California; and

WHEREAS, Droughts can severely limit the availability of water in the state; and

WHEREAS, The citizens of California desire to conserve water whenever possible; and

WHEREAS, The citizens of California support efforts to landscape with plants that require less water; and

WHEREAS, Xeric plants are plants which require little water and are generally drought resistant; and

WHEREAS, The use of Xeric plants to landscape new state buildings, where possible, would help to conserve water for the State of California; now, therefore, be it

*Resolved by the Senate of the State of California, the Assembly thereof concurring,* That the Legislature hereby urges the Department of General Services to utilize Xeric plants, where possible, for the landscaping of all new state buildings; and be it further

*Resolved,* That the Secretary of the Senate shall transmit a copy of this resolution to the Director of General Services.

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## RESOLUTION CHAPTER 84

Senate Concurrent Resolution No. 77—Relative to the Arthritis Self-help Course.

[Filed with Secretary of State August 15, 1988 ]

WHEREAS, Arthritis is a debilitating condition that affects one in seven Californians; and

WHEREAS, Self-help includes actions an arthritis sufferer may take to keep the arthritis under control and to remain as independent as possible; and

WHEREAS, The Arthritis Self-help Course is an internationally recognized self-management course for arthritis patients; and

WHEREAS, The Arthritis Self-help Course is approved by the

Arthritis Foundation; and

WHEREAS, The Arthritis Self-help Course has been demonstrated to be a cost-effective method of teaching self-management skills to persons with arthritis; and

WHEREAS, Significant reductions in the intensity of pain have been reported by course graduates; and

WHEREAS, Significant reductions in the number of out-patient medical visits are demonstrated by course graduates; now, therefore, be it

*Resolved by the Senate of the State of California, the Assembly thereof concurring,* That the Legislature of the State of California urges the Chancellor of the California Community College system to encourage community colleges which are currently under their enrollment cap to work with the Stanford University Arthritis Center to offer the Arthritis Self-help Course as a noncredit course under the health and safety category; and be it further

*Resolved,* That the Chancellor's office of the California Community College system encourage community colleges to attend a workshop on the Arthritis Self-help Course sponsored by Stanford University.

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## RESOLUTION CHAPTER 85

Senate Concurrent Resolution No. 85—Relative to the University of California accommodating increased enrollments.

[Filed with Secretary of State August 15, 1988 ]

WHEREAS, The State of California's Master Plan for Higher Education states that the top 12½ percent of each high school graduating class is eligible to attend the University of California, and the state continues to support the university's commitment to accept all eligible California high school graduates who wish to attend the university as undergraduates; and

WHEREAS, It is especially important to maintain access to the undergraduate programs of the University of California for the growing number of minority students who reflect California's demographic changes without displacing similarly qualified and motivated nonminority students; and

WHEREAS, Enrollments in the University of California between the years of 1980–81 and 1988–89 will have grown by over 26,000 students, and the percent of university eligible high school graduates who attend the university has increased significantly during the past five years from 5 percent to 8 percent; and

WHEREAS, There will be a need for increased graduate enrollments in the 1990's to provide sufficient faculty for our colleges and universities, as well as other trained professionals; and

WHEREAS, Existing levels of enrollment on many campuses can have an adverse effect on the quality of education because classrooms are crowded, laboratory and other research facilities are heavily overburdened, instructional services such as library materials and computer centers are not available to all students in a timely fashion, and many other campus resources and equipment are utilized to capacity; and

WHEREAS, Many campuses and their adjacent communities are already densely populated and experiencing student housing shortages, transportation congestion, and infrastructure problems with city and county governments and facilities; and

WHEREAS, The Legislature declares its intent to continue support for the university as a preeminent, international research institution for undergraduate and graduate students, and students of the professions of law and medicine; now, therefore, be it

*Resolved by the Senate of the State of California, the Assembly thereof concurring,* That the Regents of the University of California are requested to develop, by July 1989, a long-range plan for accommodating anticipated additional enrollments into the 21st century; and be it further

*Resolved,* That the plan include both of the following:

(1) An assessment of the reasonable and feasible capacity of the University of California's existing campuses and their respective communities.

(2) A proposal which, to the extent necessary, includes a recommended timeline and a list of critical decisions to establish one or more additional campuses of the University of California; and be it further

*Resolved,* That the Secretary of the Senate transmit copies of this resolution to the Regents of the University of California.

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## RESOLUTION CHAPTER 86

Senate Concurrent Resolution No. 66—Relative to railroad crossings.

[Filed with Secretary of State August 18, 1988 ]

WHEREAS, The General Orders of the Public Utilities Commission require railroad companies to maintain railroad crossing protection devices, and further require them, where streets intersect the railroad, to maintain or reconstruct the pavement located between the rails and within the area located two feet outside of the rails; and

WHEREAS, At the present time there are pavement management systems in widespread use that are designed to evaluate pavement conditions; and

WHEREAS, A pavement management system for railroad grade crossings could provide a uniform rating system to evaluate the condition of railroad grade crossings; and

WHEREAS, A uniform rating system could provide a standard measure of the level of maintenance required at each railroad grade crossing; and

WHEREAS, A standard measure of required maintenance could be used to make meaningful comparisons of maintenance required at railroad grade crossings on a statewide basis; and

WHEREAS, It is anticipated that information provided by a pavement management system would be collected statewide for all railroad grade crossings; now, therefore, be it

*Resolved by the Senate of the State of California, the Assembly thereof concurring,* That the Department of Transportation, working with a committee consisting of representatives from local agencies, representatives of the Senate Committee on Transportation and the Assembly Committee on Transportation, members of the City, County, and State Cooperation Committee, the Public Utilities Commission, and the railroad industry, is hereby requested to assist that committee in the development of a pavement management system for the evaluation of railroad grade crossings; and be it further

*Resolved,* That the pavement management system shall include a procedure for establishing a work priority list for grade crossings in need of repair, based on criteria determined by the committee; and be it further

*Resolved,* That the department report to the Legislature by January 1, 1990, regarding the establishment of a pavement management system for the evaluation of railroad grade crossings; and be it further

*Resolved,* That the Secretary of the Senate transmit a copy of this resolution to the Director of Transportation.

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## RESOLUTION CHAPTER 87

Senate Concurrent Resolution No. 90—Relative to the Joint Committee on Courthouse Financing and Construction.

[Filed with Secretary of State August 18, 1988 ]

WHEREAS, The judicial branch of state government provides a great number of necessary and vital services to the people of California; and

WHEREAS, There is a significant and growing need to construct and finance new court facilities to serve the judicial needs of the people of California; and

WHEREAS, It is recognized that existing court facilities may not

be adequate to allow efficient and timely processing of pending and anticipated caseloads; and

WHEREAS, Before courthouses are built, careful research and planning are essential to ensure that space allocations and designs reflect current and future court requirements; now, therefore, be it

*Resolved by the Senate of the State of California, the Assembly thereof concurring,* That the Joint Committee on Courthouse Financing and Construction is hereby established and authorized to act during the 1987–88 Regular Session of the Legislature; and be it further

*Resolved,* That the Joint Committee on Computers in State Government shall be abolished upon the enactment of this resolution; and be it further

*Resolved,* That, pursuant to Joint Rule 36.5, the Joint Committee on Courthouse Financing and Construction shall consist of three Members of the Senate, appointed by the Senate Committee on Rules, and three Members of the Assembly, appointed by the Speaker of the Assembly; and be it further

*Resolved,* That the Joint Committee on Courthouse Financing and Construction and its members shall have and exercise all of the rights, duties, and powers conferred upon investigating committees and their members by the Joint Rules of the Senate and Assembly as they are adopted and amended from time to time, which provisions are incorporated herein and made applicable to the joint committee and its members; and be it further

*Resolved,* That the Senate Committee on Rules may make money available from the Contingent Fund of the Senate as it deems necessary for the expenses of the Joint Committee on Courthouse Financing and Construction and its members. Any expenditure of money by the joint committee shall be made in compliance with policies set forth by the Senate Committee on Rules and shall be subject to the approval of the Senate Committee on Rules; and be it further

*Resolved,* That the Joint Committee on Courthouse Financing and Construction shall, within 15 days of its authorization, presents its budget to the Joint Committee on Rules for its review and comment; and be it further

*Resolved,* That, on or before November 30, 1988, the Joint Committee on Courthouse Financing and Construction shall report to the Legislature as to the status of courthouse construction within the state and the methods available to finance courthouse construction within the state; and be it further

*Resolved,* That the Joint Committee on Courthouse Financing and Construction is authorized to act until November 30, 1988, and as of that date shall cease to exist.

## RESOLUTION CHAPTER 88

Assembly Concurrent Resolution No. 113—Relative to education on aging in the public school curriculum.

[Filed with Secretary of State August 18, 1988.]

WHEREAS, In 1980, California had 2.4 million citizens age 65 years and older that constituted 10.2 percent of the total population; and

WHEREAS, In 1990, the number of Californians age 65 years and older is projected to be 3.1 million or 11.4 percent of the projected total population, and in the year 2000, there is projected to be 3.5 million California seniors, or a 44.6 percent increase in numbers from 1980; and

WHEREAS, The "old, old" (age 85 and over) population is projected to increase by 137.6 percent between the years 1980 and 2000, making it the fastest growing age group in California; and

WHEREAS, At any one time, about 5 percent of the population, age 65 years or older, is in a long-term care facility, and that percentage rises to over 20 percent among persons age 85 years and older; and

WHEREAS, California leads the nation in the number of residents age 75 years and over with a total of 944,000 persons (New York is second with 868,000 and Florida is third with 627,000); and

WHEREAS, There is a critical shortage in health manpower to care for the elderly population of our state; and

WHEREAS, Current statistics show turnover rates among long-term care nurses to be 10-50 percent annually and 80-100 percent annually for certified nurse assistants, and government figures point to a 30 percent decline in the entry level labor pool by the year 2000; and

WHEREAS, There is no meaningful education of young people in our state to ensure that they will be prepared to deal with this large elderly population; and

WHEREAS, The result of a lack of education of our young people about aging issues will be a lack of understanding about the unique needs of our elderly population; and

WHEREAS, Early education in the area of aging will result in less fear among young people about their own mortality and will foster greater compassion and understanding for the plight of the aged; and

WHEREAS, Early education in the area of aging may encourage more young people to seek careers in long-term care; now, therefore, be it

*Resolved by the Assembly of the State of California, the Senate thereof concurring,* That the Legislature hereby requests the State Department of Education and the State Board of Education to add aging issues to the curriculum for grades 1 to 6, inclusive, to ensure that the education of school aged children includes subject matter specifically addressing the aged.

## RESOLUTION CHAPTER 89

Assembly Concurrent Resolution No. 127—Relative to the Interagency Task Force on Tourism.

[Filed with Secretary of State August 18, 1988 ]

WHEREAS, The State of California spends approximately seven million dollars in state funds, in addition to approximately eight million dollars in matching funds and services from the private sector, to advertise and engage in marketing and public relations efforts to promote California as a travel and tourism destination; and

WHEREAS, Travel and tourism expenditures, estimated at over thirty-five billion dollars, are a major factor in the state's economy; and

WHEREAS, Travel and tourism directly generate approximately 600,000 jobs with a total payroll over seven billion six hundred million dollars, jobs which account for over one billion dollars in state tax revenues and over six hundred thousand dollars in local tax revenues; and

WHEREAS, According to the United States Travel Data Center "Survey of State Travel Offices," California ranks 10th in annual travel and tourism promotion budgets, and many of the states ranking ahead of California have doubled or tripled their promotion budgets over the last five years; and

WHEREAS, The increased competition from other states for foreign and domestic travelers demands a coordinated and effective use of the state's travel and tourism budget, which is not being substantially increased in the 1988–89 fiscal year; and

WHEREAS, The United States Department of Commerce, the Travel Industry Association of America, and most travel and tourism professionals predict a significant increase in the number of international visitors to California in 1988, due to the value of the dollar, lower transatlantic airfares, increased air carrier capacity, and increased competition, leading to lower-priced accommodations, in the hotel and motel industry; and

WHEREAS, According to the United States Department of Commerce, California is the number one tourist destination for foreign visitors, especially the Japanese, who spend an average of nine hundred forty-seven dollars per trip, as compared to other foreign visitors who spend an average of five hundred fifty-six dollars per trip; and

WHEREAS, The unique cultural, historical, recreational, and economic diversity of the state creates an unlimited number of "California experiences" which can be marketed to all visitors in 1988; and

WHEREAS, Existing law allows the Office of Tourism within the Department of Commerce to convene an interagency committee to devise recommendations to identify and solve problems of tourism

promotion; and

WHEREAS, The "tourism industry" is an umbrella-term used to describe the various industries relying on, or providing services to visitors, including, but not limited to: hotels, motels, inns, restaurants, souvenir shops, vacation homes, travel agents, airlines, tour buses, rental car agencies, parks, attractions, museums, galleries, festivals, fairs, retail shops, and automobile services; and

WHEREAS, Many state government agencies have authority over, and responsibilities for, activities falling under the tourism industry umbrella; and

WHEREAS, The following state agencies, departments, and offices have specific jurisdiction or interest in visitor services: the Department of Parks and Recreation, the Department of Food and Agriculture, the Department of Transportation, the Department of Commerce, including the Office of Tourism and the California Film Commission, the Department of Fish and Game, the Department of Boating and Waterways, the Department of Forestry, the California Arts Council, the the Office of Historic Preservation, the California Exposition and State Fair, and the State Legislature; and

WHEREAS, Many local governments have convention and visitor bureaus or contract with chamber of commerce organizations to develop local travel and tourism marketing and services plans; and

WHEREAS, The California Travel Industry Association serves as an umbrella group for private sector groups and associations, and the association has the goal of fostering effective statewide tourism marketing; and

WHEREAS, The California Tourism Corporation, a nonprofit, privately funded organization, was created to advise the Office of Tourism and provide its programs with private industry expertise and marketing leverage in a coordinated and cohesive manner; and

WHEREAS, There exists a need to bring together all public and private sector parties interested in the coordinated delivery of visitor services to identify and solve existing or potential problems with that delivery; and

WHEREAS, The above-mentioned public and private entities include people with creativity, enthusiasm, knowledge, and responsibility for tourism-related activities who would be assets to the state's efforts to develop a program of tourism marketing and promotion and assets to the state's ability to coordinate tourism-related services; now, therefore, be it

*Resolved by the Assembly of the State of California, the Senate thereof concurring,* That the Legislature of the State of California hereby requests the Director of Commerce to convene an Interagency Task Force on Tourism, under the direction of the Director of the Department of Commerce and composed of representatives from the above-mentioned state agencies, departments, and offices, to assist the Department of Commerce and the Office of Tourism in developing a tourism marketing plan and to help identify and solve problems in the delivery of visitor services;

and be it further

*Resolved,* That private sector representatives from the above-mentioned convention and visitor bureaus, local chambers of commerce, the California Travel Industry Association, the California Tourism Corporation, and other representatives from groups or organizations with an interest in the state's tourism promotion and delivery of visitor services be encouraged to contribute to the task force ideas and suggestions reflecting their areas of expertise and interest; and be it further

*Resolved,* That the Chief Clerk of the Assembly transmit copies of this resolution to the Governor, the Director of Commerce, the Director of the Office of Tourism, the Director of Parks and Recreation, the Director of Food and Agriculture, the Director of Transportation, the Director of Fish and Game, the Director of Boating and Waterways, the Director of Forestry, the Director of the California Arts Council, the Chairperson of the California Film Commission, the State Historic Preservation Officer, and the Director of the California Exposition and State Fair.

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## RESOLUTION CHAPTER 90

Assembly Concurrent Resolution No. 163—Relative to commending the Los Angeles Lakers.

[Filed with Secretary of State August 19, 1988.]

WHEREAS, The Los Angeles Lakers basketball club has won its second consecutive world championship of professional basketball, and it is appropriate to honor and commend the Lakers at this time; and

WHEREAS, On June 21, 1988, the Lakers completed their 1987–88 championship season with an exciting and hard-fought victory on their home court at the Forum in Inglewood, thus eliminating the rugged and determined Detroit Pistons in the NBA Championship Series, four games to three; and

WHEREAS, Under the tutelage of Head Coach Pat Riley, the Lakers have become the first pro basketball team to win consecutive world championships in almost two decades, and the Lakers' latest world championship is their fifth in the 1980's; and

WHEREAS, Only three other teams in history have won as many as five championships in a single decade; and

WHEREAS, The phrase "Showtime" has become synonymous with the Lakers' fast-breaking style, which emphasizes tenacious defense, rapid transition to offense, and dazzling ball-handling and passing, culminating in a high-percentage shot; and

WHEREAS, During the regular season, the Lakers compiled the best record in the NBA, and their winning ways continued in the

playoffs, where they eliminated the San Antonio Spurs, the Utah Jazz, the Dallas Mavericks, and, finally, the Detroit Pistons; and

WHEREAS, The Jazz, Mavericks, and Pistons each extended the Lakers to a seventh game, and the Lakers are the only team in NBA history to win three seven-game playoff series in the same season; and

WHEREAS, Special recognition is due to Laker forward James Worthy, who earned Most Valuable Player recognition in the NBA Championship Series; and

WHEREAS, The members of the 1987–88 World Champion Los Angeles Lakers are: Captain Kareem Abdul-Jabbar, Tony Campbell, Michael Cooper, A.C. Green, Earvin ("Magic") Johnson, Wes Matthews, Kurt Rambis, Byron Scott, Mike Smrek, Billy Thompson, Mychal Thompson, Milt Wagner, and James Worthy; and

WHEREAS, Also deserving of congratulations are Laker owner Dr. Jerry Buss, retiring Laker President Bill Sharman, General Manager Jerry West, Head Coach Pat Riley and his assistants, Bill Bertka and Randy Pfund, Trainer Garry Vitti, and the Laker announcers, Chick Hearn and Stu Lantz; now, therefore, be it

*Resolved by the Assembly of the State of California, the Senate thereof concurring,* That all members of the World Champion Los Angeles Lakers and their organization be congratulated for their outstanding performances throughout the 1987–88 NBA season; and be it further

*Resolved,* That, on behalf of the basketball fans of California, the Legislature thanks the Lakers for the excitement and inspiration that they have brought to our state during their most recent championship season; and be it further

*Resolved,* That the Chief Clerk of the Assembly shall transmit a suitably prepared copy of this resolution to each member of the Los Angeles Lakers team, coaching staff, and administrative staff.

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## RESOLUTION CHAPTER 91

Senate Concurrent Resolution No. 76—Relative to family law.

[Filed with Secretary of State August 30, 1988.]

WHEREAS, In proceedings under the Family Law Act, it is often desirable that counsel be appointed, pursuant to Section 4606 of the Civil Code, to represent the best interests of a minor child; and

WHEREAS, The parents of the minor child often are not financially able to contribute to the compensation and expenses paid to appointed counsel; now, therefore, be it

*Resolved by the Senate of the State of California, the Assembly thereof concurring,* That the Legislature requests the Judicial Council to provide recommendations to the Legislature, by

December 31, 1989, on the feasibility of establishing a fund for payment of the compensation and expenses of counsel appointed pursuant to Section 4606 of the Civil Code in circumstances where the court determines that the parents of a minor child do not have sufficient funds to pay for the compensation and expenses of the appointed counsel; and be it further

*Resolved,* That in making its recommendations, the Judicial Council shall make an assessment on the need of the establishment of the fund, identify potential sources of funds, identify criteria for establishing eligibility for receipt of the funds, and identify methods of reimbursement to the fund when appropriate; and be it further

*Resolved,* That the Secretary of the Senate transmit a copy of this resolution to the Judicial Council.

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## RESOLUTION CHAPTER 92

Senate Concurrent Resolution No. 81—Relative to the genome project.

[Filed with Secretary of State August 30, 1988.]

WHEREAS, Independent public and private efforts are underway to sequence and map every chemical base in all the deoxyribonucleic acid (DNA) of the human genome (all the genetic material); and

WHEREAS, These efforts have already led to the identification of DNA fragments linked with Huntington's disease, cystic fibrosis, Alzheimer's disease, Duchenne muscular dystrophy and other disorders; and

WHEREAS, Various federal agencies involved in these efforts include the National Institute of Health, the National Science Foundation, and the Department of Energy; and

WHEREAS, California's national laboratories and universities have received federal funding to support research in this area; and

WHEREAS, Continued support of the genome project is necessary to maintain California's preeminence in biotechnology; and

WHEREAS, The National Academy of Sciences has recommended that these individual efforts be coordinated through a lead agency; and

WHEREAS, The Senate of the United States is considering a bill to establish a free-standing National Biotechnology Policy Board and Advisory Panel; and

WHEREAS, This bill will organize already existing efforts and plan future ones, and will eventually lead to establishing a project, known as the genome project, to map and sequence every gene in the human body; and

WHEREAS, This project will cost an estimated 45 million dollars per year, increasing to 200 million dollars per year over five years; and

WHEREAS, Knowledge gained from the genome project could give insight into the causes of more than three thousand inherited diseases as well as cancer, diabetes, and heart disease; and

WHEREAS, The Japanese are already developing the technology for sequencing of the human genome, including coordinating the efforts of various industries to produce the materials needed for the research; now, therefore, be it

*Resolved by the Senate of the State of California, the Assembly thereof concurring,* That the members recognize and appreciate the necessity to map the human genome and proclaim their support of federal funding for this critical project; and be it further

*Resolved,* That the members urge the Governor to mobilize public and private organizations to develop a strategy for supporting the genome project and for assuring new funding for the project so that California's researchers remain competitive, and to work with the Congressional delegation from California to confirm California's readiness to participate in this project and enhance its continuing role as a leader in basic research; and be it further

*Resolved,* That the Secretary of the Senate transmit copies of this resolution to the Governor of California, and to each Senator and Representative from California in the Congress of the United States.

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## RESOLUTION CHAPTER 93

Senate Concurrent Resolution No. 89—Relative to the Joint Legislative Budget Committee.

[Filed with Secretary of State August 30, 1988.]

*Resolved by the Senate of the State of California, the Assembly thereof concurring,* That, in addition to any money heretofore made available to the Joint Legislative Budget Committee, there is hereby transferred for support of that committee, pursuant to Provision 2 of Item 0130-021-001 of the Budget Act of 1988, the sum of three million three hundred twenty-two thousand two hundred dollars ($3,322,200), or so much thereof as may be necessary, from the Senate Contingent Fund, as provided by Provision 4 of Item 0110-001-001 of that act, and three million three hundred twenty-two thousand two hundred dollars ($3,322,200), or so much thereof as may be necessary, from the Assembly Contingent Fund, as provided by Provision 4 of Item 0120-011-001 of that act.

## RESOLUTION CHAPTER 94

Senate Concurrent Resolution No. 94—Relative to federal fuel taxes.

[Filed with Secretary of State August 30, 1988 ]

WHEREAS, The federal fuel tax and the federal Highway Trust Fund were established primarily to complete the Interstate System; and

WHEREAS, The Interstate System is scheduled for completion by 1993; and

WHEREAS, The federal fuel tax levy expires in 1993; and

WHEREAS, Historically, California has been a donor state to the federal Highway Trust Fund; and

WHEREAS, The Congress and the President must develop and implement a postinterstate transportation strategy; and

WHEREAS, It is in the best interest of the people of California to eliminate or reduce the federal role in highway funding; and

WHEREAS, It is in the best interest of the people of California to have a uniform statewide policy to present to the Congress and the President; and

WHEREAS, The state has adopted a policy and enacted statutes to capture all fuel tax revenues in the event that federal fuel taxes are reduced or eliminated; and

WHEREAS, It is in the best interest of the people of California to pursue an elimination of federal fuel taxes; now, therefore, be it

*Resolved by the Senate of the State of California, the Assembly thereof concurring,* That all state and local entities are requested to work together to bring about an elimination of the federal fuel tax; and be it further

*Resolved,* That a task force be formed, consisting of the chairpersons of the Senate and the Assembly transportation committees, four members of the California Transportation Commission, the Director of Transportation, and one representative each from the County Supervisors Association of California, the League of California Cities, regional transportation planning agencies, and the private sector; and be it further

*Resolved,* That the California Transportation Commission provide staff support and arrange for meetings of the task force; and be it further

*Resolved,* That the task force shall proceed expeditiously to develop a concise policy and methods of pursuing the policy to eliminate or reduce federal fuel taxes; and be it further

*Resolved,* That the task force shall adopt that policy and submit a report thereon to the Legislature and the Governor not later than January 1, 1989; and be it further

*Resolved,* That the Secretary of the Senate transmit copies of this resolution to the chairpersons of the Senate and the Assembly

transportation committees, the California Transportation Commission, the Director of Transportation, the County Supervisors Association of California, the League of California Cities, and to each regional transportation planning agency.

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## RESOLUTION CHAPTER 95

Senate Concurrent Resolution No. 65—Relative to Stanford House State Historic Park.

[Filed with Secretary of State September 7, 1988.]

WHEREAS, The Stanford House in Sacramento was the home and office of Leland Stanford and of Frederick F. Low during their respective terms of office as Governor of California during the Civil War; and

WHEREAS, The Stanford House in Sacramento is presently the property of the State of California, and is known as the Stanford House State Historic Park; and

WHEREAS, The Budget Act of 1987 provides funding for the restoration of the Stanford House State Historic Park as a museum; and

WHEREAS, The Department of Parks and Recreation is presently preparing a general plan to determine the process of restoration and to determine future uses of the Stanford House in Sacramento; and

WHEREAS, The State of California is seeking to expand commercial, cultural, and governmental ties with other nations and states and to seek business investment; and

WHEREAS, There is a shortage of state facilities to accommodate or to receive visiting dignitaries, trade missions, and cultural delegations; and

WHEREAS, The Stanford House is a unique part of California's history in Sacramento, and there may be space within it to include adaptive uses such as reception areas, conference rooms, and overnight accommodations in an environment that is uniquely Californian; now, therefore, be it

*Resolved by the Senate of the State of California, the Assembly thereof concurring,* That the Department of Parks and Recreation is requested to include in the preliminary general plan submitted to the State Park and Recreation Commission for the Stanford House State Historic Park consideration of the feasibility of such adaptive uses as reception areas, conference rooms, and overnight accommodations; and be it further

*Resolved,* That the Secretary of the Senate transmit a copy of this resolution to the Director of Parks and Recreation.

## RESOLUTION CHAPTER 96

Senate Concurrent Resolution No. 88—Relative to Newport Bay Pollution.

[Filed with Secretary of State September 7, 1988.]

WHEREAS, Upper Newport Bay and Newport Harbor constitute an invaluable natural resource to be maintained and preserved to every extent possible; and

WHEREAS, Newport Bay and Newport Harbor constitute an invaluable recreational and tourist resource to the Orange County Coast and to our state and nation as a whole; and

WHEREAS, It is public policy that the quality of water used for recreation, fishing, and consumption must be safe to the public for those uses; and

WHEREAS, There is growing public concern over the potential problem of toxics in our recreational and consumptive supplies of water; and

WHEREAS, Recent monitoring of Newport Bay has produced evidence of the presence of toxics in the bay; and

WHEREAS, DDT and other toxics, including PCB's and heavy metals, continue to be present in Newport Bay in high concentrations, and point and nonpoint sources of pollution continue to threaten the water quality of Newport Bay; and

WHEREAS, Water quality in Newport Bay continues to be degraded by high bacterial levels; and

WHEREAS, These findings have increased the public's concern over the safety of recreational opportunities in Newport Bay and the safety of the consumption of fish caught in the vicinity of Newport Harbor; and

WHEREAS, Section 13225 of the Water Code charges the California regional water quality control board for each region with the responsibility for coordinating action by local, state, and federal agencies to prevent and abate water pollution within its region; and

WHEREAS, In November 1985, the California Regional Water Quality Control Board, Santa Ana Region, prepared a report to the California Legislature, "Newport Bay: Water Quality Issues and Recommendations" as directed by Senate Concurrent Resolution No. 38 (Res. Ch. 97, Stats. 1985); and

WHEREAS, That report, known as the "SCR 38 Report" assessed the water quality of Newport Bay and included recommendations for a specific action plan on the part of local, state, and federal agencies to protect the quality of water in Newport Bay from unhealthful pollutants; and

WHEREAS, Two years have passed since the issuance of the SCR 38 Report; and

WHEREAS, During that two-year period, the Upper Newport Bay Sedimentation Control and Restoration Program was also

completed, including the dredging of 2.4 million cubic yards of sediment at a cost of $11.9 million to state and local agencies; and

WHEREAS, During that two-year period, local agencies have also embarked upon efforts, in coordination with private industry, to reduce nutrient flows to upper Newport Bay and Newport Harbor; and

WHEREAS, During that two-year period, state and local agencies have also been implementing the recommendations contained in the SCR 38 Report; now, therefore, be it

*Resolved by the Senate of the State of California, the Assembly thereof concurring,* That the Legislature reaffirms the authority of the California Regional Water Quality Control Board, Santa Ana Region, in carrying out the reponsibilities of Section 13225 of the Water Code for Newport Bay; and be it further

*Resolved,* That the regional board utilize a portion of its funding to prepare, in concert with other agencies responsible for water quality monitoring and enforcement efforts in Newport Bay, a followup report on the water quality of the bay and the bay's watershed in view of the activities during the past two years; and be it further

*Resolved,* That the followup report include an assessement of the implementation and recommendations of the SCR 38 Report; and be it further

*Resolved,* That the report prepared by the regional board include recommendations for a specific action plan on the part of local, state, and federal agencies to protect the quality of water in Newport Bay from unhealthful pollutants; and be it further

*Resolved,* That the report prepared by the regional board be submitted to the Legislature not later that September 1, 1989; and be it further

*Resolved,* That the Secretary of the Senate transmit copies of this resolution to the State Water Resources Control Board, the California Regional Water Quality Control Board, Santa Ana Region, the Department of Fish and Game, the County of Orange, and the City of Newport Beach.

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## RESOLUTION CHAPTER 97

Senate Concurrent Resolution No. 93—Relative to disease prevention.

[Filed with Secretary of State September 7, 1988.]

WHEREAS, The prevention of cancer is one of the most urgent medical challenges of our day; and

WHEREAS, Cancer is predicted to strike three out of four California families during a lifetime; and

WHEREAS, The National Cancer Institute estimates that 35 percent of the deaths from cancer are attributable to the type of diet which is currently typical in the United States; and

WHEREAS, The American Cancer Society recommends that people should reduce their intake of fats and increase their consumption of high fiber foods, such as fruits and vegetables, as a part of a diet that may help reduce cancer risk; and

WHEREAS, The American Heart Association, the American Diabetes Association, and the United States Departments of Agriculture and Health and Human Services also make similar dietary recommendations to reduce the risk of heart disease, diabetes, and other chronic diseases; and

WHEREAS, The State Department of Health Services has recognized the significant relationship between diet and cancer as a threat to public health, and is actively promoting a doubling of the current consumption of fruits and vegetables in the typical California diet as one of the ways to reduce the risk of cancer; now, therefore, be it

*Resolved by the Senate of the State of California, the Assembly thereof concurring,* That the Legislature of the State of California declares a goal for yearly consumption of fruit and vegetables of 500 pounds, the equivalent of a minimum of 5 servings per day, per person in California by the year 2000 A.D. as a chronic disease prevention measure; and be it further

*Resolved,* That the Secretary of the Senate transmit copies of this resolution to the Governor, the Secretary of the Health and Welfare Agency, the State Director of Health Services, and to the director of each county health department.

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## RESOLUTION CHAPTER 98

Senate Concurrent Resolution No. 97—Relative to automobile insurance.

[Filed with Secretary of State September 7, 1988.]

WHEREAS, The law provides for the establishment of an assigned risk plan for the equitable apportionment among insurers of applicants for automobile bodily injury and property damage liability insurance, who are unable to procure it through ordinary means; and

WHEREAS, The California Automobile Assigned Risk Plan, approved and issued by the Insurance Commissioner, provides for adjustment of premiums based on penalty points assigned for convictions of, among other things, operating a private passenger motor vehicle without state authority, including an assignment of five penalty points for operating such vehicle during a period of revocation or suspension of motor vehicle registration or driver's

license; now, therefore, be it

*Resolved by the Senate of the State of California, the Assembly thereof concurring,* That the Legislature of the State of California requests the Insurance Commissioner, on or before March 1, 1989, to provide for more equitable assignments of points by assigning only two penalty points for the conviction for operating a private passenger motor vehicle without state authority, if a motor vehicle registration or driver's license has not been renewed for more than 90 days but less than one year; and be it further

*Resolved,* That the Secretary of the Senate transmit copies of this resolution to the Insurance Commissioner, and the governing committee of the California Automobile Assigned Risk Plan.

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## RESOLUTION CHAPTER 99

Senate Concurrent Resolution No. 101—Relative to aviation and airports.

[Filed with Secretary of State September 7, 1988 ]

*Resolved by the Senate of the State of California, the Assembly thereof concurring,* That, notwithstanding Resolution Chapter 159 of the Statutes of 1986, or Resolution Chapter 2 of the Statutes of 1987, the California Commission on Aviation and Airports, established by those measures, be composed of 25 members, as follows:

(a) The Senate Committee on Rules shall appoint the following 12 members:

(1) A manager of an international airport or the general manager of a major municipal airport department.

(2) A manager of an airport serving general aviation.

(3) A representative of a major airline with service to and from California.

(4) A licensed general aviation pilot.

(5) An aircraft mechanic currently employed in the trade.

(6) A person currently employed as an air traffic controller.

(7) A representative of the agricultural aerial application business community.

(8) A representative of the air cargo or international trade industry.

(9) Three Members of the Senate or their designees.

(10) A public member.

(b) The Speaker of the Assembly shall appoint the following 12 members:

(1) A manager of an airport serving general aviation.

(2) A representative of a national airline with service to California or a representative of a third-level air carrier with service to California.

(3) A security expert experienced in handling emergency situations.

(4) A representative of general aviation.

(5) A person with expertise in building safety and construction.

(6) A licensed and active pilot flying for a major or national airline serving California.

(7) A representative of local government with jurisdiction over a public use airport.

(8) A representative of an aircraft manufacturer.

(9) Three Members of the Assembly or their designees.

(10) A public member.

(c) The Chief of the Division of Aeronautics of the Department of Transportation; and be it further

*Resolved,* That, notwithstanding Resolution Chapter 159 of the Statutes of 1986, the Senate Committee on Rules may make allocations from the Contingent Fund of the Senate for the expenses of the commission and the members of the commission appointed by the Senate Committee on Rules, and the Assembly Committee on Rules may make allocations from the Contingent Fund of the Assembly for the expenses of the members of the commission appointed by the Speaker of the Assembly.

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## RESOLUTION CHAPTER 100

Senate Joint Resolution No. 34—Relative to General Clifton B. Cates.

[Filed with Secretary of State September 7, 1988.]

WHEREAS, From time to time, our nation has given birth to great men whose numerous deeds of valor and honor stand as self-evident, leaving no need for reiteration of the details of their heroic service; and

WHEREAS, In the annals of United States military history, there have been few men of the august stature of General Clifton B. Cates, 19th Commandant of the United States Marine Corps, whose military career in service of the most inviolate principles of freedom and preparedness stand as exemplary testimony to the irrefutable value of the American way of life; and

WHEREAS, A native of Tiptonville, Tennessee, Clifton B. Cates graduated with a law degree from the University of Tennessee; and

WHEREAS, Clifton B. Cates entered the Marine Corps as a Second Lieutenant in 1917 at the beginning of World War I and during the course of the swiftly moving two years that followed, the young man had found his true element and the Marine Corps one of its most capable and colorful leaders; and

WHEREAS, Immediately on completion of officer training,

Lieutenant Cates found himself commanding troops as a Platoon Leader in the 96th Company, Sixth Marines; his batallion sailed for France in January 1918; and

WHEREAS, After intensive combat training and a short tour in a quiet sector of the front, the Second Army Division, into which the Fourth Marine Brigade had been incorporated, was thrown into the crucial Second Battle of the Marne where Lieutenant Cates was wounded and gassed in his first combat action, but refused to be evacuated; and

WHEREAS, At Belleau Wood, Lieutenant Cates led the unit that took the strategic village of Bouresches and succeeded to command the 96th Company when all officers senior to him became casualties; this was the first of five occasions that he was to command the 96th Company for this same reason; and

WHEREAS, General Cates holds the singular distinction of being the most decorated Marine Corps officer of World War I, having been awarded the Navy Cross, Distinguished Service Cross with Oak-Leaf Cluster, Silver Star with Oak-Leaf Cluster and Purple Heart for his meritorious military service; and France conferred upon him the Legion of Honor and Croix de Guerre with one gilt star and two palms; and

WHEREAS, A career military man whose exemplary service spanned three wars, Lieutenant Colonel Cates was chosen as Commanding Officer, First Marines in May 1942, and shortly thereafter sailed to the Pacific with the First Marine Division; and

WHEREAS, Colonel Cates' regiment had the distinction of winning the first major engagement on Guadalcanal, where the regiment annihilated the formidable Ichiki Detachment; and

WHEREAS, On September 16, 1942, he was promoted to Brigadier General and on February 1, 1944, to Major General; and

WHEREAS, In June 1944, Major General Cates returned to the Pacific to assume the post of Commanding General of the Fourth Marine Division near the end of the Saipan operation and commanded the division in the assault of Tinian and throughout Iwo Jima and for the remainder of World War II; and

WHEREAS, On January 1, 1948, Major General Cates was promoted to General and assumed the prestigious post of Commandant of the Marine Corps in which office he was destined to have an eventful administration; and

WHEREAS, As Commandant of the Marine Corps, General Cates played an integral role in rescuing the Corps from relegation to obscurity in postwar reorganization of the Armed Forces; and

WHEREAS, General Cates' forthright and enlightening testimony before the House Armed Services Committee partially tempered and rechanneled efforts to relegate the Corps to a minor and subsidiary role and paved the way for subsequent passage of landmark legislation which set the combat-ready strength of the Marine Corps at three divisions and three corresponding aircraft wings; and

WHEREAS, With the outbreak of hostilities in Korea, the Commandant faced a crisis of immediate urgency, and with great organization, efficiency, and alacritious action, was able to send the First Provisional Marine Brigade and its air component to the Far East nine days following the order for its activation; and

WHEREAS, Thus, the Marine Corps, under General Cates' sagacious and capable mentorship, did accomplish its mission as the nation's force-in-readiness, and at a time when attrition had seriously sapped its strength; and

WHEREAS, General Cates' administration as Commandant also saw the practical development by the Marine Corps of two important tactical innovations: the helicopter and body armor; and

WHEREAS, Current United States Navy policy favors the selection of heroes of the Naval Service when vessels are named, with only very few Marines being singled out for this distinguished honor; and

WHEREAS, This Legislature feels that it is most fitting to name an appropriate United States Naval Vessel in honor of General Clifton B. Cates, a Marine of great distinction, courage, and character whose unremitting service to his country spanned three wars and five decades; now, therefore, be it

*Resolved by the Senate and the Assembly of the State of California, jointly,* That the Secretary of the Navy is urged and memorialized to name a Guided Missile Destroyer, or another appropriate United States Navy vessel, in honor of General Clifton B. Cates, 19th Commandant of the United States Marine Corps; and be it further

*Resolved,* That the Secretary of the Senate transmit a copy of this resolution to the Honorable William L. Ball, Secretary of the Navy, Department of the Navy, the Pentagon-4E686, Washington, D.C. 20350.

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## RESOLUTION CHAPTER 101

Senate Joint Resolution No. 45—Relative to recovery of natural resources damaged by 1987 wildfires.

[Filed with Secretary of State September 7, 1988 ]

WHEREAS, Multiple natural resources and uses on approximately 750,000 acres of national forest and adjoining mixed ownership lands in California were damaged by wildfires during the summer of 1987; and

WHEREAS, The Forest Service of the United States Department of Agriculture has completed emergency rehabilitation measures on critical areas of the damaged lands, consisting of aerial seeding, stream channel work, contour, filling, and road drainage, and has begun the restoration of commercial forest lands through the salvage

of commercial timber and reforestation efforts; and

WHEREAS, The Forest Service has submitted appropriation requests through the federal budget process to further the recovery effort of all resources, including fisheries and wildlife habitats, soil and water resources, recreational facilities and uses, forage resources, transportation systems, and timber resources to provide a balanced program for national forest recovery, with the total cost for this initiative estimated to be $165 million; and

WHEREAS, The fiscal 1988 appropriations bill included funding sufficient to carry out the initial and important phase of recovery and harvest of salvable timber, but appropriations for other natural resources and uses associated with the recovery were not adequate to complete the massive effort required to assure consideration of a balance of resources and uses and provide the assistance for recovery of the damaged lands to their prefire condition; now, therefore, be it

*Resolved by the Senate and Assembly of the State of California, jointly,* That the Senate and Assembly of the State of California respectfully memorialize the President and Congress of the United States to provide their full support and approval of budget requests of the Forest Service of the United States Department of Agriculture for the recovery effort on national forest lands damaged by wildfires in 1987, and thus provide consideration for all natural resources and uses on these lands; and be it further

*Resolved,* That the Secretary of the Senate transmit copies of this resolution to the President and Vice President of the United States, the Secretary of Agriculture, the Speaker of the House of Representatives, the appropriate House Appropriations Committee, the appropriate Senate Appropriations Committee, and each Senator and Representative from California in the Congress of the United States.

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## RESOLUTION CHAPTER 102

Senate Constitutional Amendment No. 37—A resolution to propose to the people of the State of California an amendment to the Constitution of the State, by adding a paragraph to subdivision (a) of, and by amending subdivision (c) of, Section 2 of Article XIII A thereof, relating to taxation.

[Filed with Secretary of State September 7, 1988.]

*Resolved by the Senate, the Assembly concurring,* That the Legislature of the State of California at its 1987–88 Regular Session commencing on the first day of December 1986, two-thirds of the members elected to each of the two houses of the Legislature voting therefor, hereby proposes to the people of the State of California that

the Constitution of the State be amended as follows:

First—That a paragraph is added at the end of subdivision (a) of Section 2 of Article XIII A thereof, to read:

The Legislature may extend the provisions of this subdivision relating to the transfer of base year values from original properties to replacement dwellings of homeowners over the age of 55 years to severely disabled homeowners, but only with respect to those replacement dwellings purchased or newly constructed on or after the effective date of this paragraph.

Second—That subdivision (c) of Section 2 of Article XIII A thereof is amended to read:

(c) For purposes of subdivision (a), the Legislature may provide that the term "newly constructed" shall not include any of the following:

(1) The construction or addition of any active solar energy system.

(2) The construction or installation of any fire sprinkler system, other fire extinguishing system, fire detection system, or fire-related egress improvement, as defined by the Legislature, which is constructed or installed after the effective date of this paragraph.

(3) The construction, installation, or modification on or after the effective date of this paragraph of any portion or structural component of a single or multiple family dwelling which is eligible for the homeowner's exemption if the construction, installation, or modification is for the purpose of making the dwelling more accessible to severely disabled person.

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## RESOLUTION CHAPTER 103

Assembly Concurrent Resolution No. 100—Relative to solid waste.

[Filed with Secretary of State September 7, 1988.]

WHEREAS, California citizens generated approximately 37 million tons of garbage in 1986, which equals almost one and one-half tons per person; and

WHEREAS, Waste generation is projected to reach 39 million tons annually by 1991, and 43 million tons by 1996; and

WHEREAS, While waste generation continues to spiral, the siting of new landfills and the expansion of current landfills is losing its appeal as an option due to encroaching residential neighborhoods and concerns about health and safety; and

WHEREAS, Unless new landfills are sited, or alternatives are employed to reduce the amount of garbage to be buried, most of the landfill capacity in California will be gone by 1995; and

WHEREAS, The tremendous amount of garbage being generated has also contributed to the amount of litter on our streets and highways, as evidenced by the increase in litter volume by 24 percent

between 1974 and 1985; and

WHEREAS, Recycling and reusing our natural resources serves as the most attractive alternative as a waste treatment by prolonging the usefulness of our dwindling landfills, conserving our resources and reducing the amount of unsightly litter in California; and

WHEREAS, It is imperative that both the Legislature and the administration take a leadership role in the promotion and use of recycled materials in order to bolster recycling markets and to set a positive example for the rest of the state; and

WHEREAS, The Department of General Services administers an office white paper recycling program for all state agencies, collecting a total of 51,800 pounds of paper in 1986; and

WHEREAS, The Legislature does not currently promote a policy of encouraging the procurement of recycled office supplies by state government offices and does not provide a collection service for recyclable paper products for all capitol offices; and

WHEREAS, While there are several items listed in the Department of General Services' Procurement Catalog which are made from recycled materials, these items are not marked or identified as recycled materials; now, therefore, be it

*Resolved by the Assembly of the State of California, the Senate thereof concurring,* That the Department of General Services establish a collection service for state government offices in and around the capitol building for recyclable paper products; and be it further

*Resolved,* That the Department of General Services indicate next to each item listed in its procurement catalog whether that item is made from recycled materials; and be it further

*Resolved,* That each Member of the Legislature and each state department and agency take a leadership role in promoting recycling and reuse by ordering and using recycled office supplies whenever possible; and be it further

*Resolved,* That the Chief Clerk of the Assembly transmit copies of this resolution to the Governor, to every Member of the Legislature, and to every state agency and department.

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## RESOLUTION CHAPTER 104

Assembly Concurrent Resolution No. 111—Relative to Peace Day.

[Filed with Secretary of State September 7, 1988.]

WHEREAS, Peace is a goal to which all persons, regardless of political affiliation, are committed; and

WHEREAS, In September 1984, in a speech before the United Nations, President Reagan stated, "We need a fresh approach to reducing international tensions. History demonstrates beyond

controversy that just as the arms competition has its root in political suspicions and anxieties, so it can be channeled in more stabilizing directions and eventually be eliminated, if those political suspicions and anxieties are addressed as well"; and

WHEREAS, Congress passed and the President signed legislation in 1984 to establish the United States Institute of Peace; and

WHEREAS, A broad spectrum of our elected officials, religious leaders, veterans' groups, business persons, physicians, teachers, lawyers, and homemakers, among others, have determined that peace and a strong national security are compatible concepts; and

WHEREAS, Many Californians have made significant contributions to the search for a lasting peace, including letters from children to leaders of foreign countries, students who have graduated from colleges and universities with degrees in peace and conflict studies, and individuals who have quietly brought peace initiatives to the public forum; and

WHEREAS, It is crucial to our participatory democracy that every citizen understand the importance of his or her involvement in the achievement of the goal of peace at an individual, community, and global level; and

WHEREAS, Recent initiatives, such as the late and respected psychotherapist Carl Rogers' Peace Project, have brought new meaning to the role of responsible citizen commitment to achieving individual, community, and global peace; and

WHEREAS, The State of California, through many volunteer organizations and community activities, has assumed leadership among the other 49 states, and indeed among many nations of the world, in developing responsible and innovative approaches to achieving world peace; and

WHEREAS, California students especially, through their involvement in exchange programs, world affairs councils, student councils, and other student organizations, have demonstrated their commitment to bringing peace to their own communities and to the world they will soon inherit; and

WHEREAS, Educators, scientists, business leaders, physicians, and other professionals have organized within their professions to seek greater dialogue and greater understanding among nations of the world; and

WHEREAS, International cooperation among professional associations has proven to transcend artificial and state-imposed limitations in that cooperation; and

WHEREAS, There has arisen within every nation, and especially within less democratic nations, an outspoken and growing body of progressive leaders seeking to achieve peaceful resolution of conflicts and seeking to avoid the unimaginable consequences of thermonuclear war; and

WHEREAS, These efforts should be supported, within the United States, within California, and within our communities, and by each of us personally; and

WHEREAS, California communities are today engaging in many locally oriented peace activities, sponsored by cities and counties, and supported by thousands of individual Californians; and

WHEREAS, This community expression of the desire for peaceful resolution of conflict has successfully united within these communities diverse cultural, economic, political, racial, and ethnic groups, and has brought together people of all ages and interests in the expression of this common goal; and

WHEREAS, It is altogether fitting and valuable to recognize and encourage these individual and community efforts by more and more Californians by establishing an annual day to celebrate the common goal of peace; now therefore, be it

*Resolved by the Assembly of the State of California, the Senate thereof concurring,* That the Governor is encouraged to proclaim annually the third Sunday in May as Peace Day in recognition of the desire of all Californians to establish a firm and lasting peace in the world; and be it further

*Resolved,* That it is the intention of the Legislature that all persons and institutions, and especially the individual communities, cities, and counties, and various professional and civic and veterans' organizations of California shall set aside some part of that day toward the promotion and recognition of the peaceful resolution of conflict through mutual understanding and good will; and be it further

*Resolved,* That it is the intention of the Legislature by this measure to recognize specific community models for the celebration of Peace Day and to assist in the statewide coordination of all community efforts.

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## RESOLUTION CHAPTER 105

Assembly Concurrent Resolution No. 117—Relative to health care awareness.

[Filed with Secretary of State September 7, 1988 ]

WHEREAS, The public lacks awareness of the ownership disclosure laws that govern the making of referrals for related health services by healing arts practitioners; and

WHEREAS, It is essential that the health care consumers are made aware of all of the circumstances surrounding a practitioner's referral; and

WHEREAS, California law allows healing arts practitioners to own and operate organizations providing related health care services; and

WHEREAS, The Legislature has resisted passing legislation that would prohibit healing arts practitioners from owning organizations providing related health care services, such as clinical laboratories,

radiological facilities, and physical therapy practices; and

WHEREAS, The Federal Trade Commission has held out the California health care facility ownership disclosure law, Section 654.2 of the Business and Professions Code, as an excellent example of a practical deterrent to possible abuses brought about by overutilization of the services provided at a health care facility in which the referring practitioner has a significant beneficial ownership interest; and

WHEREAS, Section 654.2 of the Business and Professions Code requires the Department of Consumer Affairs to enforce and administer laws that require healing arts practioners who hold a significant beneficial interest in an organization to which patient referrals are made to disclose that significant beneficial interest to the patients or third-party payers that they refer thereto; and

WHEREAS, Section 654.2 of the Business and Professions Code requires that a referring practitioner inform his or her patients of a beneficial interest that exists by way of ownership in any organization to which the patient is being referred for related health services; now, therefore, be it

*Resolved by the Assembly of the State of California, the Senate thereof concurring,* That the Department of Consumer Affairs is requested to carry out a public information program designed to make the health care consuming public aware of a referring healing arts practitioner's responsibility to disclose certain beneficial interests to his or her patients and to third-party payers; and be it further

*Resolved,* That the Chief Clerk of the Assembly transmit copies of this resolution to the Director of Consumer Affairs.

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## RESOLUTION CHAPTER 106

Assembly Concurrent Resolution No. 121—Relative to highways.

[Filed with Secretary of State September 7, 1988 ]

*Resolved by the Assembly of the State of California, the Senate thereof concurring,* That the Department of Transportation is hereby requested to prepare a project study of completing the Route 87 Freeway from Coleman Avenue to the Route 101 interchange in the City of San Jose and to report its findings to the Legislature; and be it further

*Resolved,* That the Chief Clerk of the Assembly transmit a copy of this resolution to the Director of Transportation.

# RESOLUTION CHAPTER 107

Assembly Concurrent Resolution No. 126—Relative to differential treatment at the University of California.

[Filed with Secretary of State September 7, 1988.]

WHEREAS, A major goal of every educational institution should be to ensure an equitable educational environment for each student; and

WHEREAS, A major measure of the effectiveness of a postsecondary education institution should be its success in providing an equitable educational environment for its students; and

WHEREAS, "Differential treatment," for purposes of this resolution, means subtle, often unintentional policies, practices, and behaviors that serve to affirm and reinforce stereotypes based on personal characteristics, including race and gender; and

WHEREAS, Research studies, conducted nationally by Burrell, 1981; Duncan, 1976; Elmore, 1983; Hall, 1986; Mingle, 1978; Rutledge, 1983; and Trujillo, 1986 conclude that differential treatment is a problem in higher education; and

WHEREAS, This research indicates that differential treatment serves to create an unsupportive and inhospitable educational environment for women and students of color, that, among certain students, may result in dissatisfaction with their faculty, high attrition rates, and a hesitancy among the affected students to pursue advanced degrees; and

WHEREAS, Institutions of higher education currently have few measures for evaluating student exposure to differential treatment or for measuring the extent to which an equitable educational environment is being provided for students generally; and

WHEREAS, The State of California has a fundamental interest in demanding institutional accountability on questions relating to educational equity; now, therefore, be it

*Resolved by the Assembly of the State of California, the Senate thereof concurring,* That the Regents of the University of California and the Trustees of the California State University, utilizing extensive ongoing consultation with students and faculty, are hereby requested to develop and implement programs and policies as are necessary to identify and correct any existing behaviors, practices, and policies which result in differential treatment among students of the University of California and of the California State University; and be it further

*Resolved,* That in developing the programs and policies described above, the Regents of the University of California and the Trustees of the California State University are specifically requested to consider the following:

(a) Addressing differential treatment issues in evaluations of faculty performance.

(b) Adoption and enforcement of specific policy statements by the Regents of the University of California and the Trustees of the California State University that discriminatory policies, behavior, and practices will not be tolerated.

(c) Establishment of systemwide or campus based programs designed to raise the awareness and sensitivity of students, faculty, staff, and administrators to questions of educational equity generally and differential treatment in particular.

(d) Inclusion of information on educational equity, nondiscriminatory teaching techniques, teaching practices that are sensitive to different learning styles, and differential treatment issues in workshops for faculty and advisers, including teaching assistants.

(e) Development of materials and programs on the maintenance of an equitable educational environment to be included in the orientation of new faculty, staff, students, and administrators. This information may be incorporated into existing orientation materials and programs.

(f) Expansion of programs that currently serve to identify or mitigate the practices and behaviors that result in differential treatment; and be it further

*Resolved,* That the Regents of the University of California and the Trustees of the California State University are requested to submit a report to the Governor and Legislature not later than March 31, 1990, detailing steps taken by the University of California and the California State University to achieve the intent of this resolution.

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## RESOLUTION CHAPTER 108

Assembly Concurrent Resolution No. 131—Relative to the San Joaquin Amtrak route.

[Filed with Secretary of State September 7, 1988 ]

WHEREAS, Legislative authorization was granted in 1987 for the addition of a third daily passenger train over the San Joaquin Amtrak route; and

WHEREAS, There is a demand for expanded service along this route; and

WHEREAS, The third train is identified as a high state priority in the Caltrans Rail Passenger Development Plan, which has been approved by the California Transportation Commission; and

WHEREAS, Due to federal budget reductions, the National Railroad Passenger Corporation is unable to supply the equipment necessary for adding the third train; and

WHEREAS, The Budget Act of 1988 (Item 2660-492-046) contains an appropriation of approximately $1,222,000 from the Transportation Planning and Development Account to help fund the

acquisition of rail cars and equipment for a third San Joaquin train; and

WHEREAS, Alternatives exist for providing the necessary equipment, including rehabilitating existing cars currently stored at Amtrak's shops in Indiana, borrowing excess equipment from other lines, and leasing or purchasing foreign equipment; therefore, be it

*Resolved by the Assembly of the State of California, the Senate thereof concurring,* That the Department of Transportation is requested to work with the National Railroad Passenger Corporation to explore alternatives and determine the most feasible option for obtaining the necessary equipment to run a third daily train over the San Joaquin Amtrak route; and be it further

*Resolved,* That, in exploring alternatives for providing the equipment, the department contact foreign manufacturers, explore the possibility of long-term financing, and determine appropriate funding sources for obtaining the equipment; and be it further

*Resolved,* That the department report to the Legislature on or before September 1, 1988, on its recommendations for obtaining the equipment necessary to run the third daily train; and be it further

*Resolved,* That the department include in its report an estimate of additional state funding that may be required, if any, beyond that provided for this purpose in the Budget Act of 1988, and an identification of recommended funding sources, including, but not limited to, funds not required for intercity or commuter rail operations from previous budget acts which have now reverted to the Transportation Planning and Development Account, surplus funds currently under contract with Amtrack, surplus funds from the Budget Act of 1987 which the California Transportation Commission has not yet allocated to the department, and Petroleum Violation Escrow funds; and be it further

*Resolved,* That the Chief Clerk of the Assembly transmit copies of this resolution to the Director of Transportation, each member of the California Transportation Commission, and the President of the National Railroad Passenger Corporation.

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## RESOLUTION CHAPTER 109

Assembly Concurrent Resolution No. 136—Relative to a California Native American Monument.

[Filed with Secretary of State September 7, 1988.]

WHEREAS, California Native American history and culture are integral to the heritage of the State of California; and

WHEREAS, The significance of Native American contributions to California's heritage has often been overlooked, to the detriment of California Native Americans; and

WHEREAS, Many of the losses sustained by Native Americans throughout California history have not been adequately corrected or compensated for; and

WHEREAS, Affirmative efforts to enhance public awareness of the cultural and historic contributions of California Native Americans are necessary; now, therefore, be it

*Resolved by the Assembly of the State of California, the Senate thereof concurring,* That a monument honoring California Native Americans should be established; and be it further

*Resolved,* That the Native American Heritage Commission, based on suggestions from the California Native American community, and with the assistance and cooperation of other state agencies as appropriate, shall determine the type of monument to be established and its location; and be it further

*Resolved,* That all appropriate state agencies shall cooperate with the staff of the Native American Heritage Commission in securing private and public funding for design and construction of the monument; and be it further

*Resolved,* That in awarding the contracts for design and construction of the monument, preference shall be given to members of the California Native American community; and be it further

*Resolved,* That the Chief Clerk of the Assembly transmit copies of this resolution on to the directors of the Native American Heritage Commission.

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## RESOLUTION CHAPTER 110

Assembly Concurrent Resolution No. 137—Relative to a California-Queretaro sister state relationship.

[Filed with Secretary of State September 7, 1988 ]

WHEREAS, The culture, art, and architecture of California and the State of Queretaro in Mexico share a common history as shown by the presence of missions of great architectural beauty in each state; and

WHEREAS, Queretaro is best known as the birthplace of the Mexican Revolution and for the signing of the Treaty of Guadalupe Hidalgo which ceded California to the United States; and

WHEREAS, The Governor of Queretaro, Mariano Palacios-Alcocer desires to form a sister state relationship between California and Queretaro, in recognition of the additional common elements of culture, geography, and religious institutions shared by each state; and

WHEREAS, California acknowledges the contributions made to the history of both states, including the legacy left to the language,

art, architecture, and religious institutions of California, by Father Junipero Serra; and

WHEREAS, A hospital has recently been built in the City of Jalpan, Queretaro, and the exchange of medical and dental personnel would be complementary to the medical development of both states; now, therefore, be it

*Resolved, by the Assembly of the State of California, the Senate thereof concurring,* That California recognizes, honors, and celebrates the common bonds between California and the State of Queretaro; and be it further

*Resolved,* That the Legislature, on behalf of the people of the State of California, extends to the people of the State of Queretaro an invitation to join California as a sister state in order to encourage artistic, academic, and professional exchanges and to lead to an indelible friendship and lasting relationship between the citizens of California and the citizens of Queretaro; and be it further

*Resolved,* That the Chief Clerk of the Assembly transmit a copy of this resolution to the Governor of the State of Queretaro.

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## RESOLUTION CHAPTER 111

Assembly Concurrent Resolution No. 153—Relative to the Mokelumne River Basin.

[Filed with Secretary of State September 7, 1988.]

WHEREAS, The northern portion of San Joaquin County has a number of water supply and water quality problems that are unique to that area; and

WHEREAS, The area's water problems affect a number of local agencies within the Mokelumne River Basin; and

WHEREAS, The Department of Water Resources is willing to take the lead in a cooperative study with those local agencies to determine possible solutions to the area's water problems; now, therefore, be it

*Resolved by the Assembly of the State of California, the Senate thereof concurring,* That all of the water supply agencies within the Mokelumne River Basin are encouraged to join with the Department of Water Resources in a preliminary study to review the water supply and water quality problems in the area and determine possible solutions to those problems.

## RESOLUTION CHAPTER 112

Assembly Concurrent Resolution No. 158—Relative to the Hlel-Din Memorial Bridge.

[Filed with Secretary of State September 7, 1988.]

WHEREAS, A new bridge has been built by the Department of Transportation upon the site of the Native American Village of Hlel-Din, the ancestral home of the Hlel-We; and

WHEREAS, It is believed that the village of Hlel-Din was important to many different tribes as a gathering place for the exchange of ideas, as well as goods, and for the seeking of marriage partners; and

WHEREAS, The native villagers and their descendants have been denied their ancestral home since the Gold Rush in the 1850's, because of mining, logging, and other developments, and progress, in its many forms, has taken its toll on the native people; and

WHEREAS, There has been no acknowledgment of the historic village of Hlel-Din by the State of California; and

WHEREAS, The dedication of Bridge No. 4-50, east of Willow Creek on State Highway Route 299, has the support of the Boards of Supervisors of Trinity and Humboldt Counties, the Hoopa Valley Tribal Business Council, and the Department of Transportation; now, therefore, be it

*Resolved by the Assembly of the State of California, the Senate thereof concurring,* That California State Bridge No. 4-50, 4 miles east of Willow Creek on State Highway Route 299, is hereby officially designated the Hlel-Din Memorial Bridge; and be it further

*Resolved,* That the Department of Transportation be directed to determine the cost of erecting appropriate plaques and markers, consistent with the signing requirements for the state highway system, showing this official designation and, upon receiving donations from private sources covering that cost, to erect those plaques and markers; and be it further

*Resolved,* That the Chief Clerk of the Assembly transmit a copy of this resolution to the Director of Transportation.

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## RESOLUTION CHAPTER 113

Assembly Concurrent Resolution No. 164—Relative to the National Association of Educational Office Personnel and the California Association of Educational Office Personnel.

[Filed with Secretary of State September 7, 1988 ]

WHEREAS, The positions of educational office employees exist for the common purpose of service to others; and

WHEREAS, Educational office employees have acknowledged a special duty to join in formulating public policy as it relates to education; and

WHEREAS, The quality of service rendered by educational office personnel directly influences the effectiveness of service rendered by the educational agency or institution as a whole; and

WHEREAS, Educational office employees have performed the duties with energy and enthusiasm, are patient, fair, and helpful in dealing with others, use utmost discretion and sound judgment in the performance of their duties, and remain loyal to those with whom they work; now, therefore, be it

*Resolved by the Assembly of the State of California, the Senate thereof concurring,* That the National Association of Educational Office Personnel and, in particular, the California Association of Educational Office Personnel, be commended for the valuable services that their members provide to our educational system; and be it further

*Resolved,* That the Chief Clerk of the Assembly transmit a copy of this resolution to the National Association of Educational Office Personnel and the State President of the California Association of Educational Office Personnel.

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## RESOLUTION CHAPTER 114

Assembly Joint Resolution No. 34—Relative to federal transportation funding.

[Filed with Secretary of State September 7, 1988.]

WHEREAS, The federal transportation trust fund, which consists primarily of user fees from fuel and excise taxes, is dedicated to the support and construction of the nation's transportation system; and

WHEREAS, Not all funds paid into the transportation trust fund have been allocated; and

WHEREAS, The accumulated balance in the transportation trust fund is approximately $9.5 billion; and

WHEREAS, The federal interstate construction program will be completed in 1992; and

WHEREAS, Maintaining a large balance in the transportation trust fund is a critical element of the federal budget deficit reduction compromise through the 1988–89 fiscal year; and

WHEREAS, Failure to allocate all available transportation trust funds has caused California to defer important transportation projects; and

WHEREAS, California must have flexible and adequate funding

resources to maintain, rehabilitate, improve, and expand the state's transportation system; and

WHEREAS, It is imperative that California have a modern and efficient transportation system to support continued economic growth; now, therefore, be it

*Resolved by the Assembly and Senate of the State of California, jointly,* That the Legislature of the State of California respectfully memorializes the Congress and President of the United States to return to the states, in addition to the usual allocation of federal transportation funds, the accumulated balance in the federal transportation trust fund over the three-year fiscal year period of 1989–90 through 1991–92 in proportion to each state's contribution to the federal transportation trust fund; and be it further

*Resolved,* That these funds be available for use on the highest priority transportation projects, as determined by each state; and be it further

*Resolved,* That in order that this process to distribute these dedicated funds for their specified purpose not adversely affect efforts to reduce the federal budget deficit after the 1988–89 fiscal year, the federal transportation trust fund be removed from the unified budget after October 1, 1989; and be it further

*Resolved,* That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, and to each Senator and Representative from California in the Congress of the United States.

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## RESOLUTION CHAPTER 115

Assembly Joint Resolution No. 59—Relative to the federal timber receipts.

[Filed with Secretary of State September 7, 1988 ]

WHEREAS, The forest fires of 1987 may result in a significant financial loss due to the decrease in federal timber receipts in many of the counties of California; and

WHEREAS, The Forest Service, in the United States Department of Agriculture, contributes 25 percent of new timber sales on federal lands, in lieu of property taxes, to counties; and

WHEREAS, Fire-damaged trees must be harvested immediately to prevent infestation by voracious bark beetles and heartwood bores and other deterioration; and

WHEREAS, For the next several years, loggers will discontinue cutting green trees and concentrate on those trees damaged by fire; and

WHEREAS, The Forest Service is not required to share timber

receipts for salvaged lumber; and

WHEREAS, Counties are required to spend one-half of the timber receipts they receive on schools and one-half on road maintenance and construction; and

WHEREAS, Many rural counties depend heavily on the federal timber receipts they receive for their schools and road repairs; and

WHEREAS, These counties currently receive between $35 million and $55 million per year in federal timber receipts from the Forest Service; and

WHEREAS, The Forest Service estimates that counties could lose up to $20 million for schools and roads; now, therefore, be it

*Resolved by the Assembly and Senate of the State of California, jointly,* That the Legislature respectfully memorializes the President and the Congress of the United States to enact legislation to guarantee each rural county currently receiving federal timber receipts a minimum allocation of timber receipts for the 1987–88, 1988–89, 1989–90, and 1990–91 fiscal years to help ensure that each county may maintain essential public services; and be it further

*Resolved,* That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, to each Senator and Respresentative from California in the Congress of the United States, and to the Chief of the Forest Service.

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## RESOLUTION CHAPTER 116

Assembly Joint Resolution No. 65—Relative to bulk transactions involving electric power.

[Filed with Secretary of State September 7, 1988 ]

WHEREAS, There is in California a diverse group of private businesses and public agencies which are buyers and sellers of electricity in bulk transactions, and which seek to interact in a marketplace for this purpose within the context of applicable federal and state laws and regulations for the purpose of mutually advantageous electricity purchase and sale transactions; and

WHEREAS, The State Energy Resources Conservation and Development Commission and the Public Utilities Commission are in favor of an evaluation of market opportunities and the creation of a common market structure to facilitate the purchase and sale of electricity in California, and these agencies are engaged in ongoing studies of the bulk transmission of electricity on both a state and regional basis; and

WHEREAS, There currently exists in California an electrical transmission system that efficiently carries electricity from existing generation facilities and that is generally well adapted to facilitating

bulk electricity transactions between buyers and sellers, although, to efficiently handle bulk transactions on an increasing basis, the existing system may require improvements; and

WHEREAS, Existing transmission systems are currently being utilized for a wide variety of electricity transactions but are not being used to promote market-based electricity transactions as effectively as could be, because increasing demand for transmission access is exceeding the capability of systems to accommodate all requests for transmission, because the technical expertise needed for effective utilization is not widely shared, and mechanisms for resolving disputes over financing and constructing improvements are inadequate; now, therefore, be it

*Resolved by the Assembly and Senate of the State of California, jointly,* That the California Legislature requests all appropriate state and federal agencies of government to support and continue the studies currently in progress relative to electrical transmission system improvements to facilitate bulk transmission of electrical power, to expedite resolution of any disputes that may arise between buyers, sellers, and transmitters of electricity concerning utilization of transmission systems, and to facilitate the construction of necessary new facilities, to the end that sellers and buyers of bulk electrical power have genuine opportunities to transact business in a free and competitive marketplace; and be it further

*Resolved,* That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, to each Senator and Representative from California in the Congress of the United States, to the Federal Energy Regulatory Commission, to the Public Utilities Commission, and to the State Energy Resources Conservation and Development Commission.

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## RESOLUTION CHAPTER 117

Assembly Joint Resolution No. 71—Relative to manufactured homes.

[Filed with Secretary of State September 7, 1988.]

WHEREAS, The Federal Emergency Management Agency (FEMA) has proposed regulations that would mandate compliance with flood-plain site elevation requirements in existing mobilehome parks; and

WHEREAS, These regulations would require that when manufactured homes are moved and resited, are substantially improved or repaired or are replaced by another manufactured home on the same site, that the floor level be established above the base flood elevation by use of pilings or other methods and that the

utility pedestal, utility connections and equipment, porches and stairways, water and waste disposal facilities, and other accessories on the space likewise be elevated for the attachment and access to the home; and

WHEREAS, The proposed regulations, which remove an existing "grandfather clause," would be mandatory upon local governments; and

WHEREAS, Under the proposed regulations local governments would be required to do flood plain studies and mapping, to adopt conforming local ordinances, construction standards, fee schedules, and numerous criteria for installation of manufactured homes; and

WHEREAS, The State of California has 58 counties and 447 charter and general law cities that have established and currently maintain various zoning, planning, health and safety, and similar local government requirements for mobilehome parks and for the siting of manufactured homes over the span of at least the past 25 years; and

WHEREAS, The State of California currently has sites for 435,000 individually owned manufactured homes, valued at approximately fourteen billion dollars ($14,000,000,000), located in over 5,800 housing sites that provide for over 750,000 citizens of the state; and

WHEREAS, The proposed FEMA regulations could affect 25 to 35 percent of all mobilehome parks in the state located in over 300 jurisdictions; and

WHEREAS, The proposed regulations would result in a long-term devastating effect on property values for each affected property category, the reduction of manufactured housing opportunities, the increase of rental charges because of the loss of revenues, the further implementation of rent control measures, additional legislative activity, the likely increase of litigation, and ultimately the permanent closure and elimination of numerous mobilehome parks in the state, without any offsetting and constructive benefit; now, therefore, be it

*Resolved by the Assembly and Senate of the State of California jointly,* That the Legislature of the State of California respectfully memorialize the Federal Emergency Management Agency to continue the exemption from site elevation requirements for existing mobilehome parks unless and until the Federal Emergency Management Agency has determined by actual study and published documentation that termination of the exemption is necessary to protect property values or protect against loss of life or injury; and be it further

*Resolved,* That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, to each Senator and Representative from California in the Congress of the United States, and to the Federal Emergency Management Agency.

## RESOLUTION CHAPTER 118

Assembly Joint Resolution No. 83—Relative to the federal diesel fuel excise tax.

[Filed with Secretary of State September 7, 1988.]

WHEREAS, The collection point for the federal excise tax on diesel fuel for off-road vehicle use was changed from the retail to the wholesale level by the Congress as part of the 1987 Budget Reconciliation Act; and

WHEREAS, Farmers and other off-road users are exempt from paying the federal 15.1 cents per gallon diesel fuel tax; and

WHEREAS, When adopting the 1987 legislation, Congress required the Internal Revenue Service to collect the tax and offer farmers and other off-road users a refund at the end of the tax year; and

WHEREAS, As of April 1, 1988, farmers and other off-road users began paying the diesel tax at the time of purchase; and

WHEREAS, This change has created an unnecessary financial burden on California farmers and other off-road users of diesel fuel; now, therefore, be it

*Resolved by the Assembly and Senate of the State of California, jointly,* That the Legislature of the State of California respectfully memorializes the President and the Congress of the United States to repeal the collection of the federal diesel fuel excise tax for off-road vehicle use; and be it further

*Resolved,* That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, and to each Senator and Representative from California in the Congress of the United States.

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## RESOLUTION CHAPTER 119

Senate Concurrent Resolution No. 79—Relative to AIDS education in the institutions of higher education in California.

[Filed with Secretary of State September 8, 1988 ]

WHEREAS, California has the second highest incidence of acquired immune deficiency syndrome (AIDS) cases nationwide, with approximately 10,000 people who have contracted the disease and over half of those have already died; and

WHEREAS, College students are often living on their own for the first time and frequently experiment with sexual activity and drug and alcohol use, but still do not perceive themselves to be at-risk of contracting the AIDS virus; and

WHEREAS, Many authorities, including the Surgeon General of the United States, the National Education Association, and the American College Health Association have recommended the immediate implementation of AIDS prevention education in schools; and

WHEREAS, More than 2.1 million Californians either attend, or are employed at, the state's institutions of higher education, representing over 7 percent of California's population; and

WHEREAS, The public education role of colleges and universities makes them particularly well-suited to implement a comprehensive AIDS education program and to disseminate critical public health information on AIDS to the students, faculty, administrators, and staff on each campus; now, therefore, be it

*Resolved by the Senate of the State of California, the Assembly thereof concurring,* That each institution of higher education in California is encouraged to develop policies and guidelines for campus issues related to AIDS that do all of the following:

(1) Are based on current information and reflect at least the recommendations of the Centers for Disease Control and the American College Health Association.

(2) Are designed to prevent the spread of AIDS, and present accurate information on the transmission of AIDS.

(3) Address the rights of people with AIDS or HIV infection and the rights of all students, faculty, administrators, and employees to a safe and healthy work place and educational setting.

(4) Are consistent with similar documents that have been developed by its respective systemwide office or statewide membership association.

*Resolved,* That students, faculty, administrators, and employee groups are encouraged to be involved in the development of policies and guidelines; and be it further

*Resolved,* That all institutions of higher education are encouraged to provide students, faculty, administrators, and staff with accurate, up-to-date AIDS prevention education. This education program should be comprehensive, provide adequate opportunities for discussion with trained personnel, and include, but not be limited to, the use of student newspapers, public information posters, staff bulletins and other campus media to disseminate information about AIDS and referral sources; and be it further

*Resolved,* That all institutions of higher education in California are encouraged to ensure that campus services, including, but not limited to, health, counseling, housing, personnel, disabled students, and employee and faculty services have staff who are knowledgeable about the most current information on AIDS, have been trained to respond to issues regarding AIDS, and are aware of local resources and referral sources; and be it further

*Resolved,* That all institutions of higher education are encouraged to consider establishing a Peer Education Volunteer Program on AIDS to do the following:

(1) Provide peer support to encourage students to seek AIDS prevention information and change at-risk behavior.

(2) Provide student volunteers an opportunity to perform community service by assisting with the AIDS prevention education program; and be it further

*Resolved,* That each institution of higher education is requested to report to its respective systemwide office or its statewide membership association within nine months after the date this resolution is chaptered on the actions it has taken and plans to take to comply with this resolution, including time frames and any coordination of resources with other education institutions or community agencies; and be it further

*Resolved,* That the systemwide offices or membership associations of each institution of higher education in the state are requested to report to the education and health policy committees of the Legislature by December 1, 1989, regarding the actions taken by the campuses and any assistance provided by the systemwide office or membership association to comply with this resolution; and be it further

*Resolved,* That the Secretary of the Senate transmit copies of this resolution to each institution of higher education in this state.

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## RESOLUTION CHAPTER 120

Senate Concurrent Resolution No. 86—Relative to Hubert de Givenchy.

[Filed with Secretary of State September 8, 1988.]

WHEREAS, The Los Angeles County High School for the Arts is a joint project of the Los Angeles County Office of Education, the Los Angeles high schools, and the California State University; and

WHEREAS, Gifted and talented young people from across the County of Los Angeles complete their high school education and develop their talents in the visual and performing arts, including dance, music, theater, painting, film/video. as well as graphic design and costume and fashion design at the Los Angeles County High School for the Arts; and

WHEREAS, The Legislature of the State of California wishes to join the Los Angeles County High School for the Arts in honoring an individual whose life of achievement in the arts epitomizes the aspirations of these promising young artists; and

WHEREAS, Monsieur Hubert de Givenchy is respected for over 40 years of significant accomplishments in the field of fashion, having designed for a renowned international clientele; and

WHEREAS, Monsieur Givenchy is known for perfection and elegance in design and has made lasting contributions to fashion and

costuming in film; now, therefore, be it

*Resolved by the Senate of the State of California, the Assembly thereof concurring,* That the Legislature of the State of California hereby establishes an annual Award for Lifetime Achievement in the Arts in conjunction with the Los Angeles County High School for the Arts; and be it further

*Resolved,* That the Legislature of the State of California joins the Los Angeles County High School for the Arts in honoring Monsieur Hubert de Givenchy for his lifetime accomplishments in fashion by awarding Monsieur Givenchy the first annual Award for Lifetime Achievement in the Arts; and be it further

*Resolved,* That the Secretary of the Senate transmit a suitably prepared copy of this resolution to Hubert de Givenchy.

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## RESOLUTION CHAPTER 121

Senate Concurrent Resolution No. 96—Relative to improving transportation to ports.

[Filed with Secretary of State September 8, 1988 ]

WHEREAS, California, because of its coastal location and proximity to the countries of the Pacific Rim, plays an integral role in international trade; and

WHEREAS, International trade is an important component of California's economy, and thousands of jobs within the state are dependent on the continued flow of exports and imports; and

WHEREAS, Maintaining California's important position in international trade depends on successful competition with other states through the maintenance of a viable system of ports of all sizes with a variety of capabilities; and

WHEREAS, California's ability to compete with other states is jeopardized by the large amounts of funding other states provide for port development; and

WHEREAS, California's position in international trade is further eroded by the decline of some of the state's small ports; and

WHEREAS, Another important aspect of port development is the maintenance of adequate surface transportation to a port; and

WHEREAS, The Department of Transportation and the California Transportation Commission are responsible for planning and programming for the state's highway system; and

WHEREAS, Many ports, in light of their current financial problems, cannot take on the additional burden of maintaining and improving surface access; now, therefore, be it

*Resolved by the Senate of the State of California, the Assembly thereof concurring,* That the California Transportation Commission and the Department of Transportation, in consultation with

representatives of the ports, shall develop a proposal, for inclusion into the state transportation improvement program, for improving state highways and railway systems that serve ports; and be it further

*Resolved,* That those entities explore and identify all possible sources of funding for road access to ports, including state and federal transportation funds; and be it further

*Resolved,* That the Secretary of the Senate transmit copies of this resolution to the California Transportation Commission, the Department of Transportation, and the ports of California.

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## RESOLUTION CHAPTER 122

Senate Concurrent Resolution No. 100—Relative to diesel emissions.

[Filed with Secretary of State September 8, 1988.]

WHEREAS, The Legislature has recently provided supplemental funding to the State Energy Resources Conservation and Development Commission for the purpose of conducting demonstration programs to determine the feasibility and air quality impacts of methanol and other alternative fuels; and

WHEREAS, The Legislature has directed the South Coast Air Quality Management District to promote the use of cleaner-burning alternative fuels, and the district has recently adopted a clean fuels program to investigate and implement clean fuels strategies; and

WHEREAS, The State Air Resources Board has significant knowledge and authority with respect to the health effects of diesel emissions, as well as regulatory control of emissions from diesel-powered vehicles and diesel fuel composition; and

WHEREAS, It is in the public interest that diesel fuel quality regulations and alternative fuel demonstration programs be designed and implemented so as to achieve the maximum feasible reduction in diesel emissions in the most cost-effective manner, taking into consideration both the costs of controls and the benefits to public health, visibility, and the environment; now, therefore, be it

*Resolved by the Senate of the State of California, the Assembly thereof concurring,* That the State Energy Resources Conservation and Development Commission, the South Coast Air Quality Management District, and the State Air Resources Board, in consultation with diesel engine manufacturers and representatives of operators of diesel-powered vehicles, are hereby requested, to the extent that this issue is not already addressed in the study being conducted pursuant to the requirements of Section 5 of Chapter 1326 of the Statutes of 1987, to develop and, where feasible, implement a common strategy to achieve the maximum feasible reduction in

public exposure to diesel emissions in a cost-effective manner, through the most appropriate combinations of the following: cleaner burning alternative fuels, including, but not limited to, methanol, compressed natural gas, liquid petroleum gas, and electricity; engine modifications and control devices; dual fuel systems; diesel fuel composition specifications and requirements; improved inspection and maintenance programs; and emissions standards for new motor vehicles and diesel-powered equipment; and be it further

*Resolved,* That these agencies are hereby requested to submit to the appropriate policy and fiscal committees of the Legislature a progress report on the results of their respective activities and future plans to reduce public exposure to diesel emissions not later than March 31, 1989; and be it further

*Resolved,* That the Secretary of the Senate transmit copies of this resolution to the State Energy Resources Conservation and Development Commission, the South Coast Air Quality Management District, and the State Air Resources Board.

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## RESOLUTION CHAPTER 123

Senate Joint Resolution No. 30—Relative to the Central Valley Project.

[Filed with Secretary of State September 8, 1988.]

WHEREAS, The Central Valley Project was originally planned and designed by the State of California as a state project, and was authorized by the California Legislature in 1933; and

WHEREAS, The state was unable to construct the project during the Great Depression, and the project was authorized as a federal project in 1935; and

WHEREAS, In 1936, the state and the federal government entered into memorandums of understanding which specified that the state would operate and maintain the project following presentation to the United States of assurances of payment satisfactory to the United States; and

WHEREAS, California has had difficulty in resolving its internal water conflicts in large measure because of conflicts with the Central Valley Project over areas of origin protection, fisheries protection, regulatory control, salinity control in the Sacramento-San Joaquin Delta, and protection of San Francisco Bay; and

WHEREAS, The above issues, and many others, must be the subject of extensive deliberations, negotiations, and public hearings at numerous levels of government both prior to and after acquisition of the Central Valley Project; and

WHEREAS, A benefit-cost analysis shall be undertaken by the state, and, if acquisition does not have a positive benefit-cost

relationship, considering a multitude of water parameters, it shall not be done; and the parameters shall include, but are not limited to, protection of areas of origin, contractual commitments, state liability, the acreage limitation, and levee protection in all affected areas of the state; and

WHEREAS, The Director of Water Resources was authorized by the Legislature in 1986 to enter into negotiations with the United States Bureau of Reclamation for transfer to the state of part or all of the federal Central Valley Project; now, therefore be it

*Resolved by the Senate and Assembly of the State of California, jointly,* That the Legislature of the State of California respectfully memorializes the Congress of the United States to transfer control and operation of the Central Valley Project to the State of California or other public entity; and be it further

RESOLVED, That if the United States transfers control and operation of the Central Valley Project to the State of California or any other public entity, the state or that entity will be required to comply with the legal and contractual obligations of the United States, including the obligation established in subarticle 10(h) of the agreement between the United States and the Department of Water Resources of the State of California for the coordinated operation of the Central Valley Project and the State Water Project dated May 20, 1985, as approved by Congress in Public Law 99-546 (HR 3113); and be it further

*Resolved,* That the Secretary of the Senate transmit copies of this resolution to the President and Vice President of the United States, to the Secretary of the Interior, to the Speaker of the House of Representatives, and to each Senator and Representative from California in the Congress of the United States.

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## RESOLUTION CHAPTER 124

Assembly Joint Resolution No. 73—Relative to trauma care.

[Filed with Secretary of State September 9, 1988 ]

WHEREAS, Numerous medical and public health studies have verified the efficacy of a regionalized trauma care system; and

WHEREAS, Each year California's trauma centers provide prompt, definitive treatment to thousands of persons who have sustained critical injuries as a result of vehicular accidents, gunshot or knife wounds, falls, and natural disasters; and

WHEREAS, The likelihood of a critically injured victim's survival and recovery is increased by 30 percent if the patient is treated at a trauma center, as opposed to a hospital emergency room; and

WHEREAS, Approximately one-third of all trauma patient deaths that do occur could only be avoided by preventing the patient's

initial injury; and

WHEREAS, Injuries have a significant impact on the California economy both in terms of loss of employee productivity due to injury-related absences and medical and rehabilitative costs to both the private and public sector; and

WHEREAS, Nationwide, health costs due to injuries are up to one hundred billion dollars ($100,000,000,000) annually; and

WHEREAS, Injury prevention and control programs have repeatedly been effective in reducing the incidence of injuries and their associated costs; and

WHEREAS, A national focus for these efforts has been established at the Division of Injury Epidemiology and Control of the United States Centers for Disease Control; and

WHEREAS, Effective injury prevention and control strategies cannot be developed or implemented without a coordinated statewide mechanism of reporting, analyzing and sharing data and information; and

WHEREAS, Seven hospitals in Los Angeles County have already been forced to withdraw from California's statewide regionalized trauma care system because of financial losses incurred in serving trauma patients, and an eighth hospital, in San Diego County, has announced tentative plans to close its trauma unit effective July 1, 1988; and

WHEREAS, The demise of California's regionalized trauma care system will endanger the lives of California citizens as well as increase the health care and rehabilitation costs to both the private and public sectors; and

WHEREAS, Some areas of the state are currently facing a rash of requests from hospitals to downgrade their emergency rooms to "standby" status; and

WHEREAS, There has been introduced in Congress a measure, S. 10 by Senator Alan Cranston of California, which would enact the Emergency Medical Services and Trauma Care Improvement Act of 1987; and

WHEREAS, There has been introduced in Congress a measure, H.R. 3133, by Congressman Jim Bates and Congressman Henry Waxman which would enact the Trauma Care and Emergency Medical Services Planning and Development Act of 1988; and

WHEREAS, Both acts would establish a national clearinghouse on emergency medical services and provide federal block grants to states with a comprehensive emergency medical services and trauma care plan, including the collection, compilation, and dissemination of information to state and local agencies and private entities providing emergency medical services and trauma care; and

WHEREAS, Members of the Congress and Senate have urged that the injury control activities of the Centers for Disease Control be supported by a 20 million dollar allocation from within the appropriation for the United States Department of Health and Human Services, and a 20 million dollar allocation from the United

States Department of Transportation appropriation, in the fiscal year 1989–90 federal budget; and

WHEREAS, This appropriation for injury prevention programs would equal .03 percent of the estimated annual costs for the treatment of injuries; now, therefore, be it

*Resolved, by the Assembly and Senate of the State of California, jointly,* That the Legislature of the State of California respectfully memorializes the Congress of the United States to expeditiously enact legislation to establish a national clearinghouse on emergency medical services and provide federal block grants to states with a comprehensive emergency medical services and trauma care plan; and be it further

*Resolved,* That the Legislature of the State of California respectfully memorializes the Congress of the United States to expeditiously enact legislation to provide funds for continued and expanded injury prevention activities of the Division of Injury Epidemiology and Control Centers for Disease Control; and be it further

*Resolved,* That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, and to each Senator and Representative from California in the Congress of the United States.

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## RESOLUTION CHAPTER 125

Assembly Joint Resolution No. 74—Relative to the 1990 Census.

[Filed with Secretary of State September 9, 1988.]

WHEREAS, The United States Census Bureau will be conducting its decennial census in 1990; and

WHEREAS, In every past census there has been a significant and disproportionate undercount of minorities, the poor, the homeless, recent immigrants, and residents of remote rural areas; and

WHEREAS, Although the Census Bureau is planning to make a special effort to reduce the undercount in 1990, all experts agree that there will still be a significant undercount, particularly in urban areas, of minorities, the poor, the homeless, and recent immigrants, and of residents of some remote rural areas; and

WHEREAS, A consensus has emerged among statisticians and other experts, including a panel of the National Academy of Sciences, that the methodology exists to make a statistically valid and technically feasible adjustment of the census to correct for the undercount; and

WHEREAS, If the undercount is not corrected, California will lose over 50 million dollars per year in federal programs and federal

assistance, which are based on census figures; and

WHEREAS, California lost at least one congressional seat in the 1981 reapportionment because of the undercount in the 1980 Census; and

WHEREAS, If the undercount is not corrected, California stands to lose one or two congressional seats in the 1991 reapportionment; and

WHEREAS, If the undercount is not corrected, California will not be able to develop accurate statistics relating to health needs, infant mortality, and epidemiology, statistics needed for health and emergency services planning and for the allocation of federal health funds; and

WHEREAS, If the undercount is not corrected, California schools will not be able to develop accurate statistics on age and ethnicity of children, needed for federal education funding, planning for English-as-a-second-language programs, school construction, desegregation, and other student needs; and

WHEREAS, If the undercount is not corrected, California will be unable to develop accurate statistics on refugee migration, needed for planning for social and health services; on inner city population distribution, needed to prepare for inner city transportation needs; and on density of housing, needed to determine housing adequacy and safety; and

WHEREAS, Representative Mervyn Dymally has introduced in the House of Representatives a bill which would require the Census Bureau to adjust the 1990 Census by using statistically valid methodology to correct for the undercount; now, therefore, be it

*Resolved by the Assembly and Senate of the State of California, jointly,* That the Legislature of the State of California urges the Congress of the United States to pass, and the President of the United States to sign, legislation requiring the Census Bureau to adjust the 1990 Census by using statistically valid methodology to correct for any undercount of minorities, the poor, the homeless, recent immigrants, and residents of remote rural areas; and be it further

*Resolved,* That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, the United States Secretary of Commerce, the Speaker of the United States House of Representatives, and each representative and senator from California in the Congress of the United States.

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## RESOLUTION CHAPTER 126

Assembly Joint Resolution No. 80—Relative to United States airline workers.

[Filed with Secretary of State September 9, 1988.]

WHEREAS, The Federal Aviation Administration (FAA) is proposing to expand the use of foreign repair stations for United States registered aircraft; and

WHEREAS, The proposed regulation amendment allowing expansion of foreign repair stations has been unilateral on the part of the FAA without proper notice for comment or debate; and

WHEREAS, Motivation for the expansion of foreign repair stations is based on purely economic factors, without regard for safety concerns; and

WHEREAS, This proposal would permit a United States air carrier to contract for maintenance, alteration, or inspection of its United States registered aircraft with any foreign repair station, whether or not it employs holders of United States Airman Certificates; and

WHEREAS, The FAA foreign repair station proposal would jeopardize airline safety in the United States by allowing any foreign country to inspect and maintain United States aircraft, and by using unlicensed mechanics and inadequately supervised maintenance on United States aircraft without FAA inspection; and

WHEREAS, The FAA foreign repair station proposal would result in the loss of thousands of jobs in the United States and in the displacement of workers; and

WHEREAS, Our air transport industry has had an enviable safety record due to the strict control and monitoring currently imposed by the FAA with regard to aircraft maintenance and repairs; and

WHEREAS, To alter or relax these controls would only subject the public to unnecessary risks; and

WHEREAS, Looser standards for foreign repair stations fly in the face of the growing body of evidence that air safety is already threatened by the FAA's inadequate inspection programs; now, therefore, be it

*Resolved by the Assembly and Senate of the State of California, jointly,* That the California Legislature respectfully memorializes the President and Congress of the United States to support efforts to ensure that all United States aircraft are repaired in facilities where trained, licensed, and competent mechanics are employed and are supervised by the FAA; and be it further

*Resolved,* That any consideration of maintenance plans to the contrary be fully debated and that the FAA do so with an understanding of the impact on customer safety and the economic impact that may result from the use of foreign repair stations; and be it further

*Resolved,* That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives and to each Senator and Representative from California in the Congress of the United States, and to the Director of the Federal Aviation Administration.

## RESOLUTION CHAPTER 127

Assembly Joint Resolution No. 85—Relative to hazardous materials.

[Filed with Secretary of State September 9, 1988.]

WHEREAS, In 1985, California enacted a comprehensive emergency planning, inventory, and community right-to-know act dealing with hazardous materials (Chapter 6.95 (commencing with Section 25500) of Division 20 of the Health and Safety Code); and

WHEREAS, A year later the Congress of the United States enacted the Emergency Planning and Community Right-To-Know Act of 1986 (Chapter 116 (commencing with Section 11001) of Title 42 of the United States Code) which was substantially similar to the state's act; and

WHEREAS, Technical differences between the federal and the state acts have created significant confusion, duplication, and unnecessary work for the state's businesses in complying with the administrative requirements of the federal act; now, therefore, be it

*Resolved by the Assembly and the Senate of the State of California, jointly,* That the Legislature urges the Congress of the United States to amend the Emergency Planning and Community Right-To-Know Act of 1986 to allow a state which has enacted a similar act, prior to the federal act, to implement the federal act in a manner that would comply with the substantive requirements of the federal act, but would provide the state with discretion in carrying out the procedural or administrative requirements of the federal act while not lessening the act's protections of the public health and safety; and be it further

*Resolved,* That the Chief Clerk of the Assembly transmit copies of this resolution to each Senator and Representative from California in the Congress of the United States.

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## RESOLUTION CHAPTER 128

Assembly Joint Resolution No. 86—Relative to Native American Remains.

[Filed with Secretary of State September 9, 1988 ]

WHEREAS, The California State Legislature recognizes the right of all human beings to be treated with equal dignity and respect; and

WHEREAS, This respect is extended to human remains after death; and

WHEREAS, The skeletal remains of several hundred California Native Americans are presently stored at the Smithsonian Institution; and

WHEREAS, Storage and analysis of these human remains and associated grave goods is in conflict with Native American spiritual practices and manifests lack of respect for the remains; and

WHEREAS, The return of these human remains and associated grave goods to descendents or to the sites of origin would be appropriate; now, therefore, be it

*Resolved by the Assembly and Senate of the State of California, jointly,* That the Legislature of the State of California strongly urges that the Smithsonian Institution comply in a respectful and timely manner with requests of individuals and tribal organizations for the return of skeletal remains of California Native Americans and associated grave goods; and be it further

*Resolved,* That the Chief Clerk of the Assembly transmit copies of this resolution to the Honorable Ronald Reagan, President of the United States; the Honorable Robert McCormick Adams, Secretary of the Smithsonian Institution; the Honorable Daniel K. Inouye, Chairman of the Senate Select Committee on Indian Affairs; and to the Honorable Alan Cranston and Pete Wilson, United States Senators.

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## RESOLUTION CHAPTER 129

Assembly Joint Resolution No. 89—Relative to aviation.

[Filed with Secretary of State September 9, 1988 ]

WHEREAS, In the 10 years since the federal government deregulated commercial aviation, the number of passengers traveling on commercial flights has doubled; and

WHEREAS, Commercial aviation has played and will continue to play a major role in the economic growth of the nation and the State of California; and

WHEREAS, General aviation serves as an important transportation mode for business and agriculture in the State of California; and

WHEREAS, The aviation industry provides thousands of employment opportunities and other economic benefits to the people of California; and

WHEREAS, California serves as America's gateway to the Pacific Rim, and aviation is California's major link to international markets; and

WHEREAS, Expansion and modernization of our nation's airports and air traffic control system is crucial to the continued economic vitality of California and the entire country; and

WHEREAS, The California Legislature has demonstrated its commitment to ensuring a quality air travel system for California through the formation of the California Commission on Aviation and

Airports, which has dedicated time, resources, and energies toward furthering public awareness and support of aviation related issues; and

WHEREAS, The Legislature, in concert with the California Commission on Aviation and Airports, believes that public information on national aviation issues is both essential and complementary to our own efforts; now, therefore, be it

*Resolved by the Assembly and the Senate of the State of California, jointly,* That the Legislature of the State of California recognizes and applauds the formation of the Partnership for Improved Air Travel, the purpose of which is to focus public attention on the need to establish a long range planning process to ensure efficient air travel, to create a national airport plan, and to make better use of current technology to expand the air transportation system; and be it further

*Resolved,* That the Legislature of the State of California respectfully memorializes the President, the Congress of the United States, and the Federal Aviation Administration to move as quickly as possible to develop and implement such legislative and administrative actions as are needed to significantly expand and improve the capacity and efficiency of the nation's air transportation system; and be it further

*Resolved,* That the Chief Clerk of the Assembly transmit copies of this resolution to the President, to each Senator and Representative from California in the Congress of the United States, the Department of Transportation, the chief executive officers of each House of the State Legislatures of the 50 states, the National Governors Association, the National Conference of State Legislatures, the National Association of Counties, the National League of Cities, the United States Conference of Mayors, the United States Chamber of Commerce, the United States Department of Transportation, and the Federal Aviation Administration.

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## RESOLUTION CHAPTER 130

Assembly Concurrent Resolution No. 94—Relative to children's services.

[Filed with Secretary of State September 9, 1988 ]

WHEREAS, There are now an estimated 7.1 million children in California under the age of 18 years; and

WHEREAS, The family is the primary structure for children and the most appropriate provider to meet the needs of children; and

WHEREAS, The family is sometimes fragmented, undermined, or incapacitated to such an extent that meeting the needs of children becomes impossible; and

WHEREAS, Children have certain inalienable rights that should

be protected by the state when the family structure fails them; now, therefore, be it

*Resolved by the Assembly of the State of California, the Senate thereof concurring,* That the Legislature hereby adopts the following Uniform Children's Services Policy:

(1) Every child has the right to shelter, safety, and nourishment.

(2) Every child deserves adequate quality care and supervision when parents are at work, school, or job training, or are incapacitated.

(3) Every child deserves a nuturing relationship with a caring adult.

(4) Since families should be the primary providers of support to children, the state should ensure a good future for all children by encouraging the well-being of families and providing support services to strengthen families and enhance their self-sufficiency.

(5) There is an appropriate government role in providing preventive and early intervention services to families and children to maintain healthy families and prevent future long-term governmental costs.

(6) Services to children must be undertaken in a purposeful, coordinated, integrated, fair, and cost-effective manner to ultimately benefit both the users and the taxpayers; and be it further

*Resolved,* That the Chief Clerk of the Assembly transmit copies of this resolution to the Governor, the Secretary of the State Health and Welfare Agency, the Director of the Department of Social Services, the Superintendent of Public Instruction, and the director of each county welfare department.

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## RESOLUTION CHAPTER 131

Assembly Concurrent Resolution No. 83—Relative to liability insurance for obstetrical services.

[Filed with Secretary of State September 9, 1988.]

WHEREAS, Over one-half of California's obstetricians have had malpractice actions filed against them for an obstetrics case, and the prevalence of these lawsuits is widespread, perhaps indicating that the expectations of parents, due to recent gains in medical technology, do not recognize maloccurrences as an unfortunate but unavoidable part of the birth process; and

WHEREAS, The high incidence of lawsuits and high cost of insurance for obstetrics has forced four-fifths of obstetricians and one-half of family practitioners to raise fees to patients, and costs to obstetrical patients are increasing due to the practicing of "defensive medicine"; and

WHEREAS, There exists in the practice of obstetrics in California

a crisis as to the availability of this specialty of medicine, particularly to patients in rural areas, as to the affordability of professional liability insurance, and as to the cost patients are required to pay for obstetrical services; now, therefore, be it

*Resolved by the Assembly of the State of California, the Senate thereof concurring,* That the Legislative Analyst is respectfully requested to conduct a study of published reports on the effects of higher professional liability insurance costs on access of the public to obstetrical care, and report its recommendations to the Legislature on the need and ways and means of reducing the costs of professional liability insurance in regard to the practice of obstetrics; and be it further

RESOLVED, That the study compare and contrast California's Medical Injury Compensation Reform Act with the efforts of other states to address the medical malpractice crisis, including, but not limited to, the Virginia Birth-Related Neurologic Injury Compensation Act and recent legislation enacted in Florida; and be it further

*Resolved,* That the study include the feasibility of legislation creating a no-fault, workers' compensation type of insurance similar to the Virginia Birth-Related Neurologic Injury Compensation Act; that the study include consultation with the California Association of Obstetricians and Gynecologists, District IX of the American College of Obstetricians and Gynecologists, the California Academy of Family Physicians, the California Medical Association, the California Trial Lawyers Association, the Association for California Tort Reform, representatives of the professional liability insurance industry, property and casualty insurance trade associations, the appropriate committees of the State Legislature, and others as determined by the Legislative Analyst; and be it further

*Resolved,* That the report be submitted to the Legislature on or before June 30, 1989; and be it further

*Resolved,* That the Chief Clerk of the Assembly transmit a copy of this resolution to the Legislative Analyst.

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## RESOLUTION CHAPTER 132

Assembly Concurrent Resolution No. 108—Relative to AIDS education in the workplace.

[Filed with Secretary of State September 9, 1988.]

WHEREAS, Acquired immune deficiency syndrome, commonly known as AIDS, is the most devastating public health epidemic of the century; and

WHEREAS, The federal Centers for Disease Control predicts that medically diagnosed cases of AIDS will increase by more than 500

percent in the next three years. By the year 1991, more than 270,000 Americans will be diagnosed with AIDS, and three to five million will be carrying the human immunodeficiency virus; and

WHEREAS, The impact of AIDS is and will continue to be devastating. By the year 1991, AIDS patients will need health and supportive services at a total cost of between $8 billion and $16 billion; and

WHEREAS, To date, there is no cure or preventive vaccine for AIDS, so that education and behavior modification are the only effective means of preventing the spread of the disease; and

WHEREAS, The United States Surgeon General has stated that it is the responsibility of every citizen to be informed about AIDS and to exercise appropriate preventative measures; and

WHEREAS, AIDS affects not only the individual lives of those afflicted and their friends and families but also has a tremendous impact on the workplace–primarily taking as its victims people who are in their peak productive years in the nation's work force; and

WHEREAS, The work environment can serve as an effective site in which to provide AIDS education to a wide range of individuals who can then share that information with their families; and

WHEREAS, There currently exists a variety of high-quality AIDS education materials and services available from a wide range of private and public agencies and organizations; and

WHEREAS, The broad-based, cooperative effort necessary to stop the spread of AIDS can only be realized with the full support, understanding, and informed decisionmaking of the business community; now, therefore, be it

*Resolved, by the Assembly of the State of California, the Senate thereof concurring,* That the Legislature of the State of California requests and encourages every employer in the state to implement for its employees an AIDS education program based on the most accurate medical and public health knowledge available; and be it further

*Resolved,* That these education programs shall include:

(a) A plan for making AIDS information readily available to all employees on a repetitive basis. Suggested methods include meetings, workshops, brochures, posters, newsletter articles, video tapes, and letters from the management which provide the employee with easily understood facts about the disease, its effects, and modes of transmission.

(b) Availability of, or referral to, special workshops for managers who may face special challenges in dealing with an employee with AIDS.

(c) Availability of, or referral to, special programs for parents who desire information which they can share with their children.

(d) Information on services available locally which can provide the employee with additional information or assist the employee in obtaining further information or assistance with any medical, psychological, or financial problems caused by the disease.

(e) Adoption of company guidelines relating to, at a minimum, (1) confidentiality of medical information; and (2) the right of an employee to continue working as long as the employee is able to perform his or her job satisfactorily and as long as the employee's continued employment presents no health or safety threat to the employee or others.

(f) With respect to small businesses or groups of small businesses in a shared location, a coordinated, group approach to providing information to employees of the various businesses involved. For example, a local chamber of commerce, merchants association, or shopping mall management could implement a joint employee education program on behalf of all its members.

(g) A program evaluation component designed to allow employees to evaluate the education program on a completely anonymous basis so that employees will feel comfortable in responding; and be it further

*Resolved,* That an employer may obtain written materials to fulfill the requirements of this resolution from the Office of AIDS in the State Department of Health Services, or from public or private nonprofit organizations that offer this information to the public.

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## RESOLUTION CHAPTER 133

Assembly Concurrent Resolution No. 118—Relative to vehicles.

[Filed with Secretary of State September 9, 1988.]

WHEREAS, The Congress of the United States passed, and the President of the United States has signed, federal legislation which provides standards for testing, licensing, licensing classification, and review of licensing, by the states, of drivers of heavy commercial vehicles; and

WHEREAS, The federal law invokes stringent penalties against those drivers for conviction of driving violations; and

WHEREAS, Those driving violations include equipment violations which often are the responsibility of the owners of the vehicles; and

WHEREAS, The trucking industry, in cooperation with the Department of the California Highway Patrol, truck drivers, and various courts, has provided an "Owners Responsibility" statement that identifies equipment violations which the owners, rather than the drivers, will accept responsibility for, including any citations; and

WHEREAS, The "Owner Responsibility" procedure is not a standard program statewide; and

WHEREAS, The lack of a statewide "Owner Responsibility" procedure results in disparities in enforcement and judicial findings throughout the state; and

WHEREAS, Under the new federal standards, drivers may be

subject to loss of their driving privilege as a result of improper posting of equipment violations on their driving records; and

WHEREAS, The "Owner Responsibility" procedure eliminates improper posting of equipment violations on the driver's records, and facilitates the processing of citations by the courts; now, therefore, be it

*Resolved by the Assembly of the State of California, the Senate thereof concurring,* That the Department of the California Highway Patrol, in coordination with the Judicial Council, the Department of Motor Vehicles, the trucking industry, and a truck driver employee representative, is requested to review the potential for including an "Owners Responsibility" procedure as a part of the California Highway Patrol's "MISTER" (Management Information System of Terminal Evaluation Records) program, and the Department of the California Highway Patrol is requested to also consider any alternative statewide procedure that can accommodate its needs and the needs of the drivers, owners, the Department of Motor Vehicles, and the courts; and be it further

*Resolved,* That the Department of the California Highway Patrol is requested to report to the Legislature, by June 30, 1989, its recommendations for legislation needed to implement a statewide "Owner Responsibility" procedure, or any alternative, and its recommendations for enhancing the current procedure for issuing and processing citations; and be it further

*Resolved,* That the Chief Clerk of the Assembly transmit copies of this resolution to the Department of the California Highway Patrol, the Department of Motor Vehicles, and the Judicial Council.

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## RESOLUTION CHAPTER 134

Assembly Concurrent Resolution No. 129—Relative to rural highways.

[Filed with Secretary of State September 9, 1988.]

WHEREAS, The State Highway System includes 8,000 miles of rural two-lane conventional highways, and 5,000 miles of these highways are located in rolling or mountainous terrains; and

WHEREAS, Many citizens of the state utilize rural highways, and many of these people reside in rural regions and are therefore very familiar with local highways; and

WHEREAS, The Department of Transportation is required to "barrier-stripe" the state highway system in a manner which conforms with the National Manual on Uniform Traffic Control Devices; and

WHEREAS, Often the method of marking these highways is inconsistent with the actual safety of passing opportunities and may

lead to unsafe passing and noncompliance, creating enforcement problems; and

WHEREAS, Slow drivers many times fail to make use of turnout lanes and fail to use proper lanes such as "passing lanes," resulting in a volume of slow moving vehicles on these routes; and

WHEREAS, The current funding levels of the state highway program do not allow for expedient solution of these problems; now, therefore, be it

*Resolved by the Assembly of the State of California, the Senate thereof concurring,* That the Department of Transportation is hereby requested to investigate the statewide need for passing lanes on rural two-lane highways and to submit a report to the Legislature on or before March 1, 1989, which does all of the following:

(1) Identifies the limits and degree of this statewide operational problem.

(2) Specifies the causes of the problem.

(3) Discusses alternative solutions to the problem, including, but not limited to, passing lanes, turnouts, and truck climbing lanes. This discussion shall provide an indication of the "costs versus benefits" for each alternative considered.

(4) Discusses the funding issues involved when considering the relative priorities and the overall funding situation within the department.

(5) Recommends courses of action; including, but not limited to, urging the Federal Highway Administration to revise it standards for "double-striping" in a manner that will promote veritable safety and prevent interminable rural gridlocks; and be it further

*Resolved,* That the Department of Motor Vehicles is hereby requested to develop a motorist education program wherein those citizens registering a vehicle receive information regarding their legal obligations as to the use of turnout lanes and passing lanes, and apprise them of penalties upon failure to comply with the law; and be it further

*Resolved,* That the Chief Clerk of the Assembly transmit copies of this resolution to the Director of Transportation and the Director of Motor Vehicles.

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## RESOLUTION CHAPTER 135

Assembly Concurrent Resolution No. 130—Relative to Family Unity Month.

[Filed with Secretary of State September 9, 1988.]

WHEREAS, The strength of our nation depends on the viability of its families; and

WHEREAS, Families have made significant contributions to the

economic, social, and political history of the nation and the State of California; and

WHEREAS, The family is a social unit consisting of men, women, and children, living together, sharing, loving, and supporting each other; and

WHEREAS, Thanksgiving is celebrated in November and families come together to give thanks for living in a free society; now, therefore, be it

*Resolved by the Assembly of the State of California, the Senate thereof concurring,* That the Legislature hereby proclaims the month of November 1988 as Family Unity Month; and be it further

*Resolved,* That the Legislature encourages all Californians to reflect upon the role of the family; and be it further

*Resolved,* That the Chief Clerk of the Assembly transmit a copy of this resolution to the Governor of the State of California.

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## RESOLUTION CHAPTER 136

Assembly Concurrent Resolution No. 132—Relative to the Auburn-Oakland-San Jose intercity rail corridor.

[Filed with Secretary of State September 9, 1988 ]

WHEREAS, The Metropolitan Transportation Commission has recently completed a comprehensive transportation study of the Route 80 corridor from the San Francisco-Oakland Bay Bridge through Solano County in response to Resolution Chapter 52 of the Statutes of 1986; and

WHEREAS, The Legislature in 1976, through the enactment of Chapter 4.6 (commencing with Section 2170) of Division 3 of the Streets and Highway Code, requested expansion and upgrading of rail passenger service as demonstration projects by the Department of Transportation in both the Los Angeles-San Diego and Auburn-Sacramento-Oakland-San Jose intercity rail corridors; and

WHEREAS, The Los Angeles-San Diego rail corridor was subsequently upgraded to the extent that Amtrak train service more than doubled, from three to eight daily roundtrips, resulting in a quadrupling of ridership from 377,000 in 1975 to more than 1.5 million passenger trips in 1987, and an improvement in the financial performance of the service from a 36 percent farebox return in 1975 to a 93 percent return in 1987, with the result that this corridor carries more intercity rail passengers than any other corridor in the country except the Boston-Washington Northeast corridor and now handles more riders than have ever been carried by train in the history of the Los Angeles-San Diego rail line; and

WHEREAS, No similar upgrading program was undertaken in the Auburn-Sacramento-Oakland-San Jose intercity rail corridor, despite

the directive of the Legislature, with the result that Amtrak service in this corridor has languished, remaining limited to two transcontinental long-distance trains generally not suitable for local travel, the same level of service that existed in 1976 when the two-corridor demonstration projects were requested and authorized; and

WHEREAS, The existing double-track railroad line between Auburn, Sacramento, and Oakland remains considerably underutilized while adjacent freeways are evermore congested and crowded; and

WHEREAS, The scarcity of transportation funds and the great expense of new highway facilities requires additional scrutiny of existing transportation corridors that are already in place and can play an important role in improving the mobility of Californians; and

WHEREAS, The forthcoming federal Strategic Transportation Planning Study funded in Continuing Resolution PL 100-202 (passed by Congress in December 1987), which called for a study of the Sacramento and San Francisco-Oakland urbanized areas and the area along Interstate 80 connecting the two areas, will utilize existing data from recent transportation studies in each urbanized area and would greatly benefit from a study of interregional rail between the urbanized areas; now, therefore, be it

*Resolved by the Assembly of the State of California, the Senate thereof concurring,* That the Metropolitan Transportation Commission, in coordination with the Sacramento Area Council of Governments and the Department of Transportation, are hereby requested to conduct an intercity rail corridor upgrade study for the Auburn-Sacramento-Oakland-San Jose intercity rail corridor; and be it further

*Resolved,* That the intercity rail corridor study should be conducted as a second phase of the Resolution Chapter 52 comprehensive study; and be it further

*Resolved,* That the study shall address, at a minimum, each of the following:

(a) Identification of short-term improvements on the existing rail line that will facilitate the introduction of additional train frequencies geared to local corridor travel, increase speeds, reduce running times, and increase reliability of service, while maintaining capacity for freight operations.

(b) Identification of longer-term improvements necessary to achieve high-speed rail travel times of 85 minutes from Sacramento to Oakland and two hours from Sacramento to San Jose.

(c) Identification of proven rolling stock technologies available on world markets best suited to this rail corridor.

(d) Identification of transfer stations between local bus and rail transit operators and the regional rail corridor service.

(e) Identification of various levels of train service frequency.

(f) An implementation and funding plan; and be it further

*Resolved,* That the Metropolitan Transportation Commission, the

Sacramento Area Council of Governments, and the Department of Transportation are requested to submit this study to the Legislature within 12 months of the passage of this resolution; and be it further

*Resolved,* That the final result of this study shall be included in the federally funded Strategic Transportation Planning Study, and that interim reports of this study shall be shared with, and reviewed by, participants in the Strategic Transportation Planning Study; and be it further

*Resolved,* That the Chief Clerk of the Assembly transmit copies of this resolution to the Metropolitan Transportation Commission, the Sacramento Area Council of Governments, the Director of Transportation, the Boards of Supervisors of Sacramento, Yolo, Solano, Contra Costa, Alameda, San Francisco, Santa Clara, and San Mateo Counties, and to the mayor of each city along the Auburn-Sacramento-Oakland-San Jose intercity rail corridor.

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## RESOLUTION CHAPTER 137

Assembly Concurrent Resolution No. 148—Relative to Capitol Park.

[Filed with Secretary of State September 9, 1988 ]

WHEREAS, Capitol Park is widely known as one of the most beautiful parks in the United States; and

WHEREAS, The 40-acre park, with its display of well-kept broad green lawns and trees collected from every continent and climate of the world, is a state and national treasure; and

WHEREAS, Since 1985, no funds have been specifically appropriated for the refurbishment of the park and many areas of the park are in need of repair and restoration, and

WHEREAS, Approximately 15 trees in the park have died within the last five years and between 40 and 50 other trees need to be replaced; and

WHEREAS, Sidewalks in the park are in need of repair, 150 light poles are rusted and corroded and need to be replaced, and some portions of the sprinkler system are more than 30 years old and need to be repaired or replaced; and

WHEREAS, Corroded pipes and a poor filtration and pumping system prevent adequate flow of the water in the fountain located west of the Capitol between the Jesse Marvin Unruh State Office Building and the Library and Courts Building; and

WHEREAS, Signs, benches, and trash receptacles need to be repaired or replaced; and

WHEREAS, The Capitol Park Service Area Building located at 13th and L Streets dates back to 1907 and needs major rehabilitation and a storage area is also needed; and

WHEREAS, The public restrooms located in the service area building need to be remodeled to make them accessible to persons in wheelchairs; now, therefore, be it

*Resolved by the Assembly of the State of California, the Senate thereof concurring,* That the Department of General Services is requested to include adequate funds in its budget for the 1989–90 fiscal year to facilitate the preparation of a plan for the renovation and refurbishment of Capitol Park; and be it further

RESOLVED, That the Department of General Services shall request the Historic State Capitol Commission to review and advise the department with respect to the preparation of the plans for the renovation and refurbishment of Capitol Park; and be it further

RESOLVED, That the department shall report its recommendations to the subcommittee of the Joint Rules Committee that has jurisdiction over the State Capitol Restoration Project by January 1, 1990; and be it further

RESOLVED, That the Department of General Services shall follow established state standards for the restoration, preservation, and maintenance of historic sites, where applicable; and be it further

*Resolved,* That the Chief Clerk of the Assembly transmit a copy of this resolution to the Director of General Services.

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## RESOLUTION CHAPTER 138

Assembly Concurrent Resolution No. 156—Relative to Cuban human rights violations.

[Filed with Secretary of State September 9, 1988.]

WHEREAS, The 1987 Report on Human Rights Violations presented by Amnesty International indicates that the detention of individuals because of their beliefs, the prolonged solitary confinement of prisoners of conscience, the incarceration of prisoners without trial, and the exposure of the detained to cruel, degrading, and inhumane conditions continues in Cuba; and

WHEREAS, The Joint Resolution of the European Parliament, announced on October 29, 1987, also denounces the Cuban Government policy of keeping hundreds of political prisoners, particularly individuals who refuse ideological indoctrination, in jails, forced labor camps, and psychiatric hospitals; and

WHEREAS, The Cuban Committee Pro Human Rights denounced on January 31, 1988, before members of the foreign press in Havana, new political crimes committed by the Cuban government in the form of disappearances, torture, religious persecution, discrimination, and other violations of human rights; and

WHEREAS, These declarations by Amnesty International, the

European Parliament, and the Cuban Committee Pro Human Rights make evident the tendency of the Cuban government to inflict cruel, degrading, and inhuman punishment, in clear violation of human rights, and these actions are condemned by all nations believing in the inalienable rights of men and women and human values beyond any racial, economic, or ideological differences; now, therefore, be it

*Resolved by the Assembly of the State of California, the Senate thereof concurring,* That the Legislature of the State of California expresses its solidarity with the requests made by Amnesty International, the European Parliament, and the Cuban Committee Pro Human Rights to the Human Rights Commission of the United Nations, demanding a full investigation of the allegations of human rights violations in Cuba; and be it further

*Resolved,* That the Chief Clerk of the Assembly transmit copies of this resolution to the Human Rights Commission of the United Nations and to the Junta Patriotica Cubana of California.

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## RESOLUTION CHAPTER 139

Assembly Concurrent Resolution No. 165—Relative to designating the week of October 2, 1988, through October 8, 1988, as Mental Illness Awareness Week.

[Filed with Secretary of State September 9, 1988 ]

WHEREAS, Mental illness is a problem of grave concern and consequence, though one widely but unnecessarily feared and misunderstood; and

WHEREAS, 3.1 million to 4.1 million Californians annually suffer from clearly diagnosable mental disorders involving significant disability with respect to employment, attendance at school, or independent living; and

WHEREAS, More than one million Californians are disabled for long periods of time by schizophrenia, manic depressive disorder, and major depression; and

WHEREAS, Research in recent decades has led to a wide array of new and more effective treatment, both medical and psychosocial, for some of the most incapacitating forms of mental illness, including schizophrenia, major affective disorders, phobias, and phobic disorders; and

WHEREAS, Appropriate treatment of mental illness has been demonstrated to be cost-effective in terms of restored productivity, reduced utilization of other health services, and lessened social dependence; and

WHEREAS, Recent and unparalleled growth in scientific knowledge about mental illness has generated the current emergence of a new threshold of opportunity for future research

advances and fruitful application to specific clinical problems; now, therefore, be it

*Resolved by the Assembly of the State of California, the Senate thereof concurring,* That the Legislature hereby proclaims the week beginning on October 2, 1988, as "Mental Illness Awareness Week"; and be it further

*Resolved,* That the Governor is hereby requested to issue a proclamation calling upon the people of California to observe the week with appropriate ceremonies and activities; and be it further

*Resolved,* That the Chief Clerk of the Assembly transmit a copy of this resolution to the Governor of the State of California.

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## RESOLUTION CHAPTER 140

Assembly Concurrent Resolution No. 166—Relative to Computer Learning Month.

[Filed with Secretary of State September 9, 1988 ]

WHEREAS, "Computer Learning Month" has been established as a nonprofit educational foundation by the Education Software Committee of the Software Publishers Association and has gained the support and attention of organizations and associations within the educational community; and

WHEREAS, The goal of "Computer Learning Month" 1988 is to increase the number of people receiving the benefits of computer technology; and

WHEREAS, A number of educational, business, and public interest groups across the nation have plans underway to focus attention on computer learning during October 1988; and

WHEREAS, New York and Massachusetts have already adopted, and 17 other states are in the process of adopting resolutions declaring the month of October 1988 as "Computer Learning Month"; and

WHEREAS, California's recognition of "Computer Learning Month" will give emphasis and support to programs important to the education of our youth, important to their future productivity, and important to the competitiveness of our state; and

WHEREAS, It is widely recognized that the strength of our state's educational system depends on preparing students to become future leaders, and the integration of new technologies into the curriculum is a necessary step in ensuring that goal; and

WHEREAS, It is widely recognized that the strength of California's economy is directly linked to the ability of our state's educational system to prepare students to work in businesses and factories facing rapid technological change to continue to compete in the world marketplace, and that familiarity with, and basic

competency in, the use of computers is a basic building-block of that preparation; and

WHEREAS, Activities during "Computer Learning Month" will be designed to expand public awareness of how computers and software are used educationally, and to emphasize that computer literacy is not an end in itself, but rather a means for opening doors to productivity, creativity, and general learning; now, therefore, be it

*Resolved by the Assembly of the State of California, the Senate thereof concurring,* That the Governor is hereby requested to proclaim the month of October 1988 as "Computer Learning Month" in California, in recognition of the importance of educating California's youth about computer technology as a means to secure our state's preeminence as one of the world's leaders in advanced technology; and be it further

*Resolved,* That the Chief Clerk of the Assembly transmit a copy of this resolution to the Governor of the State of California.

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## RESOLUTION CHAPTER 141

Assembly Concurrent Resolution No. 167—Relative to the Joint Committee for the Review of the Master Plan for Higher Education.

[Filed with Secretary of State September 9, 1988.]

WHEREAS, The Joint Committee for the Review of the Master Plan for Higher Education was created pursuant to Resolution Chapter 175 of the Statutes of 1984, and extended pursuant to Resolution Chapter 56 of the Statutes of 1987; and

WHEREAS, The joint committee was authorized and directed to receive and review the reports of the Commission for the Review of the Master Plan for Higher Education; and

WHEREAS, The commission sought and received an extension of the deadlines by which its various reports were to be delivered to the joint committee; and

WHEREAS, The joint committee has received the final report of the commission and has conducted numerous public hearings in response to that report; and

WHEREAS, The joint committee's final draft report has been completed, and public hearings were conducted during June and August, 1988, to garner responses, recommendations, and advice from the public; and

WHEREAS, The members of the joint committee are committed to a thorough discussion of the draft report, prior to its final adoption, and the press of legislative business during the concluding months of the 1987–88 Regular Session has precluded the necessary sequence of meeting and dialogue among the members to allow adequate

discussion prior to the adjournment of the session; now therefore, be it

*Resolved by the Assembly of the State of California, the Senate thereof concurring,* That the deadline for submission, pursuant to Resolution Chapter 175 of the Statutes of 1984 and Resolution Chapter 56 of the Statutes of 1987, of the final report of the Joint Committee for the Review of the Master Plan for Higher Education is hereby extended until March 30, 1989; and be it further

*Resolved,* That the Joint Committee for the Review of the Master Plan for Higher Education is hereby authorized to act in accordance with the provisions of Resolution Chapter 175 of the Statutes of 1984 until March 30, 1989, and as of that date shall cease to exist; and be it further

*Resolved,* That the Chief Clerk of the Assembly shall transmit a copy of this resolution to the Commission for the Review of the Master Plan for Higher Education.

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## RESOLUTION CHAPTER 142

Assembly Concurrent Resolution No. 77—Relative to the Afro-American History.

[Filed with Secretary of State September 15, 1988 ]

WHEREAS, It is advisable that every person who resides within the state should have a sense of being part of the state's history and culture; and

WHEREAS, The East Bay Negro Historical Society, Inc., in Oakland, a volunteer, community-based nonprofit society, has served in preserving, collecting, and disseminating the history and culture of Afro-Americans in California and the nation to schools and colleges, museums, business and industry, and to the general population, since its inception in 1965; and

WHEREAS, The public has responded wholeheartedly to the availability of the East Bay Negro Historical Society collections and programs; and

WHEREAS, The Board of Directors of the East Bay Negro Historical Society, along with its cofounders, in a regular meeting of the board, unanimously approved a motion to relinquish its ownership, control, and supervision of the East Bay Negro Historical Society in favor of the state assuming full control and ownership of all its collections, equipment, archives, and files related to Afro-American history and culture; now, therefore, be it

*Resolved by the Assembly of the State of California, the Senate thereof concurring,* That the Legislature proposes that the Department of Parks and Recreation acquire, at no cost, the East Bay Negro Historical Society collections and property, to be preserved

unspoiled in perpetuity as the "Northern California Center for Afro-American History and Life"; and be it further

*Resolved,* That the Northern California Center for Afro-American History and Life be located in Oakland in the present facility occupied by the East Bay Negro Historical Society until other facilities can be acquired; and be it further

*Resolved,* That state assumption of the East Bay Negro Historical Society under the organizational jurisdiction of the Department of Parks and Recreation become effective October 1, 1988; and be it further

*Resolved,* That the Chief Clerk of the Assembly transmit copies of this resolution to the Director of Parks and Recreation and to the Board of Directors of the East Bay Negro Historical Society.

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## RESOLUTION CHAPTER 143

Assembly Concurrent Resolution No. 138—Relative to Pacific Rim language instruction.

[Filed with Secretary of State September 15, 1988.]

WHEREAS, California has the world's sixth largest economy and is an international gateway to the fastest growing nations that span the Pacific Rim; and

WHEREAS, One out of every 10 jobs in California is dependent on foreign trade and more than $100 billion worth of goods passed through California ports in 1986; and

WHEREAS, International trade is central to California's continuing economic growth; and

WHEREAS, The Pacific Rim nations account for approximately 75 percent of California's international trade; and

WHEREAS, It is essential for Californians to understand and utilize Pacific Rim languages to maintain California's competitive edge; and

WHEREAS, Foreign language instruction can eliminate artificial barriers to trade; and

WHEREAS, The preparation of today's grade school students to function in an increasingly multicultural and diverse marketplace is necessary and vital to improving California's position in the world economy; and

WHEREAS, Experience indicates that students who begin foreign language instruction in the early grades develop language skills more readily and are provided a greater opportunity to use these language skills in academic, social, and career settings; now, therefore, be it

*Resolved by the Assembly of California, the Senate thereof concurring,* That California schools are urged to offer pupils, beginning in the elementary grades, in addition to English, courses

in Pacific Rim languages, including, but not limited to, Japanese, Spanish, Chinese, or Korean.

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## RESOLUTION CHAPTER 144

Assembly Concurrent Resolution No. 145—Relative to Hispanic state employees.

[Filed with Secretary of State September 15, 1988.]

WHEREAS, The State Personnel Board's 1987 annual census indicates that the state's work force grew by 5,110 employees during the period from July 1986 through June 1987, bringing the total count to 161,194 employees; and

WHEREAS, The census indicates that Hispanic representation in the state's work force has made minimal gains in the last three years; and

WHEREAS, The census shows that Hispanics continue to be the most underrepresented major ethnic group in state service constituting only 13.7 percent of the state's work force; and

WHEREAS, The most recent State Personnel Board estimate of Hispanic private labor force participation in 1990 (23 percent) means that the state needs approximately 9,400 more Hispanics in its work force to reach parity; and

WHEREAS, The state only recently attained 1970 labor force parity for Hispanics and at the current hiring rate the state will not reach 1980 parity until the year 2015; and

WHEREAS, The State Personnel Board's annual census indicates that, on the average, Hispanics holding full-time positions in state service earn $2,772 less per year than the average amount earned by all full-time employees and in particular, Hispanic women earn, on the average, the least of all such employees; and

WHEREAS, The deficit of Hispanic employees in the state's civil service system and the fact that they on the average earn less than the average earned by other state employees represents a lost earnings to the Hispanic community of more than $135 million annually; and

WHEREAS, The jobs Hispanics hold are most concentrated in the clerical, semiskilled, subprofessional, professional, law enforcement, field representative, janitor/custodian, career opportunities development, and laborer categories and least concentrated in the managerial, supervisory, and career executive assignment positions; and

WHEREAS, Discrimination is prohibited in hiring, promotion, discharge, compensation, job assignments, and any other terms, conditions, or privileges of employment; and

WHEREAS, Existing law requires each state agency and

department to establish an affirmative action program designed to overcome any identified underutilization of minorities in employment; and

WHEREAS, A majority of the new hiring and rehiring into state government jobs is done by the Departments of Corrections, Developmental Services, Mental Health Health Services, General Services, Youth Authority, Motor Vehicles, Industrial Relations, Justice, Social Services, Food and Agriculture, Education, Employment Development, California Highway Patrol, Veterans Affairs, Water Resources, and Transportation, and the State Compensation Insurance Fund, Board of Equalization, and Franchise Tax Board; now, therefore, be it

*Resolved, by the Assembly of the State of California, the Senate thereof concurring,* That the Legislature working through a task force appointed by the Speaker of the Assembly and the Senate Rules Committee shall conduct an ongoing assessment of the efforts of individual state agencies and departments to achieve a work force in which Hispanics are at parity with their representation in the private labor force; and be it further

*Resolved,* That the task force shall be known as the Legislative Task Force on the Underrepresentation of Hispanics in the State Civil Service System; and be it further

*Resolved,* That the task force shall have 14 members, seven each appointed by the Speaker of the Assembly and Senate Rules Committee; and be it further

*Resolved,* That the task force shall include one representative from each of the three Hispanic state employee organizations recognized by the State of California and may include Members of the Legislature, or their representatives, representatives of Hispanic organizations or groups, and any other individuals or parties interested in correcting the severe underrepresentation of Hispanics in state civil service; and be it further

*Resolved,* That the task force shall be provided necessary staff support by the Senate Office of Research and the Assembly Office of Research and is requested to do all of the following:

(a) Solicit information, input, and assistance from various sources, including outside experts and state agencies and departments so as to accomplish its mandate. All state agencies and departments are urged to cooperate with the task force.

(b) Conduct a one-time assessment of the affirmative action plans of the aforementioned state agencies and departments to determine their reasonableness and completeness The assessment shall be completed not later than March 15, 1989, and shall be submitted to the Legislature upon its completion. Based upon this assessment, the task force may meet with individual state agencies and departments to make recommendations on ways the plans can be modified so as to address the particular problem of Hispanic underrepresentation in state civil service.

(c) Conduct an assessment, at least once each six-month period,

of the progress made by the aforementioned state agencies and departments to identify, recruit, hire, and promote Hispanics for state civil service positions.

(d) Hold hearings to review state agency hiring practices regarding Hispanics. Specifically, the hearings shall evaluate the effectiveness of state agencies' efforts to identify, recruit, train, and develop Hispanics for state civil service assignments. The hearings also may focus on whether the composition of interview panels has an impact on the hiring and promotion of Hispanics and the effectiveness of various state outreach efforts and hiring assistance programs, including the Hispanic Employment Link Program (HELP).

(e) Submit semiannual reports to the Legislature on the issue of Hispanic underrepresentation in the state's work force. The first report shall be due not later than July 31, 1989, and shall include a survey of other states to identify specific policies and programs which may be useful to implement in this state so as to improve the representation of Hispanics in California's civil service work force. These reports shall highlight the progress made by the aforementioned state agencies and departments to identify, recruit, hire, and promote Hispanics for state civil service positions. In the event a state agency or department has failed to make progress, the task force shall identify the root causes behind the lack of performance and shall note these facts in its report. In addition, the reports may include recommendations on policies or strategies which the state can implement to improve the representation of Hispanics in its work force.

(f) Include other state agencies and departments within the scope of its assessments if it deems appropriate.

(g) Identify barriers which hinder the State Personnel Board in its mission and make recommendations to the Legislature on ways to eliminate those barriers.

(h) Examine ways in which the sanctions used by the State Personnel Board to deal with state agencies which are not meeting parity goals and objectives can be strengthened and expanded.

(i) Examine the feasibility of creating a vertical parity employment program for supervisory and management positions in those departments which lag in Hispanic representation in these positions.

(j) Examine ways in which state agencies, the State Personnel Board, the University of California, the California State University, California Community Colleges, and the State Department of Education can establish recruitment programs for Hispanics who are graduating from high school and colleges.

(k) Compile a list of effective practices used by state agencies which have demonstrated progress in hiring Hispanics.

(*l*) Assess the need to increase the state's bilingual pay differential.

(m) Assess the feasibility of having the State Personnel Board take

control of the hiring and promoting for those departments which fail to meet their established parity goals.

(n) Identify any barriers which prevent Hispanic women, in particular, from reaching full employment and pay parity within the state's civil service system.

(o) Recommend to the Legislature, not later than April 15, 1989, the most appropriate and effective means of studying the low retention rate among minority employees in state service and the disproportionately large number of disciplinary actions received by minority employees in state service. In developing its recommendations, the task force shall consult with minority employee organizations recognized by the State of California; and be it further

*Resolved,* That all state agencies and departments are urged to do all of the following:

(a) Designate a Hispanic Employment Coordinator or Hispanic Recruitment Coordinator position.

(b) Establish a hiring rate of 25 percent for Hispanics.

(c) Establish a Hispanic Employees Advisory Committee.

(d) Establish a reasonable timetable in which Hispanic representation would reach parity with their representation in the private labor force.

(e) Explore ways in which Hispanic representation in supervisory and managerial classifications, such as the career executive assignment levels, can be increased.

(f) Incorporate affirmative action into the existing management planning process.

(g) Expand focused recruitment activity.

(h) Develop more comprehensive mobility programs.

(i) Promote more effective deployment and utilization of affirmative action resources.

(j) Assure effective affirmative action monitoring and accountability systems; and be it further

*Resolved,* That the Joint Legislative Budget Committee conduct, as part of its analysis of the 1989–90 Budget Bill, an evaluation of the State Personnel Board's Affirmative Action and Merit Oversight Division to determine if the division is: (1) appropriately staffed to implement its mandate as set forth in statutory law and (2) being administered in an efficient and cost-effective manner; and be it further

*Resolved,* That the task force shall cease operation on June 30, 1990; and be it further

*Resolved,* That the Chief Clerk of the Assembly transmit a copy of this resolution to all state agencies, departments, boards, and commissions.

## RESOLUTION CHAPTER 145

Assembly Concurrent Resolution No. 152—Relative to video display terminals.

[Filed with Secretary of State September 15, 1988.]

WHEREAS, The California Occupational Safety and Health Standards Board adopts standards which are enforced by the Division of Occupational Safety and Health; and

WHEREAS, In August 1987, the California Occupational Safety and Health Standards Board agreed to set up an ad hoc advisory committee of experts to study the necessity for video display terminal related standards in response to petitions presented on behalf of three labor unions; and

WHEREAS, Since then, only two meetings of this committee have been convened; and

WHEREAS, California video display terminal operators remain unprotected; now, therefore, be it

*Resolved by the Assembly of the State of California, the Senate thereof concurring,* That the Ad Hoc Advisory Committee on Video Display Terminals be requested to report back to the California Occupational Safety and Health Standards Board with proposals regarding the necessity for video display terminal related standards by May 1, 1989; and be it further

*Resolved,* That the Division of Occupational Safety and Health see that an appropriate meeting schedule be set to meet this timetable; and be it further

*Resolved,* That by December 1, 1988, the division provide the Legislature with a detailed status report on progress made and issues still to be resolved; and be it further

*Resolved,* That the Chief Clerk of the Assembly transmit copies of this resolution to the Ad Hoc Advisory Committee on Video Display Terminals, the California Occupational Safety and Health Standards Board, and the Division of Occupational Safety and Health.

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## RESOLUTION CHAPTER 146

Assembly Concurrent Resolution No. 155—Relative to the Preston School of Industry.

[Filed with Secretary of State September 15, 1988.]

WHEREAS, The Preston School of Industry, located in Ione, is a facility for the custody, care, training, and guidance of youthful offenders; and

WHEREAS, The Department of the Youth Authority has jurisdiction over this facility; and

WHEREAS, In the past, the Preston School of Industry operated an agricultural program, commonly referred to as the Preston School Farm Program, on land surrounding the facility and owned by the Department of the Youth Authority; now, therefore, be it

*Resolved by the Assembly of the State of California, the Senate thereof concurring,* That the Department of the Youth Authority is hereby requested to study the feasibility of reinstituting an agricultural program at the Preston School of Industry; and be it further

*Resolved,* That the department report its findings and recommendations developed from the study to the Legislature not later than six months from the enactment of this measure; and be it further

*Resolved,* That the property on which the agricultural program may be operated shall not be sold until the department has completed its study and reported its findings and recommendations to the Legislature; and be it further

*Resolved,* That the Governor is hereby requested to consider making available funds in the Budget Act of 1989 for the implementation of any recommendations made by the department; and be it further

*Resolved,* That the Chief Clerk of the Assembly transmit a copy of this resolution to the Governor and to the Department of the Youth Authority.

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## RESOLUTION CHAPTER 147

Assembly Concurrent Resolution No 160—Relative to energy resources.

[Filed with Secretary of State September 15, 1988.]

WHEREAS, California is dependent upon nonrenewable fossil-fuels as the largest fuel source for the generation of electricity, making ratepayers vulnerable to sudden rate increases due to disruptions in foreign supply and price fluctuations; and

WHEREAS, Facilities for the generation of electricity can have significant consequences, including, but not limited to, air and water pollution, creation of hazardous wastes, harm to wildlife, vegetation, and agriculture, and socioeconomic and land use impacts; and

WHEREAS, Certain energy resources, fuels, and technologies available to energy planners create fewer adverse environmental impacts than others and increase the security of electricity supplies; and

WHEREAS, California has abundant energy resources within its own boundaries, and development of these resources contributes to local economic development, employment, and statewide energy

security and reliability; and

WHEREAS, California law supports diversification of generation resources, fuels, and technologies to achieve security from supply and price disruptions, as well as to enhance the efficient use of fossil fuels and minimize adverse environmental impacts; and

WHEREAS, California law governing siting and planning for electrical generation facilities requires consideration and balancing of factors, including the preservation of environmental quality, the conservation of resources, maintenance of a sound economy, protection of public health and safety, and state and service area growth and development; and

WHEREAS, The State Energy Resources Conservation and Development Commission has adopted policies which address the importance of increasing fuel diversity in the electricity system, increasing the security of electricity supplies, minimizing adverse environmental impacts associated with powerplant projects, and encouraging powerplant development which enhances state and local economic development; and

WHEREAS, The Federal Public Utilities Regulatory Policy Act of 1978 (P.L. 95-617) required state public utility commissions to establish a pricing mechanism for electric power sold to public utilities companies by qualifying facilities; and

WHEREAS, The Public Utilities Commission has established a standard offer contract mechanism which includes bidding for utility power sales contracts; and

WHEREAS, The bidding mechanism does not account for environmental impacts, or vulnerability to future rate increases or supply disruptions because of overreliance on a limited number of energy resources, fuels, and technologies; and

WHEREAS, The State Energy Resources Conservation and Development Commission is analyzing the importance and value of these characteristics to the utility system; and

WHEREAS, The State Energy Resources Conservation and Development Commission may develop recommendations regarding how to incorporate these considerations into the standard offer contract and competitive bidding mechanisms; and

WHEREAS, The Public Utilities Commission will consider these issues in the upcoming standard offer update proceeding; now, therefore, be it

*Resolved by the Assembly of the State of California, the Senate thereof concurring,* That the Public Utilities Commission, using its existing resources, in its standard offer update proceeding, and the State Energy Resources Conservation and Development Commission, using its existing resources, in its resource assessment and supply policies, take into account the benefits of nonprice factors such as those provided by energy resources, fuels, and technologies that enhance energy resource, fuel, or technology diversity, including, but not limited to, solar, wind, geothermal, biomass, conservation, and load management; create minimal regional

environmental impacts; enhance local or statewide employment and economic development; utilize renewable energy sources; contribute to enhanced energy efficiency and conservation of natural resources; maximize system reliability and dependability; or otherwise reduce vulnerability to future rate increases; and be it further

*Resolved,* That the State Energy Resources Conservation and Development Commission inform the Legislature in writing on or before December 1, 1989, how the benefits of the nonprice factors enumerated in this resolution have been taken into account in its resource assessment, supply policies, and any other relevant proceeding; and be it further

*Resolved,* That the Public Utilities Commission inform the Legislature in writing on or before December 1, 1989, how the benefits of the nonprice factors enumerated in this resolution have been taken into account in its standard offer update proceeding and any other relevant proceeding; and be it further

*Resolved,* That the Chief Clerk of the Assembly transmit copies of this resolution to the Public Utilities Commission and the State Energy Resources Conservation and Development Commission.

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## RESOLUTION CHAPTER 148

Assembly Concurrent Resolution No. 162—Relative to the University of California.

[Filed with Secretary of State September 15, 1988 ]

WHEREAS, California's output of goods and services ranks it as the sixth greatest economic power in the world; and

WHEREAS, Over 25 percent of the members of the National Academy of Sciences live and work in California as do more than 25 percent of the engineers working in the United States today; and

WHEREAS, California's preeminence in science and technology was the basis for the development of the aerospace, microelectronics, and other advanced technologies in this state; and

WHEREAS, The state's scientists and technicians also were instrumental in making California one of the most productive agricultural states; and

WHEREAS, The rapid computerization of many formerly mechanical functions in manufacturing and the service industries, and the swift pace of discoveries in advanced materials both point toward science and technology as essential to future advances in nearly every sector of the economy; and

WHEREAS, California owes its preeminence to its excellent educational system, including the University of California and California State University systems, its superb independent

universities and colleges, and its extensive community college system which provides highly trained manpower for California's industries; and

WHEREAS, The maintenance of California's science and technology infrastructure is vital to the continued growth of this state's economy; and

WHEREAS, The state's economic growth also depends on the ability to carry out successfully long-range research which addresses problems facing our industries and reaches toward areas of likely scientific and technological advancement; and

WHEREAS, Such research provides education and training to California's students and an opportunity for faculty to break new ground in a broad range of topics; and

WHEREAS, According to the Master Plan for Higher Education, the University of California is California's "primary state-supported academic agency for research"; and

WHEREAS, The University of California, together with others in the state's academic community, maintains preeminent faculties of capable and world renowned scientists, engineers, and technological experts; and

WHEREAS, California is fortunate to have a group of major research universities, the University of California, the University of Southern California, the California Institute of Technology, and Stanford University, each acknowledged to be world class and each of which conducts over $100 million of sponsored projects and grants more than 100 doctorates each year in science and technology related fields; and

WHEREAS, Consistent with the Master Plan for Higher Education, the California State University system engages in research, scholarship, and creative activity in support of its instructional and public service mission; and

WHEREAS, Limited public funding and the severe pressures of our increasingly international and competitive world economy require that long-range research needs be identified; and

WHEREAS, A strong and vibrant long-range research program with effective technology transfer mechanisms and genuine industry/university collaboration is necessary to ensure California's ability to retain vital industries and to continue to recruit scientific talent; now, therefore, be it

*Resolved by the Assembly of the State of California, the Senate thereof concurring,* That the President of the University of California, in collaboration with the presidents of the University of Southern California, the California Institute of Technology, Stanford University, and the Chancellor of the California State University—consistent with the role of their respective institutions under the master plan—is requested to establish, within one year of the effective date of this resolution, the California Council on Science and Technology, which will report to the presidents and chancellor, and respond appropriately to the Governor, the Legislature, and

other relevant entities on public policy issues significantly related to science and technology; and that, in establishing the council, the President of the University of California will also seek consultation with other appropriate educational and research institutions in the state; and be it further

*Resolved,* That the council identify long-range research needs for sustaining the state's economic development and competitiveness and provide direction for new scientific and technological activities; and be it further

*Resolved,* That the council assess private sector/university relations and technology transfer, particularly with respect to California's economic development, leadership in research and development, and capacity to retain vital industries and scientific talent in California; and be it further

*Resolved,* That the council analyze these public policy issues involving science and technology, and prepare and present an annual report pursuant to its studies and findings for dissemination; and be it further

*Resolved,* That the membership of the council be comprised of distinguished scholars and experts, including scientists and engineers from California's academic and industrial community; and be it further

*Resolved,* That the Chief Clerk of the Assembly transmit copies of this resolution to the Governor, the President of the University of California, and the Regents of the University of California.

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## RESOLUTION CHAPTER 149

Assembly Concurrent Resolution No. 170—Relative to California State University, Chico.

[Filed with Secretary of State September 15, 1988.]

WHEREAS, California State University campuses rely upon auxiliary organizations to provide essential campus services not provided by the state; and

WHEREAS, California State University auxiliary organizations are, pursuant to statute, court decisions, and regulations, entities created and operating separately from, but consistent with, the educational mission of the university they directly serve; and

WHEREAS, This "separate but related" relationship between California State University campuses and their auxiliary organizations afford the auxiliary organizations the opportunity to operate under less restrictive controls than those required of state universities while insulating the universities from potential liabilities that could arise as a result of certain operations; and

WHEREAS, The Associated Students at California State

University, Chico, intended to be primarily a student body organization providing advocacy and government for the students, has provided bookstore services to the Chico campus community since 1929; and

WHEREAS, In 1942, the Associated Students at California State University, Chico, incorporated as a nonprofit corporation under California law for the express purposes of operating, supervising, managing, and controlling cocurricular activities as well as of providing low-cost, student price-sensitive bookstore services; and

WHEREAS, The Associated Students at California State University, Chico, began to provide the campus community with food services in the 1940s; and

WHEREAS, Ever since, these commercial services have consistently been provided through the Associated Students auxiliary organization at low cost to students living on restricted budgets and have not been used as an endless stream of financial resources for the university because of their low-profit margins; and

WHEREAS, In 1964, students at California State University, Chico, approved construction of the student union, now known as the Bell Memorial Union, and agreed to finance the construction and operation of the facility with a self-assessed fee through the ownership, operation, and management of the Associated Students auxiliary organization; and

WHEREAS, In January 1985, the California State University, Chico, and the Associated Students entered into a five-year written agreement establishing "a new partnership" between the Associated Students and the university "based on reciprocity" in which:

(a) The Associated Students agreed to make additional financial resources available to the university for use in furthering its educational mission controlled by the university president; and

(b) The university acknowledged that it was "entering into a long-term relationship with the Associated Students designed to give ongoing status as the sole food service operator and commercial vendor on campus"; and

(c) The university agreed to renew its operating and lease agreements with the Associated Students unless there was reasonable cause not to, defined as an objective finding of nonperformance, and the university agreed to give reasonable notice and reasonable opportunity to correct any problems; and

WHEREAS, In the summer of 1987, the President of California State University, Chico, revoked his 1985 five-year contractual agreement with the Associated Students auxiliary organization and ordered a restructuring of the student-run auxiliary organization even though no findings of inefficient operations had been made; and

WHEREAS, In the spring of 1988, after extensive consultation with students, faculty, administrators, and the community, the Board of Directors of the Associated Students auxiliary organization enacted a complete restructuring of its governance operations so as to

facilitate true cooperation with the university and to increase the organizational efficiency of the student auxiliary organization; and

WHEREAS, The President of California State University, Chico, issued four campus policies in mid-June 1988, which violate the "separate but related" nature of auxiliary organizations in the California State University system and specifically that of the Associated Students auxiliary organization at California State University, Chico, including, but not limited to, a requirement that all net revenues of the auxiliary organization be returned directly to the university and that the setting of salaries and wages of auxiliary organization employees will be done by the President of California State University, Chico, upon the recommendation of a university-established and operated committee; and

WHEREAS, The university refused to permit the Associated Students auxiliary organization to renew, even on an interim basis, the commercial lease which expired on June 30, 1988; and

WHEREAS, Upon the refusal of the Associated Students to enter into the university's commercial lease proposal, the President of California State University, Chico, has decreed that he intends to establish two new auxiliary organizations to operate the campus commercial services; and

WHEREAS, The Associated Students feel that it may be forced to seek court-mandated relief in order to preserve the "separate but related" nature of its auxiliary organization; and

WHEREAS, On August 19, 1988, Butte County Superior Court issued a temporary restraining order against the California State University, Chico, President's threatened creation of two new auxiliary organizations and set a hearing on the question of a permanent injunction for September 16, 1988; and

WHEREAS, The slow dismantling of the Associated Students auxiliary organization by the California State University, Chico, administration has reached a point of high intensity which threatens the academic and administrative integrity of the institution; now, therefore, be it

*Resolved, by the Assembly of the State of California, with the Senate thereof concurring,* That the President of the California State University, Chico, is strongly encouraged to immediately suspend his decree to form two new commercial auxiliary organizations and, at least on an interim basis, renew the commercial lease between the university and the Associated Students auxiliary organization which lease expired June 30, 1988, and enter into a lease for the Bell Memorial Union; and be it further

*Resolved,* That the Trustees of California State University are hereby strongly encouraged to contract for an independent and external agent to review and audit to assist in the negotiations of the festering dispute between the California State University, Chico, administration and the Associated Students auxiliary organization; and be it further

*Resolved,* That the trustees are strongly encouraged to ensure that

a mutual, long-term agreement is reached between the California State University, Chico, administration and the Associated Students auxiliary organization as it exists to serve students through student governance and commercial services; and be it further

*Resolved,* That the Chancellor of the California State University is strongly encouraged to submit a report to the educational policy and fiscal committees of the Legislature not later than February 1, 1989, describing the results of the negotiated agreement and the subsequent resolution ensured by the trustees; and be it further

*Resolved,* That the Chief Clerk of the Assembly immediately transmit a copy of this resolution to the President of California State University, Chico, his cabinet, the President of the Associated Students at California State University, Chico, the entire California State University, Chico, Associated Students Board of Directors, the Chancellor of the California State University, and each member of the Board of Trustees of the California State University.

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## RESOLUTION CHAPTER 150

Assembly Concurrent Resolution No. 171—Relative to the Joint Legislative Committee on Surrogate Parenting.

[Filed with Secretary of State September 15, 1988.]

*Resolved by the Assembly of the State of California, the Senate thereof concurring,* as follows:

(1) The Joint Legislative Committee on Surrogate Parenting is hereby created, authorized, and directed to ascertain, study, and critically analyze facts relating to commercial and noncommercial surrogate parenting, to examine restrictions under existing law, and to determine whether commercial and noncommercial surrogate parenting should be permitted and regulated in California. The Committee shall make a report to the Legislature no later than December 31, 1989, detailing its findings and recommendations on the issues set forth below. In developing that report, the Committee shall consider the legal and ethical questions raised by this practice including, but not limited to, the following:

(a) What impact would surrogate parenting arrangements have on a child? What impact would surrogate parenting arrangements have on other children in the families involved in the arrangement?

(b) What validity should contracts to bear a child and terminate parental rights have in California? What changes in existing law would be necessary to adequately protect the rights of all parties in a surrogate parenting arangement?

(c) What roles should courts play in resolving conflicts between parties in commercial and noncommerical surrogate arrangements? What safeguards and remedies should be established to protect the

parties to surrogate parenting arrangements? What remedies should be provided statutorily to address problems which arise when one or more parties change their minds? What protections under surrogate parenting arrangements should natural mothers and fathers be afforded regardless of whether they are unmarried, or married to other people?

(d) What steps should be taken to prevent exploitation of surrogate mothers and childless couples?

(e) What steps, if any, should the state take to regulate third parties who provide services for surrogate parenting arrangements? What types of services should be provided to parties in surrogate parenting arrangements?

(2) The joint committee shall consist of three members of the Senate appointed by the Senate Committee on Rules (one of whom shall be the Vice Chair of the Committee), and three members of the Assembly, appointed by the Speaker of the Assembly one of whom shall be appointed as the chair of the joint committee). The members shall serve at the pleasure of the appointing power and vacancies shall be filled by the appointing power.

(3) The Joint Committee and all advisory committees appointed pursuant to subdivision (b) of paragraph (5) are authorized to act until June 30, 1989. Within that time, the Joint Committee shall meet a minimum of three times to discuss the issues and to formulate a legislative package based on its findings and recommendations; the advisory committee or committees shall meet as necessary.

(4) The joint committee and its members shall have and exercise all of the rights, duties, and powers conferred upon investigating committees and their members by the provisions of the Joint Rules of the Senate and Assembly as they are adopted and amended from time to time, which provisions are incorporated herein and made applicable to the joint committee and its members.

(5) The joint committee has the following additional powers and duties:

(a) If a consultant is not otherwise retained by the Joint Rules Committee of either house, to contract with a consultant and to employ those persons as may be necessary to assist the committee, subject to any Joint Committee on Rules that makes money available from its contingent funds, pursuant to paragraph (7), for the payment of the compensation of the particular consultant or employee, and utilize existing staff to the appropriate Senate and Assembly Committees and research staff as necessary to assist the committee as desired by the Committee

(b) To appoint one or more volunteer advisory committees consisting of persons representing a range of interested parties who are knowledgeable in the various areas being studied, to assist the committee and staff. The advisory committees shall report directly to the chairperson of the joint committee. The advisory committee shall meet as necessary and shall provide technical assistance and research. The members of the advisory committee may receive

travel and living expenses as authorized by Joint Rules Committee.

(c) To make findings and recommendations regarding the body of law relating to surrogate parenting.

(d) To contract with such other agencies, public or private, as it deems necsessary for the rendition and affording of those services, facilities, and studies as will best assist the Joint committee in carrying out the purposes for which it is created. Any contract executed pursuant to this subdivision is subject to the approval of the Joint Rules Committee and the Committee on Rules of either house that makes money available from its contingent funds, pursuant to paragraph (7), for those purposes.

(e) To cooperate with and secure the cooperation of county, city, and city and county, and other local law enforcement agencies and to direct, with the approval of the Joint Rules Committee, the Senate Committee on Rules, and the Assembly Committee on Rules, or the sheriff of any county to serve subpoenas, orders, and other process issued by the committee.

(f) To do any and all other things necessary or convenient to enable it fully and adequately to exercise its powers, perform its duties, and accomplish the objectives and purposes of this resolution.

(6) The consultants working with the joint committee shall work with the joint committee and advisory committees, and shall provide assistance to the author of any bill or constitutional amendments.

(7) The Senate Committee on Rules or the Assembly Committee on Rules may make such money available from the contingent funds under the joint committee's direction and control as it deems necessary for the expenses of the Committee and its members. Any expenditure of money shall be made in compliance with policies set forth by the particular rules committee making the money available and shall be subject to the approval of that rules committee. The joint committee shall, within 15 calendar days following the adoption of this measure, present its budget to the Joint Rules Committee for its review and comment.

(8) The chairperson of the joint committee shall designate a chairperson for each advisory committee and shall give consideration to the persons recommended by the advisory committee.

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## RESOLUTION CHAPTER 151

Assembly Joint Resolution No. 67—Relative to flood control.

[Filed with Secretary of State September 15, 1988.]

WHEREAS, The California Legislature, with the adoption of Senate Joint Resolution 24 in 1982 (Resolution Chapter 13 of the Statutes of 1982), went on record in support of construction of a

multipurpose Auburn Dam; and

WHEREAS, A multipurpose Auburn Dam would provide flood protection for the Sacramento region and greatly help meet the future water and power needs of El Dorado, Placer, and Sacramento Counties; and

WHEREAS, In Sacramento and adjacent areas, recent floods and a drought have focused renewed interest in the construction of a multipurpose Auburn Dam, a large version of which was authorized by Congress in 1965 but never completed; and

WHEREAS, In August 1988, the American River Authority, a joint powers agency representing El Dorado and Placer Counties, informed the federal government of its willingness to issue revenue bonds to finance the hydroelectric power portion of a multipurpose Auburn Dam, and is attempting to obtain contracts for water sales from such a project; and

WHEREAS, The American River Authority favors the construction of a multipurpose Auburn Dam, which could provide increased water and power supplies, flood protection, fishery enhancements, and recreational opportunities to all beneficiaries; now, therefore, be it

RESOLVED BY THE ASSEMBLY AND SENATE OF THE STATE OF CALIFORNIA JOINTLY, That the Legislature of the State of California advises the Congress of the United States that it continues to support construction of a multipurpose dam at the Auburn site, provided that it is shown that the project's water and power users will pay their fair share of the costs of the water and power; and be it further

RESOLVED, That the Legislature respectfully encourages the Congress to give serious consideration to the offer of the American River Authority to share the costs of a multipurpose dam; and be it further

RESOLVED, That the State of California, while participating in any study of the American River watershed, should consider the needs of, and potential benefits to, El Dorado and Placer Counties, as well as those of the City of Sacramento, Sacramento County, and other local entities; and be it further

RESOLVED, That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, the Secretary of the Interior, the Secretary of Defense, the Speaker of the House of Representatives, each Senator and Representative from California in the Congress of the United States, the Governor of California, the Secretary of the Resources Agency, and the Director of Water Resources.

## RESOLUTION CHAPTER 152

Assembly Joint Resolution No. 78—Relative to Ethiopian Jews.

[Filed with Secretary of State September 15, 1988.]

WHEREAS, During the week of April 2-8, 1988, Jews worldwide celebrate the Passover holiday commemorating the exodus of oppressed people from enslavement in Egypt; and

WHEREAS, Eight thousand Ethiopian Jews are still trapped in remote villages in the Gondar Province of Ethiopia and separated from other members of their immediate families; and

WHEREAS, The Jews remaining in Ethiopia are a vulnerable community consisting mostly of women, children, and the elderly and infirm threatened by famine and disease; and

WHEREAS, Ethiopian Jews continue to face religious persecution: Jewish studies and the teaching of Hebrew are forbidden, community leaders are questioned and arrested, and the special permission required for holiday gatherings is often denied; and

WHEREAS, Approximately 30 Ethiopian Jews have been arrested and imprisoned for attempting to emigrate or help others emigrate to Israel; and

WHEREAS, Sixteen thousand Ethiopian Jews now live outside of Ethiopia due to the courageous efforts of Operation Moses; and

WHEREAS, The right of emigration is a fundamental human right, especially where it concerns family reunification; now, therefore, be it

*Resolved by the Assembly and Senate of the State of California, jointly,* That the Legislature of the State of California urges the government of Ethiopia to allow the remaining 8,000 Jews in Ethiopia's Gondar Province to be reunited with their families in Israel; and be it further

*Resolved,* That the Legislature of the State of California respectfully memorializes the President of the United States, the Secretary of State, other federal officials, and Members of Congress to urge the government of Ethiopia to complete the resettlement of Ethiopian Jews in Israel; and be it further

*Resolved,* That the Legislature of the State of California respectfully memorializes the President of the United States, other federal officials, and Members of Congress to use all appropriate diplomatic channels in every meeting, contact, or communication between American and Ethiopian officials to press Ethiopian authorities to take actions urged by this resolution; and be it further

*Resolved,* That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, to the Secretary of State, the government of Ethiopia, and to each Senator and Representative from California in the Congress of the United States.

## RESOLUTION CHAPTER 153

Assembly Joint Resolution No. 82—Relative to Alzheimer's disease.

[Filed with Secretary of State September 15, 1988.]

WHEREAS, Alzheimer's disease is a disease of the brain, causing progressive dementia and, ultimately, physical dysfunction as well; and

WHEREAS, Persons afflicted with Alzheimer's disease can be neither cured nor rehabilitated, and the course of the disease is one of unremitting, progressive mental and physical deterioration over 5 to 20 years, with death resulting usually from infection, often pneumonia; and

WHEREAS, Diagnosis of Alzheimer's disease is made by eliminating other known causes of cognition and memory impairments for which diagnostic techniques are available, and there is no reliable diagnostic test for Alzheimer's disease; and

WHEREAS, In the United States, Alzheimer's disease or related dementia afflict approximately 3 million individuals, most of whom are 65 years old or older; and

WHEREAS, Among the segment of the population of the United States over 65 years of age, Alzheimer's disease is the fourth most common cause of death; and

WHEREAS, The incidence of Alzheimer's disease increases sharply with age, including approximately 5 percent of the total population over 65 years of age, and over 20 percent of the group over 85 years of age; and

WHEREAS, While the incidence of Alzheimer's disease or related dementias has remained relatively constant for 35 years, survival rates have not, and ever increasing percentages of the population over 65 years of age survive past 80 years of age; and

WHEREAS, There are national estimates that as many as 500,000 persons in California currently suffer from Alzheimer's disease or related dementias, and the State Department of Health Services projects that, by the year 2020, there will be 750,000 Alzheimer's disease patients throughout the state; and

WHEREAS, Approximately 50 percent of the American nursing home population is afflicted with Alzheimer's disease, and in California, the State Department of Health Services estimates 50 to 70 percent of residents in all long-term care facilities suffer from Alzheimer's disease; and

WHEREAS, The average annual cost of nursing home care in California currently runs between fifteen thousand dollars ($15,000) and thirty thousand dollars ($30,000), the aggregate annual cost of nursing home care for Alzheimer's disease patients nationwide is estimated to be as high as 48 billion dollars, and the California share, conservatively assuming 11 percent, is 5.3 billion dollars; and

WHEREAS, Most Alzheimer's disease patients are not being cared

for in nursing homes, and more than 75 percent of all dementia patients living at home are being attended by family caregivers; and

WHEREAS, The services required by these patients, and their families and caregivers, range across a continuum of needs unique to the progressive deterioration caused by Alzheimer's disease; and

WHEREAS, Specific needs for service depend on the particular stage of Alzheimer's disease of any given patient, and the total cost of care for dementia patients in California, including those who are not institutionalized in skilled nursing facilities, is unknown; now, therefore, be it

*Resolved by the Assembly and Senate of the State of California, jointly,* That the Legislature hereby memorializes the President and the Congress of the United States to enact legislation expanding benefits under the Medicare program for Alzheimer's disease patients and their families, to include, as in-home and community-based services, Alzheimer's disease day care, in-home and out-of-home respite care, and adult social day care, and to include long-term residential care; and be it further

*Resolved,* That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, and to each Senator and Representative from California in the Congress of the United States.

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## RESOLUTION CHAPTER 154

Assembly Joint Resolution No. 91—Relative to the Amerasian Resettlement Program.

[Filed with Secretary of State September 15, 1988.]

WHEREAS, Amerasian children living in Vietnam have suffered unduly because of their parentage and have been denied educational and employment opportunities afforded other Vietnamese; and

WHEREAS, The United States government and the government of Vietnam signed the Amerasian Homecoming Act in December 1987, thereby allowing a total of 30,000 Amerasians and their families to emigrate to the United States; and

WHEREAS, Under the auspices of the Amerasian Resettlement Program administered by the Department of Health and Human Services, these Amerasian immigrants are to receive six months of educational training in camps in the Republic of the Philippines before coming to the United States; and

WHEREAS, Upon arrival in the United States, the Amerasian immigrants will be sent to cluster sites specified by the Amerasian Resettlement Planning Committee in order to help them assimilate; and

WHEREAS, The Amerasian immigrants currently have no choice in the cluster site to which they will be assigned; and

WHEREAS, Over 50 percent of all Vietnamese refugees have settled in California, and a large percentage of the Amerasian immigrants will relocate in this state as well; and

WHEREAS, The Amerasian Resettlement Program itself is in danger since Congress has failed to provide funding for the program for the 1988 fiscal year; now, therefore, be it

*Resolved, by the Assembly and Senate of the State of California, jointly,* That the Legislature of the State of California urges the Congress of the United States to provide funding for the Amerasian Resettlement Program, and to enact legislation necessary for the establishment and funding of an appropriate number of cluster sites in the State of California; and be it further

*Resolved,* That a representative of the State of California be appointed as a member of the Amerasian Resettlement Planning Committee; and be it further

*Resolved,* That Amerasian immigrants be permitted to choose the cluster site at which they will be located, especially if there are relatives living in the vicinity of the cluster site; and be it further

*Resolved,* That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the United States House of Representatives, to each Senator and Representative from California in the Congress of the United States, to the Secretary of Health and Human Services, and to representatives of the Amerasian Resettlement Planning Committee.

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## RESOLUTION CHAPTER 155

Assembly Joint Resolution No. 92—Relative to the Medal of Honor.

[Filed with Secretary of State September 15, 1988.]

WHEREAS, The Medal of Honor is the nation's highest military award and has been so since the Civil War; and

WHEREAS, There are prescribed statutory limits on the time within which this award may be made; and

WHEREAS, Heroic deeds often are overlooked in the heat of battle and only come to light after the time limits have elapsed, and heroic events have been overlooked for various reasons; and

WHEREAS, These time limits have in the past been waived by Congress when information has been uncovered after the fact; and

WHEREAS, There are currently two bills before Congress which would waive the time limits for two black Americans who performed heroically in wartime; and

WHEREAS, HR 3509 concerns Sergeant Henry Johnson who

served in France during World War I as a member of the all-black 369th Infantry Regiment and has been acknowledged by the United States Army as a World War I hero, and who was the first American awarded France's highest military honor, the Croix de Guerre, for his bravery; and

WHEREAS, HR 3510 concerns Seaman Dorris Miller who was a mess steward aboard the battleship West Virginia when the Japanese attacked the ship in Pearl Harbor on December 7, 1941, and is credited with risking his life to drag his mortally wounded captain to safety and then to returning to the deck to man a machine gun and shoot down two Japanese aircraft for which action he was awarded the Navy Cross; and

WHEREAS, It is a historical fact that more than 1.5 million black Americans served in the Armed Forces of the United States during World War I and World War II; and

WHEREAS, It is also a historical fact that no black American received the Medal of Honor during those wars; and

WHEREAS, HR 3509 and HR 3510 currently have 130 cosponsors and indications are that President Reagan will sign these bills if passed by Congress; now, therefore, be it

*Resolved, by the Assembly and Senate of the State of California jointly,* That the Legislature of the State of California urges the Congress of the United States to enact HR 3509 and HR 3510; and be it further

*Resolved,* That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, and to each Senator and Representative from California in the Congress of the United States.

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## RESOLUTION CHAPTER 156

Assembly Joint Resolution No. 93—Relative to resettlement of Indochinese refugees.

[Filed with Secretary of State September 15, 1988.]

WHEREAS, More than 13 years have passed since the end of the Vietnam War, yet thousands of Indochinese remain in refugee camps in Thailand, Malaysia, the Philippines, and Hong Kong; and

WHEREAS, About 450,000 Indochinese refugees have made their homes in California and many are now United States citizens and are contributing members of their adopted country; and

WHEREAS, Many Indochinese refugees in camps in countries of first asylum are husbands, wives, parents, children, and other family members of former refugees and citizens living in the State of California, and many of these refugees have remained in refugee

camps for more than five years; and

WHEREAS, Secretary of State George Shultz has suggested that an alternative to resettling the Vietnamese refugees is voluntary repatriation, under which the refugees either "voluntarily" return to their homeland or remain indefinitely at the refugee camps; and

WHEREAS, In the past, Vietnamese refugees, including women and children, who have returned to Vietnam after arriving in Guam were put into reeducation camps by the Vietnamese government and were accused of participating in activities with the CIA, and many of these people still remain in the reeducation camps; and

WHEREAS, The number of Indochinese refugees to be admitted to the United States for the 1989 fiscal year has been reduced by 6,000; now, therefore, be it

*Resolved by the Assembly and the Senate of the State of California, jointly,* That the Legislature of the State of California respectfully memorializes the President and the Congress of the United States to request the State Department to reevaluate its proposed policy of "voluntary" repatriation of Vietnamese refugees; and be it further

*Resolved,* That those Indochinese refugees who have relatives living in the United States and who qualify under immigrant status should be given priority to be admitted into the United States of America, and that their cases be expedited; and be it further

*Resolved,* That the admission quota should remain at 29,500 the same level as it is currently established at, and that the United States should take an active leadership role within the international community in search of a long-term satisfactory solution; and be it further

*Resolved,* That the Chief Clerk of the Assembly transmit copies of this resolution to the President and the Vice President of the United States, to the Secretary of State, to the Speaker of the House of Representatives, and to each Senator and Representative from California in the Congress of the United States.

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## RESOLUTION CHAPTER 157

Assembly Joint Resolution No. 94—Relative to a federal fuel tax increase.

[Filed with Secretary of State September 15, 1988 ]

WHEREAS, Congress has established the National Economic Commission to recommend ways to solve the nation's deficit problems; and

WHEREAS, Proposals are being considered by the commission to impose a special tax on motor vehicle fuels to reduce the federal deficit; and

WHEREAS, The burden for deficit reduction should be borne by

the whole nation, not just motor vehicle fuel users; and

WHEREAS, California's highway needs are enormous, and a strengthened highway program is essential to sustain economic growth and preserve the quality of life in California; and

WHEREAS, The use of this traditional source of highway funds for deficit reduction would significantly impede the ability of the state to implement badly needed adjustments to the fuel tax and be disastrous to California's effort to improve its vital highway system; now, therefore, be it

*Resolved by the Assembly and the Senate of the State of California, jointly,* That the Legislature of the State of California respectfully memorializes the Congress of the United States to seek deficit reduction through means other than an increase in the motor vehicle fuel tax; and be it further

*Resolved,* That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, and to each Senator and Representative from California in the Congress of the United States.

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## RESOLUTION CHAPTER 158

Senate Joint Resolution No. 9—Relative to federal income taxation.

[Filed with Secretary of State September 15, 1988 ]

WHEREAS, State and national demographics indicate a substantial increase in the population's average age, with the number of persons over 65 rising from 28.6 million to over 35 million in the year 2000; and

WHEREAS, One out of four persons over the age of 65 and three out of five persons over the age of 85 are expected to need long-term care; and

WHEREAS, A study by the Harvard School of Public Health reveals that two-thirds of nursing home residents go bankrupt in three months and 90 percent face destitution in two years, which contributes to the severe mental anguish suffered by seniors and family members confronted with the spiraling financial responsibilities inherent in long-term care; and

WHEREAS, The rapidly increasing number of older Californians should be encouraged to provide for potential long-term care costs so that they may live with dignity; now, therefore, be it

*Resolved by the Senate and Assembly of the State of California, jointly,* That the Legislature of the State of California respectfully memorializes the President and the Congress of the United States to allow, for federal income tax purposes, an income tax deduction as a miscellaneous itemized deduction for the total premiums paid by

a taxpayer for the purchase of long-term care insurance; and be it further

*Resolved,* That immediate family members be allowed, for federal income tax purposes, a miscellaneous itemized deduction for the total premiums paid for the purchase of long-term care insurance purchased on behalf of an elderly relative; and be it further

*Resolved,* That the Secretary of the Senate transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, and to each Senator and Representative from California in the Congress of the United States.

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## RESOLUTION CHAPTER 159

Senate Joint Resolution No. 35—Relative to the Emergency Broadcast System.

[Filed with Secretary of State September 15, 1988 ]

WHEREAS, The Senate Task Force on California Nuclear Emergency Response assessed the state's preparedness for a nuclear powerplant emergency; and

WHEREAS, The task force determined that the federal Emergency Broadcast System is an integral part of emergency planning in the state; and

WHEREAS, The task force determined that stations are not required to participate in the Emergency Broadcast System for nuclear powerplant emergencies; and

WHEREAS, The task force determined that there is little federal oversight of the Emergency Broadcast System to ensure that station staff is adequately trained in Emergency Broadcast System procedures; and

WHEREAS, The task force concluded that the Emergency Broadcast System in California should be improved in order for the system to be used most effectively in nuclear powerplant emergencies; now, therefore, be it

*Resolved by the Senate and Assembly of the State of California, jointly,* That the Legislature of the State of California respectfully memorializes the President and the Congress of the United States to make the following changes in the Emergency Broadcast System:

(a) Require all stations in the vicinity of a nuclear powerplant to participate in the Emergency Broadcast System during a serious nuclear powerplant accident;

(b) Require stations which will act as primary Emergency Broadcast System stations in nuclear powerplant emergencies to participate in exercises of nuclear powerplant emergency response plans;

(c) Provide regular training in Emergency Broadcast System operating procedures to station staff;

(d) Provide necessary funding for each of the above items; and be it further

*Resolved,* That the Secretary of the Senate transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, to each Senator and Representative from California in the Congress of the United States, to the Chairperson of the Federal Communications Commission, to the Chairperson of the Nuclear Regulatory Commission, to the Chairperson of the Federal Emergency Management Agency, to the Governor, to the Director of Health Services, and to the Director of the Office of Emergency Services.

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## RESOLUTION CHAPTER 160

Senate Joint Resolution No. 44—Relative to federal aid to the Azores.

[Filed with Secretary of State September 15, 1988 ]

WHEREAS, Under the specific provisions of the agreement between Portugal and the United States regarding the concession of military facilities in the Azores, the Autonomous Region of the Azores has been receiving considerable financial aid for development from the United States; and

WHEREAS, From 1983 to 1986, the Autonomous Region of the Azores has received the equivalent of $40 million per year; and

WHEREAS, Funding to the Azores has been subsequently reduced through actions of the Administration and Congress by 20 percent or $8 million in both the immediate past and present fiscal years; and

WHEREAS, Due to such disadvantages as its geographic location, the dimension and dispersion of the islands and other natural conditions, a very large number of Azoreans have emigrated from their beloved homeland to settle in America, establishing large communities with a growing social, political, and cultural presence in New England, California, and Hawaii; and

WHEREAS, American financial aid, granted in accordance with the Portuguese constitutional provisions which established the autonomous and democratic government of the Azores, has been essential to the rapid economic and cultural development of the Azores and its people for the last 10 years; and

WHEREAS, The continuation of agreed-upon support to one of America's staunchest and most reliable allies is fundamental to the continued growth of essential social and cultural institutions, and to the economic stability which is the keystone to the alliance which the

United States has enjoyed with the Azores and with Portugal as a whole; now, therefore, be it

*Resolved by the Senate and Assembly of the State of California, jointly,* That the Legislature of the State of California respectfully memorializes the President and the Congress of the United States to restore federal aid to the Azores to the levels agreed upon in the Portugal-United States Agreement of 1983; and be it further

*Resolved,* That the Secretary of the Senate transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the United States House of Representatives, and to each Senator and Representative from California in the Congress of the United States.

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## RESOLUTION CHAPTER 161

Senate Joint Resolution No. 48—Relative to the declaration of National Sir Winston Churchill Week.

[Filed with Secretary of State September 15, 1988 ]

WHEREAS, April 9, 1988, was the 25th anniversary of the granting of honorary citizenship to Sir Winston Churchill by the United States; and

WHEREAS, Sir Winston Churchill's mother, Jennie Jerome Churchill, was an American, thereby making Sir Winston Churchill a son of America though a subject of Great Britain; and

WHEREAS, Sir Winston Churchill inspired the world during World War II with his stirring oratory, his energy, and his stubborn refusal to make peace until Hitler's Army was crushed; and

WHEREAS, Sir Winston Churchill inspired the world throughout his life with his commitment to the ideals of freedom, not only during times of peace but during the darkest moments of war; and

WHEREAS, Sir Winston Churchill made significant contributions to the world and was honored with a Nobel Prize in Literature for both his writing and oratory, as well as being knighted; and

WHEREAS, Sir Winston Churchill recognized the importance of understanding history and the relevance of history in solving current problems; and

WHEREAS, Sir Winston Churchill made significant contributions towards peace and freedom of all people; now, therefore, be it

*Resolved by the Senate and Assembly of the State of California, jointly,* That the Legislature of the State of California respectfully memorializes the Congress and the President of the United States to designate November 27 through December 3, 1988, as "National Sir Winston Churchill Week"; and be it further

*Resolved,* That the Secretary of the Senate transmit copies of this resolution to the President and Vice President of the United States,

to the Speaker of the House of Representatives, to each Senator and Representative from California in the Congress of the United States.

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## RESOLUTION CHAPTER 162

Senate Concurrent Resolution No. 69—Relative to nonresident tuition.

[Filed with Secretary of State September 15, 1988 ]

WHEREAS, Nonresident tuition for the University of California, the California State University, and the California community colleges system has not recently been reviewed by the Legislature; and

WHEREAS, Current state policy regarding fees at public colleges and universities does not consider nonresident tuition; and

WHEREAS, California State University currently has higher nonresident graduate tuition than the University of California, the state's recognized research institution; and

WHEREAS, The Legislature desires to enhance the opportunity of maximum access to, and viability of, the University of California, California State University, and California community colleges systems as educational institutions for state residents; and

WHEREAS, The Legislature is interested in maintaining high quality programs at the University of California, California State University, and California community colleges for the best qualified students while ensuring an equitable nonresident tuition level; now, therefore, be it

*Resolved by the Senate of the State of California, the Assembly thereof concurring,* That it is the intent of the Legislature to adopt a long-term nonresident undergraduate and graduate student tuition policy for California's public colleges and universities; and be it further

*Resolved,* That the California Postsecondary Education Commission is hereby requested to convene one or more meetings of an advisory committee consisting of representatives of the University of California, California State University, Hastings College of the Law, California community colleges, Department of Finance, Legislative Analyst, and authorized student representatives; and be it further

*Resolved,* That the participants of those meetings be requested to develop recommendations for a long-term nonresident undergraduate and graduate student tuition policy for California's public universities. In developing these recommendations, the participants shall consider, but need not recommend, the following criteria:

(a) Consistent methodologies among the University of California,

the California State University, and the California community colleges.

(b) Comparability with both the level of charges and residency requirements for nonresident students at public colleges and universities in other states.

(c) Compatibility, where appropriate, with existing state policy for resident student fees.

The recommendation should include specific tuition level calculation methodologies for the purpose of establishing the nonresident tuition levels and their adjustment on a year-to-year basis; and be it further

*Resolved,* That the California Postsecondary Education Commission, prior to July 1, 1989, is hereby requested to present to the Legislature and the Governor recommendations developed by the advisory committee for a long-term nonresident undergraduate and graduate student tuition policy for California's public colleges and universities; and be it further

*Resolved,* That the Secretary of the Senate transmit copies of this resolution to the California Postsecondary Education Commission, the Regents of the University of California, the Board of Trustees of the California State University, the Board of Directors of Hastings College of the Law, the Board of Governors of the California Community Colleges, the Department of Finance, and the Legislative Analyst.

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## RESOLUTION CHAPTER 163

Senate Concurrent Resolution No. 74—Relative to intercollegiate athletics.

[Filed with Secretary of State September 15, 1988.]

WHEREAS, The problems surrounding the balance between academics and athletics in higher education have become the focus of national attention and concern; and

WHEREAS, Intercollegiate athletics should develop and lay a foundation that enables student athletes to have a well-rounded and successful educational experience, and, insofar as possible, student athletes should be treated like other students; and

WHEREAS, Universities and colleges have an obligation to protect the health and safety of their student athletes when they engage in intercollegiate practice and competition; and

WHEREAS, College athletes have an acute need for medical and disability insurance that covers the immediate and residual effects of injuries suffered while participating in intercollegiate sports; and

WHEREAS, Many of those injuries may seriously impede the ability of the athletes to compete in the open labor market and

otherwise greatly reduce their potential lifetime earning capacity; now, therefore, be it

*Resolved by the Senate of the State of California, the Assembly thereof concurring,* That public institutions of higher education in the State of California, either individually or in cooperation with the National Collegiate Athletic Association (NCAA) or other athletic governing body, study the advisability and feasibility of instituting policies for the award of financial aid to student athletes, beyond the period of their participation in intercollegiate athletics, on the basis of financial need, and report their findings and conclusions no later than January 1, 1990, to the Legislature and the Governor; and be it further

*Resolved,* That public institutions of higher education in the State of California that compete in intercollegiate athletics ensure that all of their student athletes who participate in that competition are adequately covered by medical and disability insurance, and report on the status of that coverage no later than January 1, 1990, to the Legislature and the Governor; and be it further

*Resolved,* That the Secretary of the Senate transmit copies of this resolution to the Regents of the University of California, the Trustees of the California State University, and those private institutions of higher education in this state that participate in intercollegiate athletic competition under the auspices of the NCAA.

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## RESOLUTION CHAPTER 164

Senate Concurrent Resolution No. 92—Relative to foreign languages.

[Filed with Secretary of State September 15, 1988.]

WHEREAS, The United States of America has suffered a trade deficit continuously for the past several years, the severity of which is exemplified by the $60 billion deficit with Japan, our largest trading partner; and

WHEREAS, United States exports to Japan are increasingly agricultural products and raw materials, while our imports are valued added products, illustrative of an emerging trade pattern which is characteristic of third world or nonindustrialized countries; and

WHEREAS, Many United States manufacturing plants which are operating near capacity are showing signs of cost inefficiency which is exemplified by a decline in the volume of United States exported finished products; and

WHEREAS, Technological innovations and scientific discoveries are being developed in Japan at an accelerated pace and are only accessible in the Japanese language, and increasingly a larger

percentage of the patents being issued by our United States patent office are going to Japanese nationals or companies; and

WHEREAS, The California Legislature recognizes the need to direct resources and establish policies to meet the challenge of our state's economic development by harnessing energy and mobilizing resources to assemble a talented, efficient infrastructure capable of competing in the global marketplace; and

WHEREAS, The Legislature finds a need to promote education and training in the languages and cultures of our Pacific trading partners and in particular the language and industrial management practices of our largest trading partner, Japan, in order to improve our trade balance and compete more effectively in the international marketplace; and

WHEREAS, In recognition of this need, the California Legislature has established the California International Studies Project providing teacher training to elementary and secondary school teachers, emphasizing foreign languages and cultures; and

WHEREAS, The Legislature recognizes the benefits derived by interacting with the people of Japan in trade shows and expositions, and by participating in the Japanese marketplace which encourages the application of foreign language training and promotes the penetration of California products into the Japanese marketplace; and

WHEREAS, The EXPO '90 International Garden and Greenery Exposition was conceived by the Ministry of Agriculture, Forestry, and Fisheries of Japan as an effort to help promote better international relations by creating a vehicle to market and promote worldwide agricultural products; and

WHEREAS, EXPO '90 will provide California an important opportunity to have its agricultural products promoted, demonstrated, and sold directly to consumers for six months at the exposition site in Osaka, Japan; now, therefore, be it

*Resolved by the Senate of the State of California, the Assembly thereof concurring,* That all California educational institutions are encouraged to promote Asian, Spanish, or other foreign language, history and cultural training programs; and be it further

*Resolved,* That all California colleges and institutions of higher learning are encouraged to promote language and other courses which facilitate productive international trade relations, including, but not limited to, offering Spanish and at least one Asian language at each campus; and be it further

*Resolved,* That the California Legislature requests institutions of higher learning to offer Spanish and at least one Asian language on their campuses in order to promote greater language capability in every profession; and be it further

*Resolved,* That the University of California is requested to establish an intensive Japanese language residential summer program that is modeled after successful components of the Middlebury College and Monterey Institute of International Studies programs and that

integrates a business, technology and public policy perspective into the language instruction format; and be it further

*Resolved,* That the California Legislature hereby recognizes the importance of improved foreign language skills and participation in overseas expositions for successful marketing of California products and hereby provides a statement of intent to participate in the EXPO '90 International Garden and Greenery Exposition; and be it further

*Resolved,* That the Governor is urged to support California's participation in EXPO '90 in Osaka, Japan; and be it further

*Resolved,* That the Secretary of the Senate transmit copies of this resolution to the Governor, the Superintendent of Public Instruction, the superintendent of every school district in California, the chancellors, presidents and deans of every college or university in California, public and private, and the Ministry of Agriculture, Forestry, and Fisheries of Japan through the Consuls General of Japan in San Francisco and Los Angeles.

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